



**THAILAND  
MIGRATION  
REPORT  
2014**



# THAILAND MIGRATION REPORT 2014

United Nations Thematic Working Group on Migration in Thailand  
edited by Jerrold W. Huguet



International Organization for Migration (IOM)

International Organization for Migration



International  
Labour  
Organization

International Labour Organization



United Nations Development Programme



United Nations Population Fund



Office of the United Nations High Commissioner for Refugees



United Nations Children's Fund



United Nations Action for Cooperation Against Trafficking in Persons



United Nations Office on Drugs and Crime



United Nations Entity for Gender Equality and the Empowerment of Women



Office of the High Commissioner for Human Rights



World Health Organization



Joint United Nations Programme on HIV/AIDS



World Bank



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**R E P O R T**  
**2 0 1 4**

edited by

**Jerrold W. Huguet**

**Cover photos (left to right):**

Suvicha Premjaicheun/UNFPA, Thierry Falise/IOM, Joe Lowry/IOM, Thierry Falise/ILO

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**Publisher:**

United Nations Thematic Working Group on Migration in Thailand  
Bangkok, Thailand  
Tel: +66 2 3439300  
E-mail: [untwgmigrationthaila@iom.int](mailto:untwgmigrationthaila@iom.int)

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The Thailand Migration Report 2014 is the fourth in a series dating back to 2005, and the product of a collaborative effort between member agencies of the United Nations Thematic Working Group on Migration in Thailand.

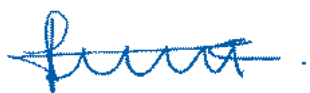
As a country of origin, transit and destination for large numbers of migrants from across the region and throughout the globe, Thailand migration flows are dynamic and complex. In the context of a rapidly evolving region – including the prospect of large numbers of migrant workers and displaced persons from Myanmar returning to their country of origin in the future, and with the initiation of the ASEAN Community around the corner in 2015 – Thailand’s ability to effectively manage migration at this critical juncture will have lasting impacts on its growth and development in the years to come.

Like its predecessors, this report aims to provide policymakers, practitioners and academia with current information on migration trends and patterns in Thailand, together with relevant policy developments. Based on the work and expertise of UN agencies in Thailand, it also features thematic chapters which identify challenges and put forward recommendations across key dimensions of migration policy. These thematic chapters delve into greater depth on areas of particular relevance to the development of international migration policy in Thailand, ranging from the management and regularization of the low-skilled migrant workforce, migrant health, and trafficking in persons.

Myanmar, Cambodian and Laotian migrants continue to play a critical role in filling labour shortages in many sectors of Thailand’s economy, a trend that is likely to continue in the future. The publishing of this report is timely, following the establishment in June-August 2014 of One Stop Service Centres for the registration of migrant workers in Thailand. Large-scale registration is a significant opportunity to increase the protection and fulfilment of the rights of migrant workers and their dependents, and could have the effect of reducing irregular migration and of greater transparency in Thailand’s migration management. However, it is crucial that effective follow-up measures are put in place to monitor the levels of transparency in the subsequent nationality verification procedure and related processes, including the involvement of unregulated intermediaries and the accessibility and cost of the process to migrants themselves.

If Thailand’s economy and society are to continue benefiting from migration, it is essential that the Royal Thai Government and its partners make rights-based and judicious decisions on migration policy. With the current push to register previously undocumented migrants, there is a promising opportunity for Thailand to further develop its migration policy and move forwards in addressing human trafficking and reducing incidences of exploitation, in cooperation with the private sector, civil society and international organizations.

This report aims to provide evidence-based support to policymakers towards the development of transparent and rights-based migration policy that promotes coherence and complementarity across a range of policy domains. Migrants contribute vitally to the development of Thailand’s economy and society, and migration policy that fosters and harnesses this contribution will benefit Thailand, countries of origin, and the migrants themselves.



**Luc Stevens**

Resident Coordinator of  
the United Nations System in Thailand



**Jeffrey Labovitz**

Chief of Mission, IOM Thailand  
Chair of the UN Thematic Working Group on Migration



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The thematic chapters presented in this report have been produced by member agencies of the United Nations Thematic Working Group on Migration. Each of the chapters in the report includes an assessment of the current situation, analysis of the current challenges and gaps in policy, discussion of relevant international instruments, and an analysis of ways forward. The report also includes numerous recommendations to support the Royal Thai Government and relevant stakeholders in developing and implementing a comprehensive rights-based migration policy, including detailed recommendations on specific thematic areas in several of the individual chapters.

Similar to the previous reports, the 2014 edition was prepared under the leadership of the International Organization for Migration (IOM) in its capacity as Chair of the United Nations Thematic Working Group on Migration, an inter-agency body consisting of the following agencies based in Thailand:

- International Organization for Migration (IOM)
- International Labour Organization (ILO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Office of the High Commissioner for Human Rights (OHCHR)
- Office of the United Nations High Commissioner for Refugees (UNHCR)
- United Nations Children's Fund (UNICEF)
- United Nations Development Programme (UNDP)
- United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations Office of the Resident Coordinator (UNRC)
- United Nations Population Fund (UNFPA)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
- World Bank (WB)
- World Health Organization (WHO)



The member organizations of the Thematic Working Group conceived the report, developed the structure and outline, and reviewed each chapter as it was being prepared and revised. All of the agencies that comprise the Working Group participated in the production of the report - either by providing financial support and/or technical advice. IOM played a central role in the preparation of the Thailand Migration Report 2014. Through tireless coordination between members of the Working Group, the editors, authors, translator and other relevant service providers, IOM guaranteed the high quality and timely submission of each chapter and at the same time ensured that the report was the result of a truly collaborative and participatory effort.

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<b>AANZFTA</b>	ASEAN-Australia-New Zealand Free Trade Area
<b>ACCDP</b>	ASEAN-Australia Development Cooperation Program
<b>ACE</b>	ASEAN Confederation of Employers
<b>ACMW</b>	ASEAN Committee on the implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers
<b>ACT</b>	Artemisinin-based combination therapy
<b>AEC</b>	ASEAN Economic Community
<b>AESR</b>	Annual Epidemiology Surveillance Review
<b>AFAS</b>	ASEAN Agreement on Free Trade in Services
<b>AFML</b>	ASEAN Forum for Migrant Labour
<b>AHTD</b>	Anti-Human Trafficking Division
<b>AIDS</b>	Acquired immunodeficiency syndrome
<b>AMS</b>	ASEAN Member State
<b>ANC</b>	Antenatal care
<b>ARCM</b>	Asian Research Center for Migration
<b>ART</b>	Anti-retroviral treatment
<b>ARV</b>	Anti-retroviral
<b>ASCC</b>	ASEAN Socio-Cultural Community
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ATP</b>	Anti-Trafficking in Persons
<b>ATUC</b>	ASEAN Trade Union Council
<b>AZT</b>	Azidothymidine
<b>BATWC</b>	Bureau of Anti-Trafficking in Women and Children
<b>BCG</b>	Bacillus Calmette-Guérin
<b>BOE</b>	Bureau of Epidemiology
<b>BPS</b>	Bureau of Policy and Strategy, Ministry of Public Health
<b>BHA</b>	Bureau of Health Administration
<b>BIOPHICS</b>	Biomedical and Public Health Informatics
<b>BVBD</b>	Bureau of Vector Borne Disease
<b>CCS</b>	Coordinating Committee on Services
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CHAMPSEA</b>	Child Health and Migrant Parents in South-East Asia
<b>CLAIM</b>	Children Living Apart from Parents due to Internal Migration
<b>CLMV</b>	Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam
<b>CMHIS</b>	Compulsory Migrant Health Insurance Scheme
<b>CMP</b>	Coordinating and Monitoring of Anti-Trafficking in Persons Performance
<b>COPD</b>	Chronic Obstructive Pulmonary Disease
<b>CRC</b>	Convention on the Rights of the Child
<b>CWD</b>	Children, Juveniles and Women Division
<b>DFID</b>	Department for International Development
<b>DLPW</b>	Department of Labour Protection and Welfare
<b>DOE</b>	Department of Employment (Thailand)
<b>DOLE</b>	Department of Labor and Employment (Philippines)
<b>DOT</b>	Directly observed treatment
<b>DPT</b>	Diphtheria, pertussis and tetanus
<b>DRG</b>	Diagnostic related group
<b>DSDW</b>	Department of Social Development and Welfare
<b>DSI</b>	Department of Special Investigation
<b>EDT</b>	Early detection and treatment
<b>EPI</b>	Expanded Program of Immunization

<b>EPS</b>	Employment Permit System
<b>EU</b>	European Union
<b>FDI</b>	Foreign direct investment
<b>FTUB</b>	Federation of Trade Unions Myanmar
<b>GATS</b>	General Agreement in Trade in Services
<b>GDP</b>	Gross Domestic Product
<b>GMS</b>	Greater Mekong Sub-region
<b>HIV</b>	Human immunodeficiency virus
<b>HSS</b>	HIV Sentinel Surveillance
<b>IAI</b>	Initiative for ASEAN Integration
<b>IBBS</b>	Integrated Biological Behavioral Surveillance
<b>ICDP</b>	International Conference on Population and Development
<b>ICRC</b>	International Committee of the Red Cross
<b>IDC</b>	Immigration Detention Centre
<b>IDP</b>	Internally displaced persons
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>IMF</b>	International Monetary Fund
<b>IPSR</b>	Institute for Public and Social Research
<b>JE2</b>	Japanese Encephalitis
<b>JICA</b>	Japan International Cooperation Agency
<b>MCH</b>	Maternal and child health
<b>MDG</b>	Millennium Development Goal
<b>MDR</b>	Multi Drug Resistant
<b>MDT</b>	Multi-Disciplinary Team
<b>MFLM</b>	Multilateral Framework on Labour Migration
<b>MHDHS</b>	Ministry of Human Development and Human Security
<b>MHI</b>	Migrant Health Insurance
<b>MICS</b>	Multiple Cluster Indicator Survey
<b>MIS</b>	Malaria Information System
<b>MMC</b>	Mahidol Migration Center
<b>MMP</b>	Migrants and Mobile Population
<b>MMR</b>	Measles-Mumps-Rubella
<b>MOE</b>	Ministry of Education
<b>MOJ</b>	Ministry of Justice
<b>MOL</b>	Ministry of Labour
<b>MOM</b>	Ministry of Manpower (Singapore)
<b>MOTS</b>	Ministry of Tourism and Sports
<b>MOPH</b>	Ministry of Public Health
<b>MOU</b>	Memorandum of Understanding
<b>MRA</b>	Mutual Recognition Arrangement
<b>MSM</b>	Men having sex with men
<b>NAPHA</b>	National Access to Antiretroviral Programme for People Living with HIV
<b>NESDB</b>	National Economic and Social Development Board of Thailand
<b>NGO</b>	Non-governmental organization
<b>NHSO</b>	National Health Security Office
<b>NLD</b>	National League for Democracy (Myanmar)
<b>NLRC</b>	National Labour Relations Commission
<b>NQF</b>	National Qualifications Framework
<b>NSO</b>	National Statistical Office
<b>NTP</b>	National Tuberculosis Programme
<b>NV</b>	Nationality verification

<b>OAG</b>	Office of the Attorney General
<b>ODPC</b>	Office of Disease Prevention and Control
<b>OHS</b>	Occupational Health and Safety
<b>OPTA</b>	Office of Population Technical Assistance Team
<b>OPV</b>	Oral polio vaccine
<b>OSSC</b>	One Stop Service Centre
<b>PHAMIT</b>	Prevention of HIV/AIDS Among Migrant Workers in Thailand
<b>PMTCT</b>	Prevention of Mother to Child Transmission
<b>POCHT</b>	Provincial Operation Center on Prevention and Suppression of Human Trafficking
<b>POEA</b>	Philippines Overseas Employment Administration
<b>POLO</b>	Philippines Overseas Labour Office
<b>RQF</b>	Regional Qualifications Framework
<b>RTG</b>	Royal Thai Government
<b>RTP</b>	Royal Thai Police
<b>SDQ</b>	Strengths and Difficulties Questionnaire
<b>SLOM</b>	Senior Labour Officials Meeting
<b>SLOM-WG</b>	Senior Labour Officials Working Group on Progressive Labour Practices to Enhance Competitiveness of ASEAN
<b>SOM-ED</b>	Senior Officials on Education
<b>SOM-TC</b>	Senior Officials Meeting on Transnational Crime
<b>SOPs</b>	Standard Operating Procedures
<b>SSF</b>	Social Security Fund
<b>SSO</b>	Social Security Office
<b>SSS</b>	Social Security Scheme
<b>STD</b>	Sexually transmitted disease
<b>STI</b>	Sexually transmitted infection
<b>TB</b>	Tuberculosis
<b>TH</b>	Transnational households
<b>THB</b>	Thai Baht
<b>TIP</b>	Trafficking in Persons
<b>TPQI</b>	Thai Professional Qualifications Institute
<b>TVET</b>	Technical and Vocational Education and Training
<b>UC</b>	Universal Coverage
<b>UN</b>	United Nations
<b>UN-ACT</b>	United Nations Action for Cooperation against Trafficking in Persons
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNGASS</b>	United Nations General Assembly Special Session on HIV/AIDS
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNIAP</b>	United Nations Inter-Agency Project on Human Trafficking
<b>UNICEF</b>	United Nations Children's Fund
<b>UNIFEM</b>	United Nations Development Fund for Women
<b>UIS</b>	UNESCO Institute of Statistics
<b>USD</b>	United States Dollar
<b>UTCC</b>	University of the Thai Chamber of Commerce
<b>VPD</b>	Vaccine-preventable diseases
<b>VPTE</b>	Visit Passes for Temporary Employment
<b>WCC</b>	Well Child Clinic
<b>WCF</b>	Workmen's Compensation Fund
<b>WHO</b>	World Health Organization



## EXECUTIVE SUMMARY

International migration makes a significant contribution to economic and social development in Thailand but in 2014 many key aspects of migration policy remain unresolved. These include the establishment of a migration management system that ensures that most migrants are in a regular status, the slow preparations for the ASEAN Community, trafficking in persons and smuggling of migrants, and the situation of displaced persons along the Myanmar border.

It may be estimated that there are between 3.5 million and 4.0 million foreigners living in Thailand, of whom approximately 3.25 million are working. About 2.7 million of those working are from the three neighbouring countries of Cambodia, Lao People's Democratic Republic and Myanmar. Workers are not the only migrants in Thailand, however. At the end of 2013, there were 127,000 registered and unregistered displaced persons in shelters near the Myanmar border. In 2012 there were about 34,500 persons residing in Thailand on retirement visas and in 2010 there were 20,155 international students in higher education.

While in-migration has a much greater impact on the Thai economy and society, out-migration is also significant. In 2012, 134,101 workers were deployed to other countries and the Ministry of Foreign Affairs estimated that about one million Thais were residing overseas.

In 1992 Thailand began issuing migrant worker cards to persons from Myanmar in 10 provinces along the border. That system of regularizing the employment status but not the immigration status of migrants expanded relatively rapidly with the adoption of successive Cabinet Resolutions. In 1996 workers from Cambodia and Lao People's Democratic Republic could also obtain work permits. By 2001 the work permit system covered all provinces in Thailand and essentially all low-skilled jobs.

In 2004, 1.28 million migrants, including dependents, from the three neighbouring countries registered with the Ministry of Interior and 814,000 continued the process to obtain work permits.

Thailand began implementing Memoranda of Understanding (MOU) on cooperation in the employment of workers with Cambodia and Lao People's Democratic Republic in 2006 and with Myanmar in 2009. Under the MOU system, workers obtained job offers and travel documents before migrating to Thailand. By July 2013, 139,048 migrant workers held active work permits as a result of going through the MOU process but that represented only about five per cent of the workers from the three countries in Thailand.

Although the MOU process provided a legal channel for migrant workers to enter Thailand and take jobs, there were still in excess of one million migrants already working in the country. These were given the opportunity to be regularized if their nationality was verified by the Government of their country of origin. While cumulative figures of the total number of migrants who have benefitted from nationality verification (NV) since its beginning in 2009 are difficult to establish, latest statistics indicated that over 1 million Myanmar migrants and 150,000 migrants from Cambodia and Lao People's Democratic Republic had completed NV and held a temporary passport and valid work permit by 14 December 2012. Further entry into the NV process was closed effective 11 August 2013.

Thailand has in place several mechanisms to provide social protection to migrant workers and their families, including the provision of free primary education to all children in the country, the enrolment of registered migrant workers in the Social Security Fund and access to health insurance regardless of migration status. The Social Security Fund does not cover workers in the informal sector or those working on fishing boats, however, and many barriers prevent migrants from gaining access to education and health care.

Although migration decisions are usually made by their parents, many children in Thailand are directly affected by migration, including (1) children who migrate from other countries with their families or are born in Thailand to migrant parents (children of in-migrants); (2) children who migrate from other countries on their own or with peers (migrant children); (3) Thai children who migrate on their own within Thailand (Thai internal migrant children) and (4) Thai children whose parents have migrated to other countries or within Thailand.

The influx of migrants into Thailand raises concerns about the potential increased risk of infectious diseases and increased demands on the health-care delivery system, especially in border regions. Even though most migrants are young and healthy, they might also be especially vulnerable to illness owing to occupational hazards, poor living conditions, mobility, and lack of access to health services. The scope and nature of this vulnerability needs to be fully appreciated by both communities and Government officials. Public misperceptions about migrants' health and the lack of comprehensive epidemiologic data hinder the development of comprehensive health policy and fully implementing integrated health services for both Thai and non-Thai populations.

Among migrants in Thailand, unmet need for family planning, incorrect use of contraception, unwanted and adolescent pregnancy, poor maternal and child health, high prevalence of sexually transmitted diseases and HIV/AIDS infection and other problems (i.e. gender-based violence) have been identified as reproductive health concerns. A major cause of these problems is the inability of migrants to obtain access to sufficient reproductive health services, and appropriate health education and health information because of constraints from the migrants' side and existing barriers in the Thai health service system.

In November 2012, the Ministry of Labour issued Ministerial Regulation No. 14 (B.E. 2555) under the Labour Protection Act B.E. 2541 (1998). The Regulation applies to employers whose employees are engaged in domestic work but not in business operations. The Regulation represents an advance in the protection of domestic workers' rights because it stipulates that they are entitled to one day of rest per week, 13 days of public holidays and wage payment on holidays and days of sick leave. However, the Regulation does not establish a minimum daily wage because domestic work is not regarded as a business operation.

The bilateral agreements and regularization regimes enacted have yet to wholly fulfil their objectives of instituting a safe and lawful labour migration process. A significant remaining gap is the policy and implementation of complaint mechanisms, which currently leave migrant workers without adequate means to seek redress for rights violations during recruitment and employment. The intrinsic vulnerability of migrants working outside of their country of origin is further exacerbated by the absence of fair, efficient, and accessible channels to resolve grievances.

Thailand is a source, transit and destination country for men, women and children trafficked for forced labour or sexual exploitation. The majority of trafficking victims identified in recent years in Thailand were migrants from neighbouring countries, namely Cambodia, Lao People's Democratic Republic and Myanmar. After 2012, however, an increasing number of Thai victims have been identified. Since the enactment of the Anti-Trafficking in Persons Act B.E. 2551 in June 2008, there has been an increase in the number of prosecutions for human trafficking.

In a recent survey of 5,027 Myanmar migrants working in Thailand, 80 per cent of them expressed their willingness to go back to Myanmar in the future. Among those who indicated their willingness to return, 82 per cent indicated that their decisions had been influenced by the recent political and economic changes in Myanmar. The length of stay in Thailand is the major variable that determines whether a migrant will want to return to Myanmar or not, with migrants who have stayed in Thailand for longer periods being

less interested in returning. These findings indicate the potential for change in the labour market dynamics between Myanmar and Thailand.

The Association of Southeast Asian Nations (ASEAN) Economic Community will be formally established at the end of 2015. The economic pillar of ASEAN calls for a free movement of skilled workers, which should have implications for the labour market in all ASEAN Member Countries. However, it is clear that the free flow of skilled labour, as envisioned by ASEAN, is restricted in its scope, focusing mainly on the movement of natural persons and service providers, with the primary aim of facilitating cross-border trade and investment. However, the ASEAN Socio-Cultural Community (ASCC) commits Member States to continue existing efforts to promote regional mobility and to protect and promote the rights of migrant workers.

In sum, the Royal Thai Government has achieved several advances in migration policies and programmes over the past decade, including the MOUs on labour migration with neighbouring countries, regularizing more than one million migrant workers through nationality verification, the resettlement to third countries of approximately 100,000 displaced persons from Myanmar and the enactment of the Anti-Trafficking in Persons Act B.E. 2551 (2008).

In spite of these achievements, many aspects of the situations addressed by them persist. There are probably more than one million unregistered migrant workers in the country and the fully legal migrant workers often lack the social protection and enforcement of labour standards that they are entitled to. More than 120,000 registered and unregistered displaced persons remain in camps along the Myanmar-Thailand border, with no durable solution readily apparent. The number of persons prosecuted and convicted for trafficking in persons has generally been low, but increased significantly in 2013.

Developing a comprehensive policy concerning international migration would help the Royal Thai Government to continue the progress achieved over the past few years while addressing the drawbacks cited above. Such a comprehensive policy should be developed in consultation with representatives of all stakeholders and should be based on recognition of the major contribution to development made by migrants.

Detailed recommendations for advancing migration policies and programmes are provided in the chapters in this report, particularly those on labour migration policy; social protection; migrant health, including reproductive health; trafficking in persons; preparations for the ASEAN Community and complaints mechanisms for migrant workers.





# INTRODUCTION

JERROLD W. HUGUET

The publication of the Thailand Migration Report 2014 comes at a crucial time for international migration policy-making in Thailand as well as at a time when major administrative reforms are being considered by the National Council for Peace and Order (NCPO) and the temporary National Legislative Assembly. At least six aspects of international migration are at critical points, when major changes are required.

First, the nationality verification process for migrant workers from Cambodia, Lao People's Democratic Republic and Myanmar is characterized by passed deadlines, extensions and grace periods but has not been established as a continuous process. The process has regularized more than 1.3 million workers from those countries (chapter 2) but has been far from complete. There is no systematic estimate of the number of migrant workers in the country who are not registered but most observers assume that it exceeds one million. Furthermore, those workers whose nationality was verified were permitted to stay and work in Thailand for four years but many workers will soon reach that limit and no definitive policy regarding their status is in place. Migrant workers who became regularized through the NV process should have been enrolled in the Social Security Fund but many employers either did not enrol the workers or did not keep up their monthly contributions to the Fund, thus depriving workers of health insurance.

The NCPO set up several one-stop service centres (OSSCs) to register migrant workers whose registration had expired or who were not previously registered. The centres combine officials from the Immigration Bureau, Ministry of Interior, Ministry of Labour and Ministry of Public Health. Employers are required to bring their migrant workers and dependents to register at the OSSCs, following which the migrants receive a "non-Thai" identification card, which permits them temporarily to stay and work in Thailand and access health care. In a period of several months more than 1.5 million irregular migrants and their dependents have been registered at the OSSCs. At the time of writing, the cards are due to expire on 31 March 2015, by which time it is expected that those migrants who have registered will have completed NV and be in a regular status in Thailand.

To ensure that migrant workers have access to health care, the Ministry of Public Health in June 2014 announced that they could obtain health insurance cards for either three or six months. After that temporary period, migrant workers will be able to obtain a health insurance card for a total of THB 2,100 per year, including THB 500 for a medical check-up. This represents the latest step taken by the Ministry of Public Health in its efforts to provide universal health care for migrant workers and their dependents in Thailand, and follows on from the migrant health policy enacted in August 2013, allowing migrants of all ages, in regular or irregular status who are not currently receiving health benefits under the Social Security Scheme to enrol in the Migrant Health Insurance Scheme.

Second, although the Memoranda of Understanding (MOU) concerning migrant workers negotiated by Thailand with the three neighbouring countries were meant to regularize recruitment prior to arrival in the destination country, they have accounted for only about one in ten of the migrant workers registered in Thailand. The MOUs began to be implemented in 2006 but as of July 2013 only 139,000 of the migrant workers in Thailand had entered via that process (chapter 2). The cost and complexity of recruitment of migrant workers through the MOU process mean that it has not achieved its objective of having most



workers registered prior to entering the host country. As the MOUs provide for two two-year periods of employment, most of the workers who were recruited through this process will soon reach the limit of their legal stay in Thailand. It is not yet known if provision will be made for those workers who wish to remain longer or how many of them will decide to stay in an irregular status.

Third, the ASEAN Economic Community (AEC), which will come into being at the end of 2015, promises the free flow of skilled labour. To date, only eight, mostly professional, occupations have been chosen for easier movement among the ten members of ASEAN, and the detailed agreements required for such movement have not been completed. Nonetheless, Thailand has not put in place the necessary regulations to permit the employment of foreigners in some of those occupations, nor has it developed policies to ensure the competitiveness of its nationals in a region-wide professional labour market. It may be anticipated that employers will request that the movement of workers within the AEC framework be expanded to cover many other occupations and skill levels. In addition, the ASEAN Socio-Cultural Community (ASCC) calls for continuing efforts to promote regional mobility and to protect and promote the rights of migrant workers. To meet the ASEAN objectives, migration policies in Thailand will need to become much more comprehensive and coherent.

Fourth, the annual Trafficking in Persons Report (TIP) issued by the United States of America Department of State, which rates all countries on their efforts to combat trafficking, has recently downgraded Thailand to Tier Three after three consecutive years on the Tier Two watch list, which implies that its efforts to combat trafficking are inadequate and leaves Thailand subject to United States sanctions. There is a need to ensure policies concerning human trafficking are more victim-centred, and migration policies strengthen the protection available to migrant workers and ensure the strict enforcement of labour rights and standards. Social protection mechanisms should be expanded to ensure protection for workers in the informal sector, including in agriculture, domestic work and fishing.

Fifth, as economic and political reforms are instituted in Myanmar, the situations of migrant workers from Myanmar may be expected to change. In a survey of 5,027 Myanmar migrant workers in Thailand conducted by the International Organization for Migration and the Asian Research Center for Migration (2013), 80 per cent of the respondents reported that they wanted to return to Myanmar, with 30 per cent of the total indicating that they planned to return within three years. Thus, improved employment opportunities in Myanmar may have a significant impact on the supply of labour in Thailand, an issue that has not yet been addressed by the Government of Thailand or by employers' federations. As it concerns those that fled Myanmar to seek refuge in Thailand due to armed conflict or political persecution, some 120,000 "displaced persons" are receiving protection and humanitarian assistance in nine Temporary Shelters (camps) along the Thai-Myanmar border. Their situation and prospects for a durable solution, including voluntary repatriation, are fundamentally linked to the ongoing peace process and end to the armed conflict between non-State armed actors (Ethnic Armed Groups) in the southeast and the Government of Myanmar. Temporary ceasefires were signed in 2012, but to-date no permanent cessation of the armed conflict has been agreed (currently being negotiated under the proposed framework of a national ethnic ceasefire). The lack of confidence within the refugee population on the peace process remains high, resulting in a level of anxiety regarding their futures. Securing a durable solution for all of the camp population will take time. While individual resettlement to third countries remains an option for some, the possibility to return home is now also an emerging solution for the many who have hoped for this for years and may desire to do so.

The NCPO has discussed a plan to repatriate those living in temporary shelters at a meeting of the Thai-Myanmar Regional Border Committee, 1-3 August 2014. However, the displaced persons themselves might still believe that they cannot yet return safely. Finding a solution that is acceptable to all parties might prove



difficult, especially as only about 62 per cent of the displaced persons in the nine shelters along the border are officially registered. Furthermore, a sizeable proportion of the population in the shelters was born in them and those persons may have little desire to return to a country they have never seen.

Sixth, no country in the region has developed adequate policies dealing with the plight of Rohingya who have fled Myanmar and landed on their shores. Rohingya are an ethno-religious-linguistic minority who are not recognized as nationals of Myanmar under the country's Citizenship Law of 1982, rendering them stateless. Following civil unrest in Rakhine state in June and October 2012, many of them, including for the first time women and children, have fled to countries in the region by boat. From July 2012 to June 2013 over 30,000 Rohingya reportedly turned to agents who could smuggle them to other countries, however in some cases they became stranded and detained by national authorities.

In Thailand in January 2013, a group of 850 Rohingya released during raids on smuggling camps in Southern Thailand were granted temporary protection by the Royal Thai Government (RTG). In the coming weeks the number of Rohingya in detention swelled to over 2,000 persons. Women and children from the group have been accommodated in Shelters for Children and Families operated by the Ministry of Social Development and Human Security (MSDHS). The males have been held in Immigration Detention Centres (IDCs) across the country. In the second half of the year, several hundred Rohingya men, women and children escaped, often with the assistance of agents, and more than a thousand were deported. The situation of the newly arrived Rohingya in Thailand, particularly those held in unofficial 'transit camps' in the forests of southern Thailand, leave many in vulnerable situations with possible links to trafficking. It is hoped that efforts are timely, effective and systematic to ensure that Rohingya individuals who are fleeing for safety are protected, that they are accorded basic rights associated with 'temporary protection' pending attainment of more sustainable solutions, and that they are not exploited further.

More broadly, durable solutions and any effective resolution of the current challenges faced by Rohingyas will require regional discussions and an agreement between Myanmar and its neighbours. In light of the continued tension in Rakhine State, the situation is not deemed conducive to safe and voluntary return at this stage.

The Thailand Migration Report 2014 provides information on the context of all of these issues and a detailed examination of the first four of them. The Royal Thai Government has made limited progress in more efficiently registering migrant workers in the country, protecting the rights of migrant workers and their dependents, and formulating anti-trafficking policies and procedures, especially in the fishing industry. Overall, policy making has been reactive, without stated long-term objectives and without integration with other socioeconomic development strategies.

The intent of the Thematic Working Group on Migration in Thailand (comprising several United Nations agencies and the International Organization for Migration) is that this publication can assist in the process of formulating policies to better protect the rights of migrants, to promote social and economic development in Thailand, and to promote constructive relations between Thailand and its neighbours.

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## In-migration

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Both internal and international migration play a significant part in the social and economic development of Thailand. While the rate of internal migration may be expected to slow because of a shifting age structure, international migration is expected to be of greater significance in the future. Several million foreigners reside and work in Thailand. The majority of foreign workers are in low-skilled occupations but 91,000 hold work permits in professional and skilled occupations. Many foreigners also stay in Thailand as international students, spouses of Thai nationals and as retirees.

The actual number of non-Thais living in the country is not known and there has been no systematic attempt to estimate their number although an approximate estimate is provided in table 1.1 below. The number of migrant workers in Thailand could be two or three times the number who have obtained work permits. It is believed that tens of thousands of persons from around the world are overstaying their visas in Thailand, and that most of them are working, but there is no available estimate of the number. Table 1.1 gives an estimate that there are 3.7 million foreigners living in Thailand, of whom 3.25 million are working. Given the assumptions involved and the range of error in making that estimate however, a more cautious approach would be to say that there are probably between 3.5 million and 4.0 million foreigners living in Thailand.

The estimate of the total number of foreigners in Thailand depends heavily upon an estimate of those who are working in an irregular status, i.e. those who have not completed nationality verification as required or do not hold work permits. To construct the estimate of migrant workers in an irregular status, statistics provided by the Bureau of Registration Administration, Department of Provincial Administration, Ministry of Interior, as reported by Archvanitkul (2013), were used. The Department of Provincial Administration reported that there were 3,567,683 migrant workers from Cambodia, Lao People's Democratic Republic and Myanmar registered as of 13 March 2013. There are, however, three major sources of error in this figure. First, it does not take into account workers who have registered with the Department in the past but are no longer in Thailand. Second, it does not take into account workers who have registered more than once, perhaps with different names. Third, it obviously does not include migrant workers in Thailand who have never registered with the Department. The impact of the first two types of error would be largely offset by the third error of non-registration.

To estimate the total number of workers from Cambodia, Lao People's Democratic Republic and Myanmar in Thailand in 2013, taking into account the offsetting errors in the data, it was assumed that the actual number was three fourths (75%) of the cumulative number registered by the Department of Provincial Administration ( $3,567,683 \times 0.75 = 2,675,762$ ). As 1,082,892 of those held work permits, the number of migrant workers from those three countries in an irregular status equalled 1,592,870. While this estimate may be reasonable, it must be acknowledged that it comes with a wide range of error.

Table 1.1: Estimated foreign population residing and working in Thailand, 2013

Category	Stay	Stay and work
<b>Professional and skilled workers<sup>a</sup></b>		92,008
<b>Workers from Cambodia, Lao People's Democratic Republic and Myanmar</b>		
• With work permits <sup>a</sup>		1,082,892
• Irregular status <sup>b</sup>		1,592,870
Subtotal <sup>b</sup>		2,675,762
<b>Subtotal</b>		<b>2,766,968</b>
<b>Other temporary stay<sup>c</sup></b>		
• Stay with Thais	15,492	
• Stay with Thai wife	9,708	
• Stay with a resident family	1,860	
• Retirement	34,536	
• Other visa extensions	91,128	
<b>Subtotal</b>	<b>152,724</b>	
<b>Tertiary students (2010)<sup>d</sup></b>	<b>20,155</b>	
<b>Other regular<sup>e</sup></b>		
• Residents awaiting nationality verification		203,512
• Born in Thailand to non-national parents	128,910	
• Stateless persons		281,938
<b>Subtotal</b>	<b>128,910</b>	<b>485,450</b>
<b>Displaced persons, refugees and asylum-seekers<sup>f</sup></b>		
• Registered in official camps	78,575	
• Unregistered and other categories	48,463	
Subtotal	127,038	
<b>Total</b>	<b>428,827</b>	<b>3,252,418</b>
<b>Overall total</b>	<b>3,681,245</b>	

<sup>a</sup>Ministry of Labour, Department of Employment, Bureau for Management of Foreign Workers, "Newsletter on statistics of foreign workers with work permits throughout the Kingdom, 2012" (2013) (in Thai).

<sup>b</sup>Author's estimation based on data from Department of Provincial Administration reported in Archavanitkul (2013). See text for explanation.

<sup>c</sup>Immigration Bureau, [http://www.immigration.go.th/stat/xtend\\_nation2555.xlsx](http://www.immigration.go.th/stat/xtend_nation2555.xlsx). Figures for September 2012 are multiplied by 12 to obtain annual estimates.

<sup>d</sup>Office of the Higher Education Commission, Foreign Students in Thai Higher Education Institutions 2010 (Bangkok, 2012) (in Thai).

<sup>e</sup>Department of Provincial Administration, as reported by Archavanitkul (2013).

<sup>f</sup>The Border Consortium, "Refugee and IDP camp populations: November 2013". Available from <http://theborderconsortium.org/camps/populations.htm> (accessed 26 December 2013).

As of July 2013, there were 1,174,900 foreigners with work permits in Thailand, in both professional and low-skilled occupations. They were numerous in every region except the North-East, which is itself a source of workers for Bangkok and the Central region (table 1.2). Forty per cent of those with work permits were women.

**Table 1.2: Number of foreigners holding work permits in Thailand, by sex and region, July 2013**

Region	Both sexes	Males	Females
<b>Thailand</b>	<b>1,174,900</b>	<b>705,495</b>	<b>469,405</b>
Bangkok	149,209	104,156	45,053
Bangkok vicinity	233,362	136,666	96,696
Central region	298,628	179,118	119,510
Northern region	114,264	61,231	53,033
North-Eastern region	22,520	12,508	10,012
Southern region	356,917	211,816	145,101

Source: Ministry of Labour, Department of Employment, available from <http://wp.doe.go.th/wp/images/statistic/sm/56/sm0756.pdf>.

According to the Thailand Labour Force Survey, the labour force in 2010 was 38.6 million persons. Thus, the foreigners with work permits constitute about 2.8 per cent of the labour force. However, if unregistered migrant workers are taken into account, foreigners probably make up between 5 and 8 per cent of the labour force.

Only workers from Cambodia, Lao People's Democratic Republic and Myanmar are permitted to work in low-skilled occupations in Thailand. Those that held work permits in July 2013 following the process of nationality verification equalled 899,658 (table 1.3). Among those, 10 per cent were from Cambodia, fewer than 4 per cent were from Lao People's Democratic Republic and 86 per cent were from Myanmar. Some 43 per cent were women. Workers from those countries can also enter Thailand through a process established by bilateral Memorandums of Understanding (MOUs) between Thailand and each source country, in which they are approved in advance and travel with a "passport" issued for the purpose of labour migration. The number of workers from the three neighbouring countries who had entered Thailand under the auspices of the MOU process equalled 139,048 as of July 2013 (IOM, 2013). It is likely that a small percentage of those were no longer in Thailand, however.

**Table 1.3: Number of persons from three neighbouring countries holding work permits following nationality verification, by sex, July 2013**

Country	Both sexes	Males	Females
<b>Total</b>	<b>899,658</b>	<b>513,320</b>	<b>386,338</b>
Cambodia	89,618	53,223	36,395
Lao People's Democratic Republic	31,782	17,451	14,331
Myanmar	778,258	442,646	335,612

Source: Ministry of Labour, Department of Employment, available from <http://wp.doe.go.th/eu/statistic/7/56/sm06-56.pdf>, accessed on 19 August 2013.

As of July 2013, some 92,008 foreigners held work permits for professional and skilled occupations in Thailand, reflecting the relative openness of the Thai economy to foreign expertise (table 1.4). More than 80,000 of those were in the two categories of (a) senior officials and managers, and (b) professionals. The largest number of foreign skilled and professional workers comes from Japan. Workers from Japan and India are concentrated in the category of senior officials and managers whereas a majority of those from the Philippines and the United States of America are considered professionals, presumably because many of them are teachers.

**Table 1.4: Number of foreigners holding work permits for professional and skilled occupations by nationality, July 2013**

Occupation	Total	Nationality						
		Japan	United Kingdom	Philippines	China	India	United States	Others
<b>All occupations</b>	<b>92,008</b>	<b>13,329</b>	<b>9,057</b>	<b>8,929</b>	<b>8,520</b>	<b>7,442</b>	<b>7,065</b>	<b>37,666</b>
Senior officials and managers	54,568	10,644	4,522	1,437	4,211	5,868	2,666	25,220
Professionals	27,079	1,524	3,866	6,492	2,838	903	3,943	7,513
Technicians and associate professionals	5,305	737	433	514	596	285	342	2,398
Clerks	1,239	85	131	235	101	55	48	584
Service and sales workers	1,462	199	43	149	61	31	221	758
Skilled agri-cultural and fishery workers	42	2	3	3	3	..	..	31
Craft and related trades workers	425	45	12	21	121	42	10	174
Factory and related operators	935	84	41	74	470	51	9	206
Elementary occupations	412	4	1	3	4	..	2	398
Trainees	541	5	5	89	27	17	14	384

Source: Ministry of Labour, Department of Employment, available from <http://wp.doe.go.th/eu/statistic/7/56/sm06-56.pdf>, accessed on 19 August 2013.

A key factor in the demand for foreign workers in Thailand is the declining number of persons in the younger working ages, as highlighted in table 1.5. While the number of persons in the full labour-force age range from 15 to 64 years is still growing, albeit at only 0.2 per cent per year, the number of persons in the younger age ranges is decreasing. The Thai population in the age groups of 15-24 years and 15-39 years is declining by 1.2 per cent a year. Thus, the population aged 15-24 years, or the age of entry to the labour force, is falling by an annual average of 109,000 persons between 2010 and 2020, while that aged 15-39 years is declining by an average of 288,000 persons a year. Given that the overall economy grew steadily up to the year 2013, it would be expected that the declining number of persons entering labour force age would be compensated for by the employment of international migrant workers.

**Table 1.5: Thailand, population of working age in broad age groups, 2010 and 2020 (in thousands)**

Year	Age group					
	15-64	Annual rate of change (%)	15-39	Annual rate of change (%)	15-24	Annual rate of change (%)
2010	47,676	--	25,570	--	9,505	--
2020	48,397	0.2	22,694	-1.2	8,413	-1.2

Source: United Nations Population Division, World Population Prospects: The 2012 Revision. Available from <http://esa.un.org/unpd/wpp/Excel-Data/population.htm> (accessed 31 August 2013).



Approximately 153,000 persons have visas to stay in Thailand (usually for one year at a time) based on family relationships or for retirement, a category that has been increasing steadily since the retirement visa was introduced in 2003.

The number of foreign students in Thailand is also increasing gradually, although at a much slower rate than for Malaysia or Singapore, for example. In 2010 there were 20,155 international students in 103 higher education institutions in Thailand. By far the largest number came from China (9,329). The number of tertiary students from China was only 2,698 in 2006 and 4,028 in 2007; thus it had more than doubled in the three years from 2007 to 2010. Lower numbers of tertiary students in 2010 came from Lao People's Democratic Republic (1,311), Myanmar (1,310), Viet Nam (1,100) and Cambodia (944) (Office of the Higher Education Commission, 2011). The latter figures bode well for the initiation of the ASEAN Community at the end of 2015.

Statistics supplied by the Ministry of Education indicate that in 2012 there were also 21,800 foreign students enrolled in Thai kindergartens, 64,967 in the six grades of primary school, 10,844 in lower secondary school and 2,322 in upper secondary school, for a total of 99,933 foreign students in the Thai educational system. This total is not shown in table 1.1 because presumably the students are included in the Immigration categories of their parents. Among the total of 99,933 foreign students, 49,677 are from Myanmar, 8,180 are from Cambodia, 4,091 are from Lao People's Democratic Republic and 3,329 are from China. The steep decline in the number of foreign students from primary education to the two levels of secondary education reflects not only the barriers for them to continue to higher levels but also their withdrawal from school in order to begin work.

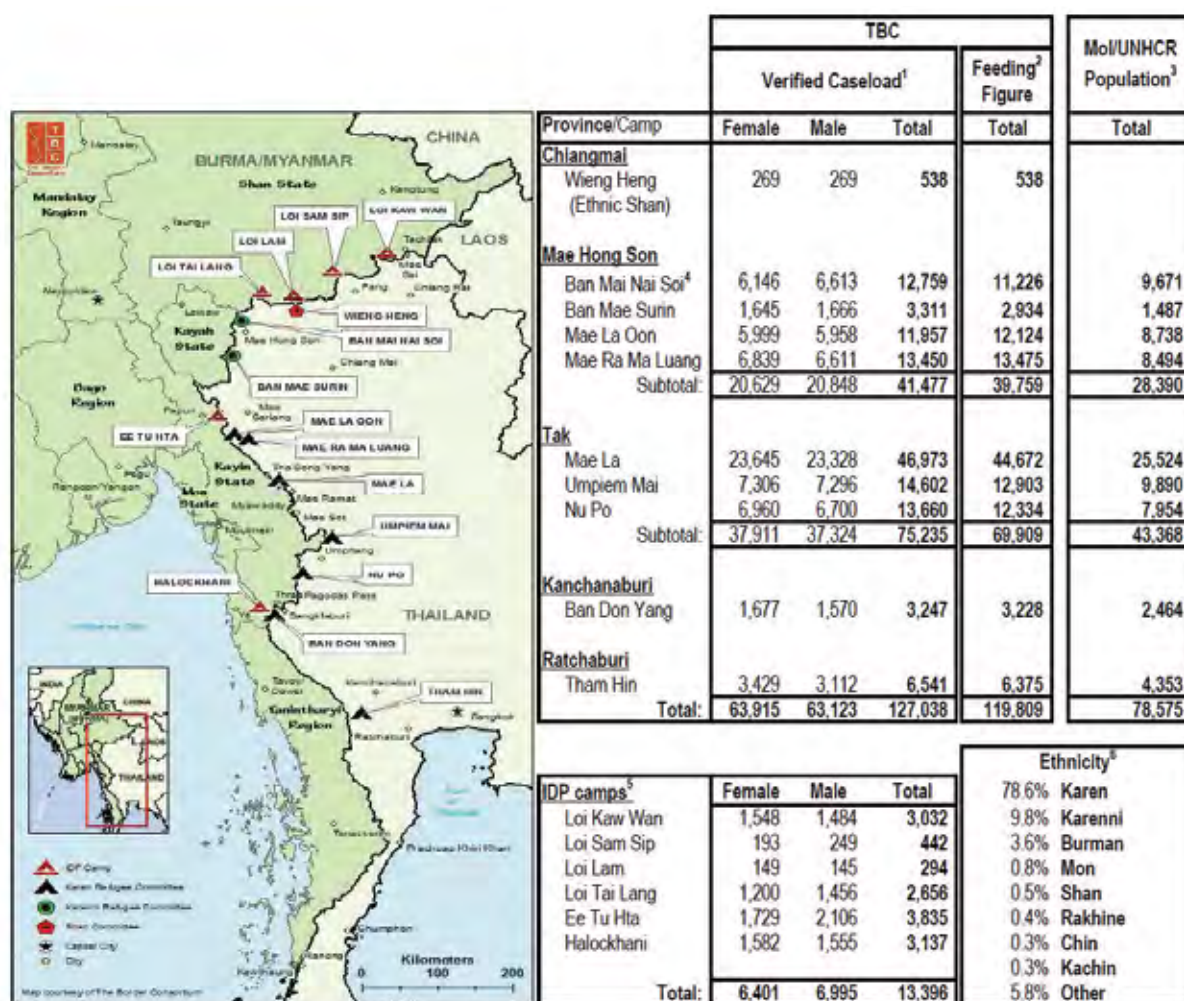
It may be assumed that several thousand persons are overstaying the duration of their visa after entering Thailand legally. Statistics provided by the Immigration Bureau indicate that 72,271 persons were detected as staying longer than authorized but the great majority of those are probably persons who had overstayed by only a few days and were fined upon leaving the country. Thus, the number of such overstayers at any one time would be small. The number of long-term visa overstayers is not known.

In 2005 the Cabinet approved the National Strategy on Administration of Legal Status and Rights of Persons, designed to regularize the situation of highland populations and other ethnic minorities. According to statistics from the Department of Provincial Administration, as of 13 March 2013 there were 203,512 persons in ethnic minority groups who were awaiting nationality. There were also 128,910 persons born in Thailand to non-Thai parents (of whom some will be eligible to apply for Thai nationality) and 281,938 persons considered to be stateless (Archvanitkul, 2013). In constructing table 1.1, deciding whether these categories of persons are working in Thailand is somewhat arbitrary. Not all ethnic minorities and stateless persons are working, while those persons born to non-Thai parents would be eligible to work when they are 15 years old.

The Border Consortium, a group of non-governmental organizations (NGOs) providing services and assistance to displaced persons from Myanmar, reported that there were 127,038 such persons in ten camps along the Thailand-Myanmar border in November 2013 (map 1.1). These included 78,575 persons in nine camps who were registered with the United Nations High Commissioner for Refugees (UNHCR). The Royal Thai Government (RTG) allows UNHCR to process for resettlement to third countries displaced persons who had arrived in the camps by 2005. Thus, the difference between the total camp population and the number formally registered with UNHCR are persons who have arrived since that date and are not eligible for resettlement.



Figure 1.1: Refugee and IDP Camp Populations: November 2013



Notes:

- The Verified caseload includes all persons verified as living in the camps and eligible for rations, registered or not (including students). It excludes all previously verified residents now permanently out of camp.
- Rations are provided only to those personally attending distributions. The Feeding Figure is the actual number of beneficiaries recorded as having collected food rations at distribution the previous month. For example, the June Feeding Figure is the number of beneficiaries confirmed as collecting food rations during the May distribution.
- Mol/UNHCR figures are registered refugees. Most new arrivals since 2005 are not registered. UNHCR records an additional 248 people who have been submitted to the Provincial Admission Boards (PABs).
- Includes Kayan.
- Population figures for IDP camps are derived from camp committees on a monthly or quarterly basis depending on accessibility.
- From TBC Population Database of verified caseload; IDP camps excluded.

Source: The Border Consortium, "Refugee and IDP camp populations: November 2013". Available from <http://theborderconsortium.org/camps/populations.htm> (accessed 26 December 2013).

## Out-migration

While in-migration has a much greater impact on the Thai economy and society, out-migration is also significant. In 2012, 134,101 workers were deployed to other countries and the Ministry of Foreign Affairs estimated that about one million Thais were residing overseas.

Among formal deployments, two thirds went to other countries in Asia (excluding Western Asia), 19 per cent went to the Middle East and Africa, and 10 per cent went to Europe. Women constituted only 19 per cent of the workers deployed (table 1.6). The number deployed included both those migrating on new contracts (79,628) and those who were renewing their contracts (54,473). Among those migrating with new contracts, 49 per cent were being sent by recruitment companies, 17 per cent were recruited by their employers, 16 per cent found their own employment, 12 per cent were recruited by the Department of Employment and 6 per cent were going for training (table not shown).

**Table 1.6: Number of Thai workers deployed, by destination, 2012**

Destination	Males	Females	Both sexes
<b>Total</b>	<b>108,89</b>	<b>225,209</b>	<b>134,101</b>
<b>Middle East and Africa</b>	22,011	2,859	24,870
Bahrain	455	645	1,100
Israel	4,804	255	5,059
Kuwait	1,637	155	1,792
Qatar	2,480	149	2,629
South Africa	2,212	61	2,273
United Arab Emirates	6,260	1,052	7,312
Other	4,163	542	4,705
<b>Asia</b>	<b>72,111</b>	<b>17,074</b>	<b>89,185</b>
Brunei Darussalam	2,201	496	2,697
Hong Kong, China	89	2,444	2,533
India	2,179	212	2,391
Indonesia	2,446	34	2,480
Japan	5,253	3,343	8,596
Lao People's Democratic Republic	1,033	76	1,109
Malaysia	3,036	1,405	4,441
Republic of Korea	8,772	1,557	10,329
Singapore	11,208	656	11,864
Taiwan Province of China	33,431	5,697	39,128
Viet Nam	848	164	1,012
Other	1,615	990	2,605
<b>Europe</b>	<b>9,760</b>	<b>3,395</b>	<b>13,155</b>
Finland	2,647	406	3,053
Sweden	5,028	559	5,587
Other	2,085	2,430	4,515

Destination	Males	Females	Both sexes
<b>Americas</b>	2,099	1,548	3,647
Canada	547	397	944
United States of America	1,377	1,072	2,449
Other	175	79	254
<b>Pacific</b>	2,911	333	3,244
New Zealand	565	286	851
Papua New Guinea	1,764	14	1,778
Other	582	33	615

Source: Ministry of Labour, Office for Thai Workers Going Overseas. Available from [http://www.overseas.doe.go.th/summarystat55/2\\_3\\_2555.pdf](http://www.overseas.doe.go.th/summarystat55/2_3_2555.pdf) (accessed 19 August 2013).

Note: Includes both new deployments and contract renewal, labelled "re-entry".

The migrant workers deployed by Thailand are generally low-skilled (table 1.7). Of the 134,101 workers deployed in 2012, only 11 per cent were in the top three occupational categories.

**Table 1.7: Number of Thai workers deployed abroad by occupation, 2012**

Occupation	Males	Females	Both sexes
<b>All occupations</b>	<b>108,892</b>	<b>25,209</b>	<b>134,101</b>
Senior officials and managers	1,699	573	2,272
Professionals	3,614	936	4,550
Technicians and associate professionals	3,434	4,193	7,627
Clerks	282	271	553
Service and sales workers	4,756	6,425	11,181
Skilled agricultural and fishery workers	11,884	1,516	13,400
Craft and related trades workers	26,386	562	26,948
Factory and related operators	43,025	8,866	51,891
General labour	13,812	1,867	15,679

Source: Ministry of Labour, Office for Thai Workers Going Overseas. Available from [http://www.overseas.doe.go.th/summarystat55/2\\_3\\_2555.pdf](http://www.overseas.doe.go.th/summarystat55/2_3_2555.pdf) (accessed 19 August 2013).

Note: Includes both new deployments and contract renewal, labelled "re-entry".

Each year, the Thailand Ministry of Foreign Affairs requests its Embassies and Consulates abroad to estimate the number of Thai nationals living within their areas of responsibility. The estimates prepared in this manner for 2012 indicated that at least 1,001,070 Thais were living abroad (table 1.8). By far the greatest number was living in the United States of America, 330,349, based on the 2010 population census of the host country. (It should be noted that, as the census data were based on place of birth, some percentage of those born in Thailand would currently be naturalized United States citizens.)

Among the Thai nationals living overseas are students studying at the tertiary level. Data compiled by the UNESCO Institute of Statistics (UIS, 2013) indicate that their number equalled 26,233 in 2010. The largest numbers were in the United States (8,455), United Kingdom (5,348), Australia (4,229) and Japan (2,419).

**Table 1.8: Estimated number of Thai persons residing in other countries, 2012**

Country or area	Number
<b>Total</b>	<b>1,001,070</b>
United States of America (2010)	330,349
Taiwan Province of China	73,544
Germany	56,153
Australia	54,787
United Kingdom	54,000
Malaysia	51,000
Singapore	47,700
Republic of Korea	44,000
Japan	42,658
France	30,000
Sweden	28,739
Hong Kong, China	28,336
Israel (2011)	28,000
Netherlands	16,000
United Arab Emirates	14,232
Norway	13,293
Saudi Arabia	11,240
All others	77,039

Source: Thailand Ministry of Foreign Affairs. Available from <http://www.consular.go.th/main/contents/files/services-20120630-141533-674689.pdf> (accessed 19 August 2013).

## INTERNAL MIGRATION

The Thai population is relatively mobile. The 2010 Population and Housing Census found that 9.4 per cent of the population had changed residence during the previous five years and that more than half of the migrants had moved between provinces (table 1.9). The population census under-reports the extent of internal migration because it records only moves of at least six months duration, thus omitting the high level of seasonal migration that occurs in Thailand. One in eight migrants had moved from another country.

**Table 1.9: Thailand: number of persons who migrated during the previous five years, by type of migration and sex, 2010**

Type of migration	Both sexes	Per cent	Males	Per cent	Females	Per cent
Total population	65,981,642	--	32,355,056	--	33,626,586	--
<b>Total migrants</b>	<b>6,227,495</b>	<b>100.0</b>	<b>3,205,535</b>	<b>100.0</b>	<b>3,021,960</b>	<b>100.0</b>
Within province	1,675,283	26.9	865,993	27.0	809,290	26.8
Between provinces	3,372,533	54.2	1,695,949	52.9	1,676,584	55.5
From another country	757,306	12.2	434,904	13.6	322,402	10.7
Unknown	422,373	6.8	208,689	6.5	213,684	7.1

Source: Thailand, National Statistical Office, *The 2010 Population and Housing Census (2013)*, table 20.

Males are slightly more migratory than females but the age-specific migration rates are very similar between the two sexes (table 1.10). At ages 15-19, females have a decidedly higher migration rate, however. In Thailand females have higher enrolment ratios at both the secondary and tertiary levels of education so some of the higher migration rate could be attributable to moving for study. Most of the difference is probably simply because females entering the labour force are more likely to take jobs farther from home.

**Table 1.10: Percentage of persons migrating during the previous five years, by age group, 2010**

	Both sexes	Males	Females
<b>All ages</b>	<b>9.4</b>	<b>9.9</b>	<b>9.0</b>
0-4	8.4	8.3	8.6
5-9	5.1	5.1	5.2
10-14	5.1	5.1	4.9
15-19	14.5	12.8	16.1
20-24	26.1	26.1	26.1
25-29	19.0	19.7	18.3
30-39	12.0	13.1	10.9
40-49	6.4	7.2	5.6
50-59	4.0	4.6	3.5
60-69	3.0	3.5	2.5
70 and over	2.0	2.1	1.9

Source: Thailand, National Statistical Office, The 2010 Population and Housing Census (2013), table 20.

The reasons for moving during the previous five years are also quite similar between males and females (table 1.11) although males are more likely to have moved either to seek work or because of a job assignment and females were more likely than males to have moved to study or moved as dependants. The higher percentage of males who moved to an institutional household no doubt reflects movements for military service.

**Table 1.11: Population who migrated during the previous five years, by sex and reason for moving, 2010**

Reason	Both sexes	Per cent	Males	Per cent	Females	Per cent
<b>Total</b>	<b>6,227,550</b>	<b>100.0</b>	<b>3,205,579</b>	<b>100.0</b>	<b>3,021,972</b>	<b>100.0</b>
To look for work	1,662,991	26.7	901,625	28.1	761,366	25.2
Job assignment	809,525	13.0	453,717	14.2	355,808	11.8
To study	795,616	12.8	311,808	9.7	483,808	16.0
Following persons in household	1,007,647	16.2	416,944	13.0	590,703	19.5
To return home	128,159	2.1	61,535	1.9	66,624	2.2
Change of residence	1,092,504	17.5	538,777	16.8	553,727	18.3
Change to institutional household	394,039	6.3	324,002	10.1	70,036	2.3
Others	52,577	0.8	36,929	1.2	15,649	0.5
Unknown	284,492	4.6	160,241	5.0	124,251	4.1

Source: Thailand, National Statistical Office, The 2010 Population and Housing Census (2013), table 21.

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## **Introduction**

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Thailand is the main destination country for international migration in the Greater Mekong Sub-region. Owing to significant differences in economic development with neighbouring Cambodia, Lao People's Democratic Republic, and Myanmar, over the years millions of people have crossed the porous borders irregularly, often with the help of unscrupulous smugglers, to look for better lives in Thailand. While no migration policy existed until 2003 that allowed low-skilled migrant workers to enter Thailand legally, a series of MOUs have since been signed and a regularization system was introduced in 2006 for Cambodia and Lao People's Democratic Republic, and in 2009 for Myanmar.

This chapter reviews and analyses Thailand's migration policies for low-skilled migrants from Cambodia, Lao People's Democratic Republic and Myanmar with a particular focus on the mechanisms that have been developed to enable low-skilled migrant workers to work in Thailand in a regular status. This chapter will also analyse progress made towards implementation of the recommendations put forward in the Thailand Migration Report 2011, and underline lessons learnt that can be applied to future regularization systems either in Thailand or further afield.

The chapter is organized as follows: first, the Thailand migration profile will be described and relevant policies reviewed, including registration, nationality verification (NV) and the MOU process. Particular attention will be given to the regularization system implemented following completion of NV in December 2012. An analysis of the benefits and drawbacks of the process will also be presented. Finally, discussion regarding the future of migration policy in Thailand and recommendations for improvement of the regularization and MOU processes will be provided.

## **Thailand Migration Profile And Relevant Policies**

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Low-skilled migrant workers from the Greater Mekong Sub-region commonly migrate to Thailand as their main destination site. The fast economic development that the country has experienced over the past 20 years, together with large economic differentials seen between Thailand and its neighbouring countries – Cambodia, Lao People's Democratic Republic and Myanmar – as well as political instabilities in some of those countries, have been the main determinants of mobility to Thailand. The search for better lives and opportunities on one hand and the high demand for labour on the other hand have driven high flows of low-skilled workers to enter Thailand. Most of these migrants are employed in the so called "3D jobs" (dirty, dangerous and demanding), including agriculture, manufacturing, construction and fisheries.

The lack of a policy to allow low-skilled workers from neighbouring countries legal entry to work in Thailand before 2003 left workers with the alternatives of staying in the country in an irregular situation and hoping to obtain a work permit or of entering and working in the country irregularly. This contributed to the development of a large pool of irregular migrant workers in Thailand. While exact figures of the total

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<sup>1</sup> This chapter was commissioned by the International Organization for Migration, Thailand.

number of migrants in Thailand are difficult to obtain, as of 2011 an estimated 2.5 million migrants from neighbouring countries lived in Thailand, of which 1.5 million were irregular (Huguet, et al., 2012).

## Registration Process

In an effort to tackle the challenge posed by the increasing number of irregular migrant workers in the country while accommodating the needs of employers and industry for migrant labour, the Royal Thai Government (RTG) established a registration process for migrant workers to be employed as labourers or domestic servants in the 1990s. Registrations were initially carried out at the provincial level. It was not until 2004 that the first national registration took place and 1.28 million migrants came forward and reported to the authorities.

Under the registration process, irregular migrant workers were asked to report to the Ministry of Interior to obtain a temporary stay registration (the Tor Ror 38/1) and to the Ministry of Labour to obtain a one-year work permit - the latter of which was subject to passing a medical examination. Only irregular migrants who were already employed, along with their children under age 15 years, were eligible to register in Thailand.

While the registration process provided migrant workers with some documentation and health insurance, it did not change their immigration status. Registered migrants remained irregular migrants because they had entered or remained in Thailand in breach of Thai Immigration law and had not obtained valid visas and/or travel documents. Owing to the lack of regular legal status in Thailand, registered migrants continued to be very vulnerable to abuse and exploitation and were not granted basic rights such as the right to move freely between provinces or the right to drive a vehicle. In addition, the registration process was a unilateral mechanism developed, decided upon and implemented by the Thai Government only. No discussion with neighbouring countries took place, and information on migrants who registered was not shared with countries of origin.

This national registration process has been regarded as ineffective due to the plummeting registration figures and increasing numbers of unregistered migrants. Over the years migrants dropped out of the registration system, viewing it as cumbersome, confusing and expensive or because they were ineligible (Hall, 2011). For further details on the registration process, please refer to the Thailand Migration Report 2011, Chapter 2.

## MOUs on Employment Cooperation

A step forward in the history of Thailand's migration policy was taken in 2002/2003 with the Memoranda of Understanding (MOU) on Cooperation in the Employment of Workers signed with three neighbouring countries, namely Lao People's Democratic Republic (signed in 2002), Cambodia and Myanmar (both signed in 2003). The MOUs, for the first time, established a legal channel for low-skilled migrants from these countries to enter Thailand for work purposes. The signature of the MOUs was very important in that it was the first time that Thailand and neighbouring countries entered into bilateral discussions regarding the high flows of irregular migrants across their borders and attempted jointly to address the issue.

The text of the MOUs was drafted in a very general fashion. Detailed procedures for the recruitment of migrants in countries of origin and hiring in countries of destination were subsequently developed through a series of bilateral meetings involving the relevant countries. Migrants from Cambodia and Lao People's Democratic Republic began to be hired under MOU procedures in 2006 but it was not until 2009 that the MOU with Myanmar was implemented.

As discussed in more detail below, the procedures for employing migrants under MOUs were very complex, lengthy, expensive and burdensome, which translated into very low numbers of migrants using this channel

to migrate to Thailand. Nevertheless, a new category of low-skilled migrant workers began to exist in Thailand as of 2006—regular migrant workers from the three neighbouring countries who had arrived through the MOU. These migrants had a temporary passport, a Thai visa and a work permit valid for two years, renewable for an additional two years provided that they continued to be employed. The MOUs as a regular channel for migrant workers to Thailand cannot yet be considered a success and the numbers of migrants who have benefited from it are still very low. As of the July 2013 only 139,000 migrants who were living and working in Thailand had entered through MOU procedures (table 2.1).

**Table 2.1: Total stock of migrants recruited through the MOUs working in Thailand as of 13 July 2013**

Nationality	No. of migrants working with active work permits and valid passports/certificate of identity
Cambodia	85,733
Lao People's Democratic Republic	16,665
Myanmar	36,650
<b>Total</b>	<b>139,048</b>

Source: Department of Employment, Ministry of Labour, Thailand, 2013.

### Nationality verification (NV)

The nationality verification (NV) process was developed to supplement the MOUs and was the product of Article III in the MOUs, which read as follows: *“The authorised agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding”* (MOU between Thailand and Cambodia/Lao People's Democratic Republic/Myanmar on Cooperation for the Employment of Workers, 2002 and 2003). The NV process was the result of several bilateral discussions between Thailand and neighbouring countries and it was envisioned as a mechanism to regularize all irregular migrants who were already living and working in Thailand. This category included both registered and totally undocumented migrants (see text box 2.1). NV differed from previous registrations in that the identity of migrants was shared with the Governments of countries of origin who were required to verify their nationality.

When it first began, the NV process entailed a total of 13 steps, including registration and Tor Ror 38/1 application, medical check-up and work permit application. Once the worker had registered, employers could begin the NV process by submitting a full list of workers' names for whom they requested regularization. The Department of Employment (DOE), Ministry of Labour was responsible for submitting the list of names – via diplomatic channels – to authorities in Cambodia, Lao People's Democratic Republic and Myanmar. Once checked and cleared, the relevant names were submitted to any of the NV offices and migrants were informed when to collect their temporary passports. While Cambodia and Lao authorities dispatched mobile teams to issue temporary passports to their eligible citizens, Myanmar migrants had to cross the border and return to their home country to collect the temporary passport, with the exception of in Ranong, where an NV centre was opened in 2010 run by Myanmar authorities.

Initially, the NV process was supposed to conclude in February 2012 but this deadline was extended until June 2012, and then 14 December 2012 – while the subsequent regularization process added further grace periods until August 2013. Again, while cumulative figures of the total number of migrants who have benefitted from NV since its beginning in 2009 are difficult to establish, latest statistics indicated that over

1 million Myanmar migrants and 150,000 migrants from Cambodia and Lao People’s Democratic Republic had completed NV and held a temporary passport and valid work permit by 14 December 2012.

**Table 2.2: Total number of migrants who completed nationality verification (NV) from 2010 to 14 December 2012**

Nationality	No. of migrants working with active work permits and completed NV
Cambodia	117,287
Lao People’s Democratic Republic	34,999
Myanmar	1,179,341
<b>Total</b>	<b>1,331,627</b>

Source: Department of Employment, Ministry of Labour, Thailand 2012.

**Text box 2.1: The continuum of legal status among low-skilled migrant workers in Thailand**

To better understand how the various policies operate and who they apply to, it is important to have a clear understanding of the degree of irregularity among migrant workers in Thailand. This can be seen below on the continuum of legal status among low-skilled migrants in Thailand.

Before the MOUs came into force, all low-skilled migrants from Cambodia, Lao People’s Democratic Republic and Myanmar in Thailand were considered irregular. The term irregular included both totally undocumented migrants but also those who had undergone the registration process and had obtained the Tor Ror 38/1 document and work permit. However, being registered did not translate into regularization, as migrants were still subject to deportation in the future when their temporary permits expired.

An important distinction to understand is the one between “registered” and “regular” migrants. While “registered” migrants only refers to those who received documentation unilaterally from the Thai Government, such as the Tor Ror 38/1 and work permit, “regular” migrants refers to those who hold temporary passports from their countries of origin. Registered migrants are considered “irregular” in immigration status and are bound for deportation as soon as their temporary stay in Thailand expires. This difference in status affects migrants’ ability to access social and health services and to move freely within the country.



The continuum of migrants’ status in Thailand.  
Status has a direct implication on migrants’ social security entitlements

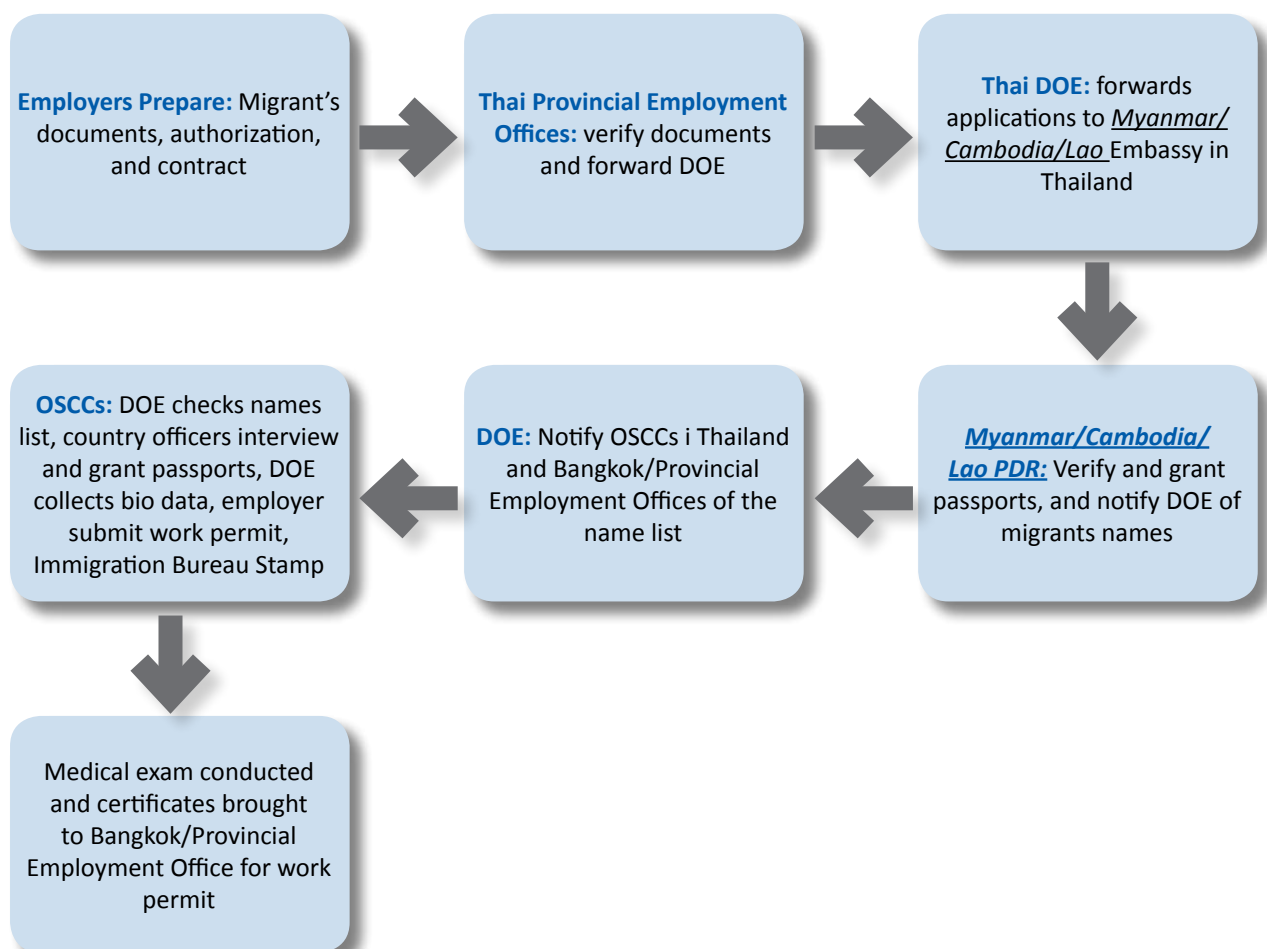
\*The terms NV and MOU here refer to migrants who obtained their regular legal status through the NV system (i.e. they entered Thailand as irregular migrants) and those who entered through the MOUs (and hence held regular status on their arrival in the country).

## Regularization Process

Following the NV deadline of 14 December 2012, on 15 January 2013 the Cabinet approved a new resolution granting a “grace period” of 120 days – until 13 April 2013, which was subsequently extended until 13 August 2013 – for irregular Myanmar, Laotian and Cambodian migrant workers and their children under 15 years of age. The grace period allowed employers and migrants to complete the process of regularization to lawfully reside and work in Thailand together with their children. This new regularization process was open to all irregular migrants from Lao People’s Democratic Republic and Myanmar along with their children under age 15 years and to all Cambodian migrants who did not complete NV by 14 December 2012.

While the process was no longer referred to as NV, there continued to be numerous similarities with the NV process, including the requirements for medical check-ups and work permits, together with the fees involved, with the exception that it was a simplified version. Most importantly, migrants were not required to be registered to enter into the regularization process (i.e., they did not have to have an existing Tor Ror 38/1 and a work permit to be able to access the process). This was a step forward for the regularization process, which thus overcame one of the bureaucratic hurdles of the traditional NV process with the aim of making regularization more efficient and less costly for migrants. The various steps of the regularization process are shown in visual form below:

**Figure 2.1: The regularization process for migrant workers from Cambodia, Lao People’s Democratic Republic and Myanmar after 14 December 2012 and until 13 August 2013.** (Source: IOM Migrant Information Note, Issue #18, February 2013).



Another key difference was the opening of 12 One Stop Service Centres (OSSCs) throughout the country, where employers could pick up the temporary or regular passports of migrant workers and their children, meaning migrants did not have to return to their countries of origin to collect their passports, and could fulfill the requirements of the regularization process (collecting their temporary passport, visa stamp, and work permit, and having their bio-data collected) in the same location. The establishment of OSSCs was a step welcomed by civil society, migrant organizations and international organizations, who had advocated in favour of OSSCs for a long time.

A further improvement and good practice evident during the grace period was the implementation of improved and more widespread information campaigns among migrant communities through distribution of information, education and communication materials and through the organization of forums for relevant stakeholders in nine provinces. The Ministry of Labour successfully coordinated this effort with the support and cooperation of the Migrant Working Group (an umbrella organization of NGOs working for migrants' rights protection), IOM and the ILO.

On completion of the regularization process, Laotian migrants were to obtain a one-year temporary passport; Myanmar migrants a six-year temporary passport; and Cambodians a three-year regular passport. As with the NV process, employers were then required to apply for the migrant worker's entry into the social security scheme from the Social Security Office of the Ministry of Labour. For migrant workers in the informal sector who were ineligible for entry into the social security scheme, employers were responsible for obtaining health insurance from the Ministry of Public Health or a private insurance company. This is an area in which challenges remain, with regularization and social protection policies remaining somewhat inconsistent (see chapters 3 and 5).

The revisions made by the Thai Government to the regularization process seemed to indicate that it had accepted to some extent the overly cumbersome and time-consuming nature of NV and had taken seriously the various criticisms received during the implementation of NV. However, challenges continued, as although the grace period offered an opportunity for a high number of migrants to regularize their status in Thailand, by the deadline of 13 August 2013 a total of 252,000 migrants could not finalize the process as the relevant authorities did not have time to process their cases. To address this gap and in acknowledgement that the failure to regularize the status of this group of migrants was due to reasons beyond the migrants' and employers' control, another Cabinet Resolution was issued in August 2013 approving a one-year extension to the process.

However, some obstacles have been incorporated into the new extension, which applies to all migrants who had entered the regularization system but were unable to complete it by the set deadline. In particular, these migrants are required to obtain a Tor Ror 38/1 from the Ministry of Interior (a requirement which was previously discontinued during the initial stage of the regularization process) as well as a work permit from Ministry of Labour and a medical examination. At the time of writing, bilateral discussions between the relevant Governments were ongoing as to the modalities through which this group of migrants will be able to obtain temporary passports and identity cards from their Governments.

Another recent development concerns migrants who have completed or are soon to complete the first four years of regular employment in Thailand and hence whose permitted length of stay in the country has expired or will soon expire. Relevant Governments have agreed to waive the requirement for migrants to return home for a period of three years. On 11 February 2014, the Department of Employment (DOE) issued an order permitting Myanmar migrant workers who are close to completion of four years of employment in Thailand and who hold a valid passport and visa to apply for a new visa at one of three one stop service centres (OSSCs) in Thailand, located in Chiang Rai, Ranong and Tak Provinces. In March 2014 a resolution was



passed by the Cabinet to allow migrant workers who are close to completion of four years of employment to stay in Thailand for a further 180 days, during which time they must report to the OSCCs to apply for a new work visa. In order for workers to remain in the country for this period, workers must obtain a special permit at designated labour service centres throughout the country. Workers whose work permits have already expired are not eligible for the renewal procedure described above.

## Regularization Policies In Thailand: Challenges Versus Benefits

There has been much debate and many criticisms of the MOU, NV and regularization processes. The NV and MOU processes have presented challenges for migrants and employers but marked a big step forward for migration policy in Thailand. Before the MOUs and NV, there were no systems in place for low-skilled migrants to enter the country legally and for irregular migrant workers to regularize their status in Thailand respectively.

### Challenges/Lessons learnt

Broadly speaking, the systems put in place in Thailand to deal with the in-migration of low-skilled workers from neighbouring countries have remained overly complex, cumbersome and time-consuming in their implementation. They are also indicative of the lack of a clear vision of a longer-term comprehensive migration strategy, and appear to have been largely driven by the short-term demands of employers, rather than representing a human rights-based approach aiming to empower and protect the rights of migrants themselves.

The lack of a human rights-based approach to the NV and regularization processes is highlighted by, among other things, the lack of outreach, information and support provided to migrants. The only information sessions organized or informational materials produced by the Ministry of Labour throughout the NV process targeted employers. Very limited information was provided to migrants regarding the procedures to complete NV and why it was important to obtain a Temporary Passport. The Thai Government has always heavily relied on the support of non-governmental organizations (NGOs) and international organizations to ensure that migrant communities were effectively contacted in migrant languages with awareness-raising messages regarding the process, its benefits and the costs involved.

The lack of effective outreach to migrants is indicative of the fact that the NV process was employer-driven. Migrants could not independently apply for a temporary passport without the support of employers, a major challenge since many employers were not supportive of the process. Even when employers were supportive, migrants ended up paying very high broker fees, which were generally deducted from the migrants' salaries. Similarly, the MOU process can be categorized as an attempt to deliver workers to specific employers in Thailand, which largely fails to align with the interests of migrant workers themselves, many of whom see it as easier, quicker, cheaper and more flexible to enter and work in Thailand without documents and legal status.

It also needs to be underlined that the NV and MOU processes' complexity and levels of bureaucracy exceeded the capacities of the Governments involved to deal with them efficiently. This meant that the time taken to process cases was long; migrants often had to wait months before their status was fully regularized. This also explains, to a certain extent, why many migrants could not complete NV by the set deadline of 14 December 2012. Similarly, the procedures for employing migrants under the MOUs were very complex, lengthy, expensive and burdensome, which have translated into very low number of migrants using this channel to migrate to Thailand.

As such, the Thai Government has taken only incremental steps forward in formulating and implementing a strategy to increase the efficiency and effectiveness of the NV system and migrant worker regularization, one of the key recommendations put forward by the 2011 Thailand Migration Report. While some steps forward have been taken, such as the establishment of OSSCs, the streamlining of administrative requirements under the regularization process and the improvement in the reach of government-led information campaigns, these have nonetheless remained temporary and/or ad-hoc responses. For example, administrative requirements under the regularization process took a step backwards with the re-introduction of the Tor Ror 38/1 requirement.

Secondly, the involvement of brokers and private recruitment agencies remains a challenge – another key issue raised by the 2011 report. The involvement of brokers in the NV process has been a factor heavily contributing to the risk of the process turning into an exploitative mechanism that exacerbates already high vulnerabilities of migrants. Brokers are not regulated in Thailand and, although the Department of Employment in 2010 issued a guidance note posing a cap of THB 500 for services provided by middlemen, this was never enforced. Given the complexity of the process, it is understandable why employers naturally turned to brokers who promised them a reduction in their administrative burden and assisted in facilitating and expediting their access to migrant workers. In 2012 the Office of the Council of State provided an interpretation of the *Recruitment and Job-Seekers Protection Act 1985* and specifically looked into whether the Department of Employment had the duty to protect and control the recruitment of migrant workers under the Act. The answer was positive, as migrant workers are to be considered “job-seekers” according to article 4 of the Act. However, it remains to be seen if this legislation will be revised and clarified to ensure that it can be effectively enforced against unscrupulous brokers and recruiters.

Networks of brokers have developed both in Thailand and Myanmar. Several agents are involved in the NV and MOU processes, who often do not know each other and are organized into a pyramid system. The more intermediaries involved in the process, the higher the cost for the service received as each intermediary is responsible for a different stage of the process and charges a separate fee to the migrants. This translates into high total fees that migrant workers have to pay. Evidence shows that migrants often ended up paying THB 12,000-15,000 to complete NV, nearly triple the official cost associated with the process<sup>2</sup>. Many migrant workers continue to complain of being victims of brokers who overcharge, extort or misinform them, and as a result, migrants have often found themselves in debt bondage situations and become stranded, with the potential of ending up as victims of trafficking. While the latest regularization process was envisaged to be more effective and transparent, reports have indicated that the high fees charged by brokers continue unabated.

In terms of eligibility, one of the biggest drawbacks of the NV process was that only registered migrants were eligible for temporary passports and hence NV represented a real option only for a small proportion of migrant workers in the country. This posed several challenges to migrants as, while registration had been opened annually for many years, the RTG stopped registering people in June 2011. The subsequent “regularization” period however, which opened following the completion of NV in December 2012, did not require Laotian and Myanmar migrants to have previously registered, indicating a move towards less cumbersome procedures and an implicit recognition that the slow process and restricted eligibility of NV had hindered its success.

Moreover, not all migrants were eligible for NV due to their existing status vis-à-vis their country of origin. Some groups of migrants such as Rakhine Muslims were automatically excluded as their claimed country of origin would not recognize them as citizens, hence no verification of their nationality was possible. It is important to point out however that this is not due to flaws in the NV process as such but rather to more

<sup>2</sup> <http://www.trust.org/item/20130405080400-95qth/>

complex identity and nationality issues linked to the country of origin. A further difficulty related to the country of origin was that Myanmar migrants had to return to their home country to collect the temporary passport. This not only proved to be expensive in many respects but also posed a series of challenges considering the fear of persecution that many of these migrants had.

Another major challenge has been the issue of migrants' access to social protection in Thailand, both during the NV process for registered migrants and upon regularization of migrants' status. For example, a system to ensure coverage for work-related accidents during the NV phase has been absent, following which migrants would be, in principle, entitled to benefits under the Workmen's Compensation Fund (WCF). Regular migrants who have completed NV or entered through the MOUs, although in theory eligible for social security benefits, in reality are faced with many practical, administrative and sociocultural challenges in accessing these benefits. The issue of migrants' access to social protection is discussed in further detail in chapter 3.

The challenges described above have translated into a high number of migrants who did not access the processes and have thus remained irregular. The time and complex processes involved have made it very difficult for migrants to fully understand the process and its benefits, while also creating a market for brokers to take over the process at extortionately high costs to migrants. Furthermore, while legal status does entitle migrants to a much greater range of benefits than would otherwise be expected, it does not necessarily bring greater protection without more stringent enforcement of labour laws and standards.

### Benefits/Best practices

Against these drawbacks, the regularization process has nevertheless represented a step forward in Thailand's migration policy. The process has already demonstrated progress, continues to be evaluated, and can act as a precedent for migration policies to be further adapted in Thailand, in addition to other migrant destination countries, particularly in Malaysia and Singapore (Hall, 2012b). If the regularization system is made more efficient, it has the potential to become increasingly beneficial for all relevant stakeholders, namely migrants themselves, the Governments of Thailand and its neighbouring countries, and employers, who potentially will all be able to work together in a more dependable and transparent labour migration system.

The system has also brought with it numerous benefits for migrants, the most important of which is that a temporary passport gives a migrant worker regular status in Thailand and the ability to live and work for a total of four years without fearing deportation. A passport allows migrants finally to be able to travel between provinces, to purchase and drive a motorcycle and to register their marriages—all rights that irregular migrants do not enjoy. Holding regular status is also very important as it allows migrants to access the Thai Social Security Scheme and the benefits of the *Workmen's Compensation Act*,<sup>3</sup> B.E. 2537 (1994), although this is true only for migrants engaged in the formal sector and with all the limitations that the Thai Social Security Act,<sup>4</sup> B.E. 2533 (1990) presents for migrants.

Migrant workers granted regular status are in theory entitled to various protective mechanisms, including *“effective repatriation [for those] who have completed terms and conditions of employment and due protection for workers to ensure they receive the rights they are entitled to. In addition, the ‘authorised agencies’ referred to in the MOUs are the Thailand and Myanmar Ministries of Labour who should, respectively, ‘inform their counterparts of job opportunities’ and ‘provide their counterparts with lists of selected applicants for the jobs.’ These agencies should also coordinate to ensure requirements such as visas, work permits, health insurance and the signing of employment contracts are fulfilled”* (Hall, 2012a).

3 (BE 2537 (1994) [http://thailaws.com/law/t\\_laws/tlaw0391.pdf](http://thailaws.com/law/t_laws/tlaw0391.pdf))

4 (BE 2533 (1990) <http://www.sso.go.th/sites/default/files/Social%20%20security%20act.pdf>)

Regularization also benefits employers of migrants, Governments, NGOs and international organizations concerned with migration by providing an opportunity for the situation of migrant workers to be more effectively monitored, thereby allowing more information to be gathered and disseminated among relevant agencies. This facilitates, for example, tracking the number of migrants travelling across borders, where they are working, their human rights situations, and the openness and transparency of the system in dealing with them, all of which can provide ample opportunities for helping secure migrants' safety and protection and minimizing trafficking and exploitation.

Overall, the NV, MOU and regularization processes offer various benefits for numerous stakeholders. Although the criticisms of the processes must be acknowledged and acted upon, regularization increases the confidence of migrants (Hall, 2012b), strengthens border security, and offers a potential avenue for future collaboration among several different interest groups, including Governments, employers and migrants themselves, to reap the benefits of labour migration. For the regularization system to deliver the further potential benefits it has to offer, however, it is important that it continues to evolve to incorporate greater levels of transparency, accessibility, and information sharing to facilitate its effective implementation.

## **Conclusion – The Future Of Migration Policies In Thailand**

The NV, MOU and regularization processes have all been promising steps forward in the management of irregular migration in Thailand, and have allowed for the first time the possibility for irregular migrants to obtain legal status in Thailand. However, several lessons can be learnt from the challenges faced in implementation of these policies. The overly complex, costly and bureaucratic procedures involved, combined with the low capacity of the relevant Governments to implement them efficiently, have hindered the processes and left many migrants without the chance to regularize by the numerous deadlines which have been set over the past several years. The involvement of unregulated brokers and middlemen has further contributed to turning NV and the MOU systems into potentially exploitative mechanisms. Furthermore, the process has been largely employer-driven, with migrants dependent heavily on their employers for effective implementation of the process and access to their rights upon gaining a regularized status.

There have, however, also been examples of good practices. One Stop Service Centres offer the potential of streamlining the process for migrants and provide one example of a good practice in establishing an effective regularization process. Furthermore, the streamlining of administrative requirements and wider eligibility implemented during the first phase of the regularization process (after NV) provided evidence of further steps forward.

Looking forward, a key step the RTG should take is to ensure that the existing channels for low-skilled migrants to work regularly in Thailand are streamlined and made more accessible to a higher number of people. Recruitment channels must be made more transparent and affordable, thereby simplifying the MOU process to become a more attractive option for migrants as opposed to the alternatives offered by informal networks of brokers. Brokers should be effectively regulated, which would go some way towards ensuring that the costs of the process and the administrative burden involved are decreased substantially. Given the centrality of the role of employers in the regularization process, but their relative impunity for violating labour laws, it is also imperative that there are stronger incentives for employers to employ regular migrants and ensure their rights are protected, while enforcing high fines or other punishments against employers not engaging in the regularization process or who are in breach of labour law.

The urgency of these tasks is emphasized by the impending onset of the ASEAN Community, due to become a reality at the end of 2015, which will promote further mobility between ASEAN countries. While the initial liberalization of movement concerns only highly skilled professionals, it is likely that as regional integration is strengthened, increased intra-regional movements of low-skilled worker flows will occur in the future. If Thailand is to grasp the opportunities offered by closer regional integration and harness the benefits of in-migration for its economy and society, a simplified MOU and/or regularization process for low-skilled migrant workers should be developed for the benefit of migrants, Thailand and its neighbours in the region. Recommendations for key elements that could form part of such a simplified and streamlined system could include:

- Provide stronger incentives for employers to engage in the regularization process, employ regular migrants and ensure their rights are protected, while enforcing high fines or other punishments against employers not engaging in the regularization process or who are in breach of labour law.
- The three MOUs with neighbouring countries on employment cooperation should be reviewed to streamline the process and time required for recruitment and reduce the cost to the worker to an amount that is commensurate with the amount being earned, with a view to making the MOU process a more attractive option for employers, migrant workers and Governments.
- Consider revision of the regulation stipulating that a work visa and work permit are tied specifically to one employer, and allow greater flexibility for migrant workers who wish to change employer for legitimate reasons.
- Develop stronger regulatory mechanisms to monitor the treatment of migrant workers in the workplace, as well as transparent complaint and investigation procedures that make the protection of migrants' rights a priority.
- Take steps to more effectively and rigorously regulate and control the role of recruitment agencies and brokers in the migration process, including strictly enforced penalties for violations of the law.
- The legislation covering the sub-contracting of labour in Thailand should be revised to make it more difficult for employers and sub-contractors to evade the laws concerning minimum wages, working conditions, and protection of labour rights.
- Integrate migration policies into national development strategies and planning based on current and future projections of labour market needs, as well as acknowledgement of the major contribution to development made by migrants and recognition and protection of the rights of migrants and their accompanying dependents.
- Explore means of allowing migrant workers to register directly with the Thai Government, thereby loosening the nexus between registration and employment and lessening the dependence on employers to make the registration process work.
- Strengthen the capacity of the concerned Government agencies to successfully develop and implement a comprehensive and holistic migration policy.

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ควรวินให้เกียรติและเคารพ  
สิทธิของแรงงานข้ามชาติ  
เพราะทุกคนมีสิทธิ์ความ  
เป็นมนุษย์เท่ากัน  
อย่า! เหยียดหยามกัน

ไม่เลือกปฏิบัติต่อแรงงานข้ามชาติ  
Non discrimination  
to migrant workers

PLEASE!!  
RESPECT  
MIGRANTS'  
VOICES

Social change - it  
starts with you! Let's  
start a movement to  
transform attitudes  
towards migrants!

Respect  
Migrants Rights

eyes  
mouths  
HANDS  
Legs  
TREAT  
THEM  
EQUAL, PLZ  
!!  
We are the same, humankind

Migrant is not my concern.  
It's our Concern!

Foreign workers  
helping Thailand  
EQUAL WORK  
PAY!  
300 for 4mi

Attitudes matter.  
Let's start the  
conversation and let  
them be heard

Migrants make a  
massive contribution to  
Thailand's economy -  
lets support them and  
give them their

WE ALL  
COME FROM  
SOMEWHERE

In recent years, Thailand has been lauded for its achievements in expanding social protection coverage to its population. Within the category of middle-income countries, Thailand has been able to introduce a universal health coverage scheme, free education policy, and an old-age pension that are now drawing the attention of the international community as models of good practice. Particularly in provision of health benefits, the reforms initiated have combined universal coverage with a fairly comprehensive benefit package, providing lessons learned to policy-makers in the developing world (Hughes and Leethongdee, 2007).

Progress has also been made in extending social security benefits to Thailand's large informal sector labour force, representing over 62 per cent of the economically active population and considered a key target population for poverty reduction programmes. The partially subsidized benefits package includes coverage for illness, disability, death, and an optional old-age benefit. Over one million workers have already joined the scheme since it was reviewed in 2010 and coverage continues to expand (Schmitt, Sakunphanit, and Prasitsiriphol, 2013).

Prior to the reforms, poor and vulnerable groups had access only to means-tested programmes that failed to achieve the levels of participation necessary to provide sufficient protection. The ambitious approach of introducing universal schemes during the past decade has provided the basis for a more solidified social protection floor.

Despite these recent achievements in providing coverage for nationals, social protection benefits for the over three million<sup>3</sup> foreign workers in Thailand remains a fragmented and incomplete system, leaving most without sufficient access. Both migrant workers entering under the bilateral Memoranda of Understanding (MOU) between Thailand and neighbouring countries, and those who have registered and completed nationality verification, are eligible for many of the same benefits as Thai nationals. Migrants falling within these two legal statuses constitute over one million eligible workers in Thailand;<sup>4</sup> in practice, however, many are not able to exercise their right to benefits.

The challenges faced in providing adequate social protection for migrant workers are by no means unique to the context of Thailand. Social security systems around the world were generally designed for providing protection to workers on a territorial basis. In many cases, they have not been sufficiently adapted for the changes in global labour markets that have increased the volume, ease and rapidity of labour migration across international borders. Expansion of temporary labour migration programmes has outpaced the development of comprehensive and appropriate social protection schemes for migrants. As a consequence, many of the eligibility requirements for receiving entitlements either explicitly exclude or create significant

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2 Prepared by Benjamin Harkins with support provided by the ILO GMS TRIANGLE project. Technical inputs for the chapter were contributed by Max Tunon, Kuanruthai Siripatthanakosol, and Viennarat Chuangwiwat at the ILO Regional Office for Asia and the Pacific.

3 Hugué, Chamrathirong and Natali, 2012:3.

4 Department of Employment, June 2013 (Note: some additional sectoral exclusions apply (see table 3.3)).

obstacles for migrants to avail themselves of their rights (e.g. citizenship requirements, documentation requirements, minimum qualifying periods, sectoral exclusions, etc.). When compounded by common problems with poor enforcement of compliance, a large proportion of migrants are left without access to protection (Tamagno, 2008).

To provide a framework for further discussion of the issue in Thailand, this chapter provides a brief situation analysis of social protection for migrant workers, including the relevant international standards and good practices, socioeconomic risks faced, access to social protection schemes, policy and enforcement gaps and recommendations for strengthening social protection to ensure equal treatment both under law and in practice.

## ILO concept of social protection

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The International Labour Organization (ILO) defines the concept of social protection as the set of public policy measures that a society provides for its members to protect them against social and economic distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, disability, old age, and death of the breadwinner); the provision of health care; and the provision of benefits for families with children. These constitute the nine principal branches of social security entitlements (Bonilla and Guat, 2003).

The concept is not static however, and has evolved from its original narrower definition as public assistance provided to ensure a minimum income to prevent destitution, to its current meaning of protection against a broad range of socioeconomic risks. This broader concept is associated with a societal shift towards risk pooling for whole populations, with coverage extended from targeted classes of workers to universal coverage. It should also be noted that other organizations have defined and applied the concept quite differently — including the World Bank, the Inter-American Development Bank, and the Overseas Development Institute — and that the unique features of the ILO approach are its focus on threats to living standards and human rights (Sabates-Wheeler and Waite, 2003).

Application of the principles of social protection to workers outside of their countries of origin is not a new policy issue for the ILO. Although protection of migrant workers has gained increased attention in recent years owing to increases in the scale of global migration flows, the concern itself has been on the agenda of the organization since its inception. In 1919, the principle was enshrined within the preamble of the ILO's founding constitution, which calls for "protection of the interests of workers when employed in countries other than their own" ("ILO Constitution," 1919).

## International standards for social protection of migrants

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Ratification or incorporation of the standards promulgated in international treaties is a critical step in strengthening social protection for migrant workers in Thailand. These standards may be applied in the review and amendment of national legal frameworks or through the development of bilateral or multilateral agreements. The five basic principles in extending social protection to migrants through such agreements are the following.

- **Equality of treatment.** All workers engaged in remunerated labour should enjoy equal access to social protection. In agreeing to this principle, nations are obligated to treat migrant workers equally with their own nationals, including family members in some cases.



- **Maintenance of acquired rights and provision of benefits abroad (portability).** Any acquired right to benefits, or right that is in the process of being obtained, should be guaranteed to migrant workers regardless of whether they are still resident in the country where they were qualified as eligible.
- **Determination of the applicable legislation.** The social protection of migrant workers should be governed at any given time by the legislation of only one country.
- **Maintenance of rights in the course of acquisition (totalization).** If a right is conditional on the completion of a qualifying period, account should be taken of the total period of contribution or affiliation in all of the countries that are parties to the agreement to allow for migrant workers to meet the qualifying period.
- **Reciprocity.** Each country which is a party to an agreement attempts to apply the same mechanisms in order to make its social protection benefits accessible to migrant workers. Reciprocity is also based on the principle that there is reasonable comparability in the obligations that each party assumes as a result of the agreement (Hirose, Nikac, and Tamagno, 2011; ILO, 2013d).

At the international level, several ILO Conventions establish relevant standards for social protection of migrants. In addition, United Nations declarations and conventions have recognized social protection as a universal right for all members of society (table 3.1).

**Table 3.1: International standards for social protection of migrant workers**

International instrument	Relevance to social protection of migrants
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	➤ Guarantees equal rights to compensation for those who suffer personal injury due to work-related accidents regardless of nationality.
Universal Declaration of Human Rights, 1948	<ul style="list-style-type: none"> <li>➤ Advances the universal right to social protection (Article 22).</li> <li>➤ Promotes the importance of the principle of equality of treatment (Article 2).</li> </ul>
Migration for Employment Convention, 1949 (No. 97)	➤ Establishes the principle of equality of treatment for migrants in relation to social security (Article 6).
Social Security (Minimum Standards) Convention, 1952 (No. 102)	<ul style="list-style-type: none"> <li>➤ Sets minimum standards for the nine branches of social security.</li> <li>➤ Elaborates standards for equality of treatment for social security (Permits exclusion of non-nationals where benefits are payable wholly out of public funds) (Article 68).</li> </ul>
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	➤ Furthers the principle that migrant workers should have equal access to social security.

International instrument	Relevance to social protection of migrants
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	<ul style="list-style-type: none"> <li>➤ Ensures the application of the principle of equality of treatment for the nine branches of social security. Within its territory, a State party to the convention must provide equal treatment to nationals of any other State that has ratified the Convention (reciprocity).</li> <li>➤ Provides for the maintenance of acquired rights and the export of benefits.</li> </ul>
Migrant Workers (supplementary provisions) Convention, 1975 (No. 143)	<ul style="list-style-type: none"> <li>➤ Addresses the rights of irregular migrant workers to equality of treatment in respect to past employment with regard to remuneration, social security, and other benefits (Article 9).</li> </ul>
Maintenance of Social Security Rights Convention 1982 (No.157) and its Recommendation, 1983 (No.167)	<ul style="list-style-type: none"> <li>➤ Provides for the maintenance of acquired social security rights or rights in the course of acquisition and for benefits acquired abroad to be effectively provided when migrants return to their country of origin.</li> <li>➤ The accompanying recommendation contains model provisions for bilateral and multilateral agreements to facilitate maintenance of rights.</li> </ul>
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	<ul style="list-style-type: none"> <li>➤ Promotes equality of treatment for a broad range of social protection benefits (Articles 25, 27, 28, 43, 45, 54).</li> </ul>
Social Protection Floors Recommendation, 2012 (No. 202)	<ul style="list-style-type: none"> <li>➤ Recommends establishing national social protection floors to ensure that all members of society enjoy at least a basic level of social security (including resident migrant workers).</li> </ul>

Source: (ILO, 2010a; ILO, 2013b, ILO, 2013c).

With the exception of the Equality of Treatment (Accident Compensation) Convention (No. 19), which has been ratified by 121 member States, the ILO Conventions related to the protection of migrant workers' social security rights have not been widely adopted and applied under national laws (Hirose, et al., 2011:12-13). Of the above international standards, Convention No. 19 is the only treaty that Thailand has ratified. Continuing concerns about enforcement of Convention No. 19 in relation to migrant workers in Thailand have led the ILO Committee of Experts on the Application of Conventions and Recommendations to adopt observations requesting explanation, legislative review and improved implementation in 2009 and 2011:

*“The Committee expressed **deep concern** over the situation of more than 2 million migrants, mainly from Myanmar, working in Thailand...Calling attention to the dire humanitarian situation of these workers, the Committee requested the Government to take positive and urgent measures to review the policy and legal framework concerning social security coverage and protection of migrant workers in case of occupational accidents and to instruct the SSO to lift restrictive conditions and facilitate access of migrant workers to the WCF irrespective of their nationality” (ILO, 2011).*



Since that time, requests for a Government report to provide detailed explanations on these issues have remained unanswered, leading to repeat observations in 2012 and 2013.

Relevant standards for social protection of migrants are also being considered at the regional governance level in South-East Asia. At the Association of Southeast Asian Nations (ASEAN) Ministerial Meeting held in Siem Reap, Cambodia on 4 September 2013, a draft “Declaration on Strengthening Social Protection” was adopted. Principle 1 of the Declaration establishes that:

*“Everyone, especially those who are poor, at risk, persons with disabilities, older people, youth, children, migrant workers, and other vulnerable groups, are entitled to have equitable access to social protection that is a basic human right and based on a rights-based/needs-based, life-cycle approach and covering essential services as needed.”*

The ASEAN Summit held in Brunei Darussalam in October 2013 adopted the Declaration.

## Examples of good practices for social protection of migrants

### Republic of Korea Employment Permit System (bilateral approach)

In 2004, the Republic of Korea launched an experiment in bilateral cooperation to support decent work for migrants that has come to be recognized as an important model within Asia. It represents a major policy shift for the Government from treating migrant workers as “apprentices” to fully recognized workers with many of the same entitlements as nationals. The framework of the Employment Permit System (EPS) is based on the signing of bilateral agreements with sending countries that require all of the parties involved to actively participate in the protection of the rights of workers. MOUs have been signed with Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Timor-Leste, Uzbekistan and Viet Nam (ILO, 2010b).

Under the EPS, migrant workers are covered by health insurance, accident compensation insurance and employment insurance. Participation in the national pension scheme for workers is determined by reciprocity, depending on the bilateral agreement between the sending country and the Government of the Republic of Korea (table 3.2).

**Table 3.2: Insurance provided to migrant workers under the Republic of Korea Employment Permit System**

Insurance Scheme	Application
Industrial accident insurance	➤ Businesses hiring more than one regular employee (Exception: businesses hiring under five employees in the agricultural, forestry, fisheries and housekeeping sectors)
Employment insurance	➤ Construction projects with budgets over KRW20,000,000
Health insurance	➤ Compulsory pursuant to the National Health Insurance Act
National pension	➤ Applicable to foreign nationals according to the reciprocity principle: <ul style="list-style-type: none"> <li>• Obligatory application: Indonesia, the Philippines, Sri Lanka, Thailand</li> <li>• Join exemption (applying for exemption is possible): China, Mongolia, Uzbekistan</li> <li>• Excluded from application: Bangladesh, Cambodia, Myanmar, Nepal, Pakistan, Viet Nam</li> </ul>

Source: Ministry of Employment and Labor, Republic of Korea, 2010.

Since 2006, the ILO/Korea Partnership Programme has supported efforts to pursue continuous improvement of the EPS through national and regional workshops and research studies. The activities bring together sending-country and Korean officials to regularly discuss lessons learned, good practices, emerging concerns and ideas for improvement (ILO, 2010b).

Although the EPS represents a major step forward in extending social protection to migrants in the Republic of Korea, the implementation gaps that remain in provision of insurance coverage are also instructive. A study by Amnesty International found that language barriers, unfamiliarity with local laws and the threat of job loss prevent many migrant workers from accessing their rights to accident compensation. The length and complexity of the process for applying for compensation also delays receipt of payment for migrants during periods when they are most in need of income (Amnesty International, 2009).

### **European Union regulations on social security (multilateral approach)**

The largest and most comprehensive multilateral agreement on social protection for migrant workers is the European Union (EU) social security policy among its 27 Member States. Regulation 1408/71 was first established in 1971 and has been amended several times in response to the expansion of EU membership and the progression of social security systems (Tamagno, 2008). The regulation addresses the five basic principles of social protection for migrants described in the section above and covers all nine branches of social security benefits.

A supplementary regulation extended the scope of the original legislation to apply to all persons residing legally in the EU regardless of nationality in 2003, ensuring social security protection for all regular migrant workers in the EU. The two regulations have been enacted to replace a complex and fragmented system of bilateral agreements that had previously been developed to coordinate the administration of social security. Moving to a multilateral legal framework filled the gaps where bilateral agreements had not been reached and provided greater consistency in applicability of social security coverage—from a mosaic of varying requirements to a shared definition of coverage (Tamagno, 2008).

However, given the number of countries covered and the diversity of schemes involved, implementation of the regulations has proven a long and challenging process for the EU. The capacity and time required for State parties to administer such agreements should be taken into account in defining their scope, particularly for countries where the available resources to do so are more limited.

In the context of ASEAN, it is likely that the trajectory for international cooperation may be somewhat similar to the EU. Given the major differences in social security systems and administrative capacities between Member States, it can be expected that a series of bilateral agreements will be reached before a broader multilateral instrument is adopted.

## Socio-economic risks faced by migrants in Thailand

Standard forms of social protection are often deficient in effectively shielding migrants from the risks they face. In Thailand, gaps in regulating the entry, placement, employment, and unemployment of migrant workers create specific socioeconomic vulnerabilities during each stage of the process. These risks can be classified into four main types:

1. Risks during recruitment/job-seeking
2. Risks during employment
3. Risks upon termination of employment
4. Risks faced by migrants while in an irregular status (ILO, 2013a).

Additionally, several sub-groups of vulnerable migrants—including women, children, and certain ethnic/religious minorities—face socioeconomic risks beyond those of other migrants in Thailand as a result of their marginalization within the labour force.

### Risks during recruitment/job-seeking

The journey of migrant workers into Thailand is often facilitated by brokers or other intermediary parties. By some accounts, migrants who are smuggled of their own free will for placement with employers may in fact constitute the majority of low-skilled migrants entering from neighbouring countries (Chantavanich, Vungsiriphisal, and Laodumrongchai, 2007). Because of the complexity, expense, and duration of migrating through legal channels, a substantial market for these services has been established.

The involvement of these agents during the migration process—who often recognize that the legal, economic, and social vulnerability of irregular migrants can be exploited for profit—places migrants at risk of becoming victims of trafficking for labour exploitation. Smuggled migrants are often not fully aware of the tenuousness of their situation until their arrival in Thailand. In the best-case scenario for these journeys, the individuals involved become irregular workers in the Thai labour market until they can register during the next window for amnesty. However, in the worst cases, they may end up as victims of forced labour.

Research on regular recruitment of migrant workers has shown that legal labour migration under the MOUs between Thailand and sending countries may also create risks for migrants. Recruitment under the MOU process in Cambodia requires the services of a private employment agency, approximately a three-month period from application to placement, and a total expense of between THB 18,000 and THB 20,000, which is borne by the worker through a combination of upfront payments and payroll deductions. As a result, some migrants find the increased freedoms associated with regular status largely unrealized as the payroll deductions they face keep them in a state of pecuniary captivity. Deceptive practices by recruitment companies regarding recruitment fees, wages and terms of employment, as well as threats of violence and repossession of property, have also been documented (Harkins, Laodumrongchai, Sangnaet Der Kinderen, et al., 2013).

### Risks during employment

As employees, migrants in Thailand often face inequitable working conditions that may pose risks to their welfare or health. In many cases, they do not receive pay in accordance with minimum wage laws; during periods of illness, injury, or maternity; or on a regular schedule. Excessively long work days of 12 hours or more are not unusual in some sectors, and non-payment of overtime wages has been frequently reported.

Their freedom of movement may be restricted and retention of identification documents is a widespread practice (Sciortino, 2009).

In addition, because the majority of migrant workers are employed in “3D” jobs (dirty, dangerous, and demanding), the nature of their work generally places them at higher risk of work-related accidents and health problems than that faced by nationals (particularly when coupled with fatigue from long work hours). In some cases, industries employ foreign workers specifically because native workers have shunned them due to the occupational safety and health risks involved.

A recent study conducted by the ILO of employment practices and working conditions in Thailand’s fishing sector provides an illustrative example of the dangerous working conditions that many migrants face. Although official data on the number of fatalities, injuries and ill health in the Thai fishing industry are lacking, a survey of nearly 600 fishers in four provinces found that 21 per cent had experienced an on-the-job accident requiring medical attention at a clinic or hospital (Chantavanich, Laodumrongchai, Harkins, et al. 2013).

### **Risks upon termination of employment**

For migrants who have come to Thailand legally under the MOU, or have completed some portion of the regularization process through registration or nationality verification, their legal status to remain in Thailand is tied to their employment. Upon termination, they are required to leave the country within seven days. Although there is an administrative process for changing employers while maintaining regular status managed by the Department of Employment, it is only possible within the same industry and under certain specific conditions (i.e. death of the employer, bankruptcy of the business, employer is found guilty of exploitation or abuse, or employer approval). The result is that many migrant workers in Thailand cycle through stages of regular and irregular status during their stay, with all of the associated risks that periods without legal documentation entail (see the following section).

In addition, because migrants are regularly paid below minimum wage, and in many cases must remit income to support family members in their home countries, they often do not have sufficient accumulated savings to cope with the sudden loss of income caused by termination of employment. For many families, migration itself is an informal social protection strategy to alleviate the deprivations of poverty, thus the economic shock of unemployment affects not only the welfare of migrants themselves but also the dependents they have left behind.

### **Risks faced by workers in an irregular status**

Risks related to irregular status underpin all stages of the labour migration process in Thailand. Because legal channels for migration sometimes fail to provide comprehensive protection of rights and welfare, foreign workers may conduct an informal cost-benefit analysis of the options available to them. The outcome has been that the majority continue to choose migrating irregularly because it is less complicated, faster, and less expensive. However, undocumented migrants face an increased risk of exploitation and abuse, not only by unscrupulous brokers and employers but also by corrupt authorities. Irregular migrants may face extortion of money to avoid arrest and deportation, and it is not uncommon for a migrant to lose the equivalent of one to several months’ pay in one incident (Human Rights Watch, 2010).

In addition to their heightened vulnerability to abuses, irregular migrants are denied even the marginal levels of access to legal protections and redress mechanisms that are available to regular migrants. Unable to appeal to officials when their labour rights are violated, undocumented migrants typically suffer silently in fear of reprisals or being reported to authorities for filing complaints.

## Additional risks faced by vulnerable populations

Certain demographic groups of migrants face additional risks in Thailand as a result of their social and economic marginalization. Because they are more frequently employed in physically isolated workplaces, such as domestic work in private residences, women migrants are often more vulnerable to abuse by employers than men (however, it should be noted that similar concerns also exist for men employed in the fishing sector). Children are employed in the worst forms of child labour in Thailand, including in hazardous forms of agriculture as well as in the shrimp and seafood processing industries (Bureau of International Labour Affairs, 2012).

Although generally considered under the classifications of smuggled migrants or asylum-seekers rather than migrant workers, another vulnerable cohort of migrants in Thailand that should be noted are the Rohingya. As a stateless ethnic and religious minority group from Myanmar, they are particularly vulnerable in terms of legal status and access to services. Because the Government of Myanmar does not recognize the Rohingya as citizens, they are not able to complete the nationality verification process which has become a mandatory part of registering as a documented migrant worker in Thailand. The outcome is that they are *a priori* irregular migrants in Thailand, as they are prevented from legalizing their status as migrant workers and have also been excluded from refugee status determinations or statelessness assessments conducted by the Thai Government (Human Rights Watch, 2012).

Due to mutually reinforcing constraints caused by this lack of documentation, language barriers, and cultural and religious differences with Thai society, the Rohingya face restrictions on their ability to move freely, find stable employment, and access essential health and social services. As a consequence, they frequently live in squalid conditions of poverty and suffer from poor health, malnutrition and other deprivations (IOM, 2010).

## Access to social protection schemes for migrant workers in Thailand

The four main pieces of legislation governing the social protection schemes accessible to migrants in Thailand are the Social Security Act (1990), the Workmen's Compensation Act (1994), the Ministry of Public Health (MoPH) Announcement on Health Examinations and Insurance for Migrant Workers from Myanmar, Lao PDR, and Cambodia (2009) (revised in 2013), and the National Education Act (1999) (extended by a cabinet resolution in 2005 to include children without documentation or Thai nationality).

Under this legal framework, *de jure* access to some forms of social protection for regular migrants is significant. Migrants who have completed the nationality verification process or have entered Thailand under one of the MOU agreements with neighbouring countries (over one million workers<sup>5</sup>) are eligible to receive benefits under both the Social Security Fund and the Workmen's Compensation Fund administered by the Social Security Office. Migrants who were registered under the last amnesty offered to irregular migrants but have not completed nationality verification (approximately 650,000 workers in July 2013<sup>6</sup>) are provided with access to health coverage under the Migrant Health Insurance scheme. Additionally, all migrant children in Thailand regardless of legal status are entitled to free education for 15 years, providing schooling from pre-school through secondary and vocational education (table 3.3).

5 Department of Employment, July 2013.

6 Department of Employment, July 2013.

Table 3.3: Social protection schemes for migrant workers

Legal status	Entitlements	Application	Institution
MOU migrants	Social Security and Workmen's Compensation Funds*	Compulsory (registration and monthly worker/employer matching contributions of 5 per cent required for SSF and registration and employer contribution of 0.2-1 per cent for WCF)	Social Security Office of the Ministry of Labour
Migrants completed nationality verification	Social Security and Workmen's Compensation Funds*	Compulsory (registration and monthly worker/employer matching contributions of 5 per cent required for SSF and registration and employer contribution of 0.2-1 per cent for WCF)	Social Security Office of the Ministry of Labour
Registered migrants (entered regularization process)	Compulsory Migrant Health Insurance scheme	Compulsory (enrolment fee of THB 2,800)	Ministry of Public of Health
Irregular migrants	Compulsory Migrant Health Insurance Scheme	Optional (enrolment fee of THB 2,800)	Ministry of Public of Health

Sources: (Schmitt, et al., 2013; Social Security Office, 2012).

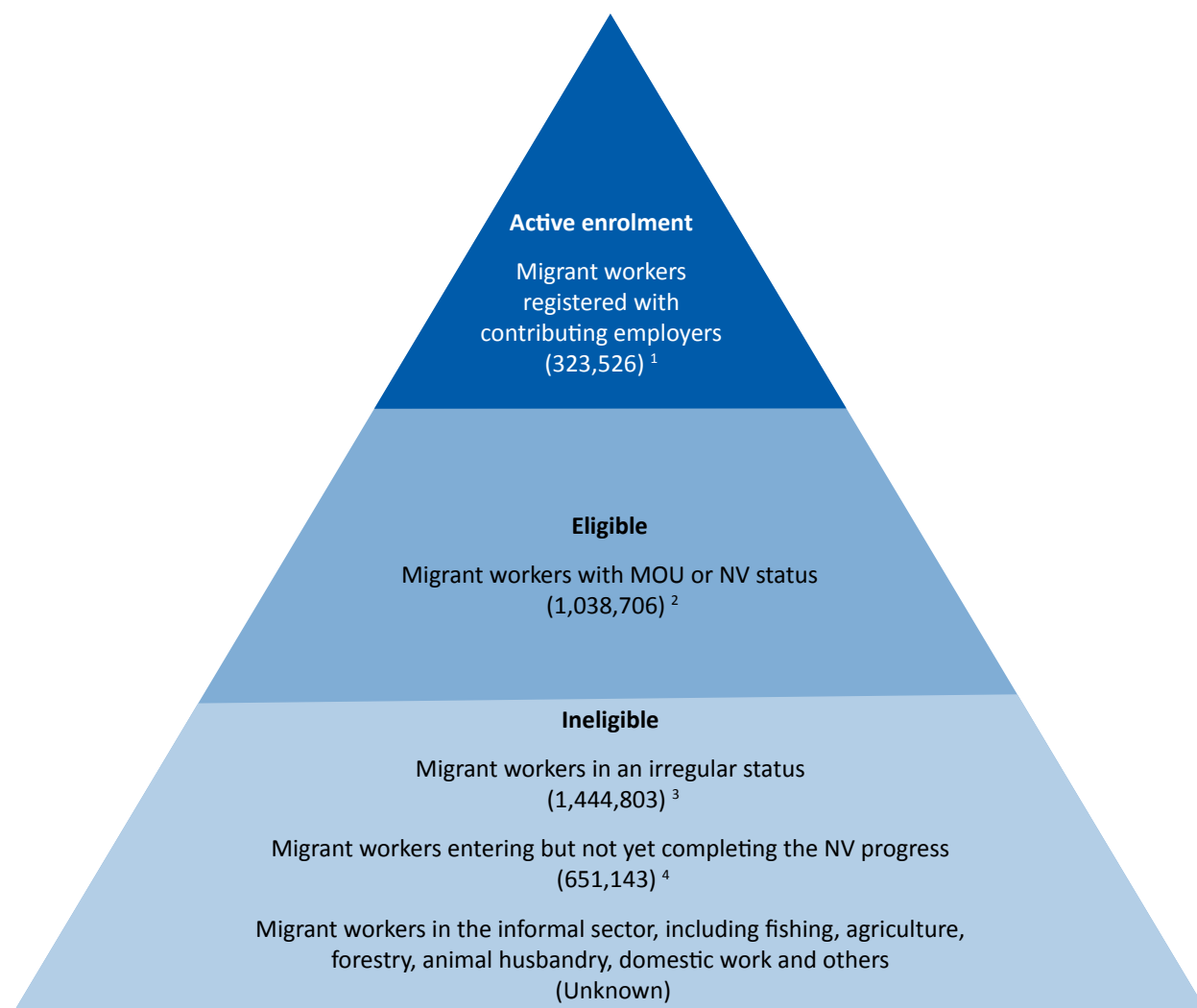
\*Migrants employed in the informal sector are excluded regardless of legal status, including those working in fishing, agriculture, forestry, animal husbandry, domestic work and others. The number of regular migrants affected is indeterminable due to a lack of policy clarity defining informal sector employment for migrants, but is likely very substantial given some of the industries involved. It should also be noted that migrants in these sectors are not fully covered by the Labour Protection Act but rather various ministerial regulations, further increasing their vulnerability as workers.

For the remaining migrants working in Thailand in an irregular status, estimated to be over one and a half million workers (Chapter 1), access to protection through government providers is very limited. A revision to the MoPH policy for providing the Compulsory Migrant Health Insurance scheme was put into force in August 2013, allowing irregular migrants the option of buying into the scheme for a cost of THB 2,800 (and for children of migrants under age 7 at THB 365). Despite this positive development, concerns remain that the cost involved may constitute a major deterrent for migrant workers to enrol. As with young and healthy people everywhere, many migrants may not see the benefit of voluntarily purchasing coverage, given that they likely do not need to access health care frequently.

In addition, the benefits provided under law for regular migrants are commonly out of reach in practice because of reluctance by employers to pay contributions into the Funds—in some cases colluded by migrants' own wishes to avoid salary deductions. A recent social protection assessment in Thailand carried out by a joint United Nations/Royal Thai Government team found that:

*“Although migrant workers under the MOU or who have passed nationality verification can in theory be registered under the Social Security Fund and the Workmen's Compensation Fund, they encounter difficulties in fully accessing benefits because of limited compliance with the law by employers” (Schmitt, et al., 2013:14).*



**Figure 3.1: Migrant worker eligibility and enrolment in the Social Security Fund**

<sup>1</sup> Social Security Office, June 2013

<sup>2</sup> Department of Employment, July 2013

(Note: This figure includes an unknown number of informal sector workers who are ineligible but cannot be precisely estimated)

<sup>3</sup> Ministry of Labour estimate

<sup>4</sup> Department of Employment, July 2013

Even for migrants who are registered for the Social Security and Workmen's Compensation Funds, use of benefits remains restricted for a variety of reasons that preclude genuine equality of treatment. In some cases, such as application for unemployment benefits, the responsible authorities at the Department of Employment simply do not accept applications from migrants (Schmitt, et al., 2013). For other benefits, including claims related to workmen's compensation for on-the-job accidents, the long duration of the process and evasion of responsibility by employers are major obstacles for migrants<sup>7</sup> (State Enterprise Workers Relations Confederation, 2009). To receive old-age pension benefits requires a minimum qualifying period of 15 years of contributions, an impossibility for migrants under Thailand's current immigration policies (Hall, 2012). Additional constraints to access include a lack of understanding for many workers about the process to make a claim for benefits, language barriers, documentation requirements such as official marriage and birth certificates, and concerns about discriminatory treatment by authorities. As a

<sup>7</sup> In 2009, the State Enterprise Workers Relations Confederation filed a complaint with the ILO alleging breach of the Thai Government's obligations under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) for denying migrant workers from Myanmar access to the Workmen's Compensation Fund.

result, regular migrants are required to pay into a social security system where they have no opportunity to use several of the benefits, and very limited access to others.

Likewise for the Migrant Health Insurance scheme, substantial barriers to care mean that utilization remains relatively low, particularly for outpatient care. Enrolment in the programme is compulsory for migrant workers to regularize their status and obtain work permits in Thailand. For a fee of THB 2,800, migrants are entitled to a health screening and health insurance, making a THB 30 co-payment per hospital/health centre visit. However, reluctance to access government medical facilities often results in migrants self-medicating or not seeking medical care until their health problems are very severe, even when they are enrolled in the scheme (Srithamrongsawat, Wisessang, and Ratjaroenkajorn, 2009).

For irregular migrant workers, health care is still generally financed through a patchwork of out-of-pocket payments, hospital-granted exemptions, voluntary health insurance schemes provided in some provinces, and migrant health programmes supported by international donors. Under this pastiche of coverage, access to care at public hospitals remains largely dependent on individual hospital policies. The resulting gaps in provision of health care are contradictory with the international standards for equality of treatment, as well as the MoPH principle of promoting health as a human right. Both migrants themselves and the Thai population more broadly face negative impacts on health status from the policy deficit (Srithamrongsawat, et al., 2009). Whether or not the recent reforms enacted by the MoPH providing irregular migrants with the option to buy into the Compulsory Migrant Health Insurance scheme will be sufficient to fill the coverage gap remains to be seen.

Although Thailand was able to implement a universal coverage programme beginning in 2001, intended to provide health care for all persons in Thailand who are not covered by other Government-provided insurance schemes (Towse, Mills, and Tangcharoensathien, 2004), it has so far been targeted for coverage of citizens only. Even though the National Health Security Act that provides the legal framework for the scheme stipulates that “every person” is entitled to health services in Thailand, the law is generally interpreted to apply to those of Thai nationality. Therefore, migrant workers are omitted from the concept of universality applied (Schmitt, et al., 2013:27).

Various informal eligibility restrictions have also been found in the implementation of the universal free education policy for children. Although the law guarantees that all children are allowed to study at Thai schools, in practical terms, they are typically required to show identification documents to enrol, which remains a barrier in some cases. The final decision about matriculation of migrant children often rests with individual headmasters who may add their own conditions and requirements to those laid out in the universal free education policy. Commonly, schools may require a certain level of Thai language proficiency or place age restrictions on the enrolment of migrant children (Salmon, Thanwai, and Wongsangpaiboon, 2013). Because of this and other factors, a large portion of migrant children study at unaccredited “migrant learning centres” funded by NGOs and other donors to complete their education at primary level.

## Conclusion

Thailand has had considerable success in expanding the coverage and comprehensiveness of social protection benefits for its population. Within ASEAN, it now stands as the only country to have established protection schemes for all nine of the branches of social security defined under international law (Hall, 2011). In particular, extension of protection to Thailand's informal economy workers constitutes important progress towards ensuring equitable access to benefits and establishment of a social protection floor for all Thai citizens.

However, substantial policy and enforcement gaps remain in making these benefits available to Thailand's over three million migrant workers (table 3.4). Because the majority continue to make use of irregular channels for migration, they are precluded from access to nearly all forms of social protection. For those migrants who do opt to migrate regularly, or are able to obtain legal status, the lack of operational strategies for ensuring equality of treatment and securing compliance by employers means that the ratio of utilization to eligibility for protection benefits remains quite small. Thus, the incentive to use regular migration channels is reduced by the absence of accessible social protection benefits.

**Table 3.4: Key gaps in provision of social protection to migrant workers**

Social protection	Policy and enforcement gaps
Social security	Exclusion of informal sector workers employed in several key industries (fishing, agriculture, livestock, forestry, and domestic work) prevents tens of thousands of enrolments even for regular migrants. In addition, enforcement of the Social Security Act has been ineffective in identifying violators who fail to register their employees or applying sanctions to prevent non-compliance. Migrants who are registered and making regular contributions to the social security fund are still unlikely to be able to make full use of their benefits because of a lack of portability after return to their country of origin. The voluntary extension of social security benefits under Section 39 of the Act is also not available to migrants and neither are the benefits offered to Thai nationals employed in the informal sector under Section 40: illness, invalidity, death, and old-age (lump sum).
Workmen's compensation	Work-related injury benefits for migrants under the Workmen's Compensation Act require a passport or certificate of identity, a work permit, and regular contributions by employers, preventing most migrants from accessing them. In cases where workers are not enrolled, employers are required under law to cover the cost of compensation. However, many employers attempt to avoid taking financial responsibility for migrant injuries and law enforcement is very limited. In some instances documented by the State Enterprise Workers Relations Confederation, the denial of access to health-care institutions has resulted in fatal consequences for migrant victims of occupational accidents.
Health	Health protection is fragmented between different laws and institutions, leading to both inefficiencies and large segments of the migrant population that are completely uncovered by official schemes. This includes both irregular migrant workers (often owing to lack of information, inability to complete worker registration, or the expense of the Compulsory Migrant Health Insurance scheme) and regular migrant workers who are eligible for health insurance under the Social Security Act but are not enrolled by their employers (often as a result of social evasion).

Social protection	Policy and enforcement gaps
Old-age	Old-age pension benefits require a qualifying period of 15 years, which excludes all migrant workers under Thailand's current policies related to temporary labour migration.
Child benefits	The administrative requirement that enrolees must provide official birth certificates to receive child support benefits continues to prevent their use by many migrants. Although the Civil Registration Act 2008 entitles every child born in Thailand to be registered regardless of nationality or legal status, many migrants are either unaware of this right or unable to complete the process, thus preventing them from obtaining the necessary documentation.
Unemployment	Regular migrants are unable to claim unemployment benefits under the Social Security Act both because they are required to leave Thailand within seven days of losing their employment (preventing them from registering for benefits) and because the Department of Employment only accepts applications from Thai citizens.
Education	Inadequate dissemination of information on the universal education policy means that some migrants are unaware of their children's right to education or the educational assistance programmes available. In addition, studies have found that individual schools may require legal documentation, a certain level of Thai proficiency, or a particular age for migrant children to matriculate.
Overall	General inconsistency in application of social protection policies by authorities, as well as fears of discrimination and language barriers, results in the reluctance of many migrants to attempt to make use of their right to benefits.

There have been signs that there is political will for a more inclusive approach towards providing benefits to migrant workers. Already, increasing regular labour migration through the MOU agreements and regularization through the nationality verification process has made hundreds of thousands of migrants eligible to receive benefits under the Social Security and Workmen's Compensation funds. Given their sizable contribution to the economic output of several key sectors in Thailand, effective provision of benefits to these migrants should properly be viewed within the framework of investment in the productivity of the nation's labour force.

## Recommendations

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- Carry out a comprehensive assessment of migrant access to social protection schemes, in consultation with government, employer, and worker representatives.
- Make a complete report to the ILO's Committee of Experts on the Application of Conventions and Recommendations in response to its observations on the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).
- Consider ratifying the Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Maintenance of Social Security Rights Convention 1982 (No.157) in order to ensure that any multilateral or bilateral social security agreements concluded conform to international standards.
- Extend social security coverage to migrant workers in the informal sector, including those working in fishing, agriculture, forestry, animal husbandry, domestic work and other industries.
- Remove completion of the Nationality Verification process as a pre-requisite to register for the Social Security and Workmen's Compensation Funds.
- Include registration for the Social Security and Workmen's Compensation Funds as a required step in registering migrant workers with the Department of Employment.
- Establish a link between the Department of Employment and Social Security Office databases to identify employers who fail to comply with registration and contribution policies.
- Enforce sanctions against employers who do not register or contribute to the Social Security and Workmen's Compensation Funds on behalf of their workers.
- Conduct outreach campaigns to migrant workers and their employers on their rights and responsibilities under the Social Security and Workmen's Compensation Acts.
- Provide translation assistance to migrant workers at Social Security Office locations where a sizeable cohort are registered.
- Offer migrants the option of a lump sum payment for their pension amounts accrued upon repatriating to their countries of origin, and clearly communicate the procedures for obtaining the disbursement.
- Allow regular migrant workers a 3-month period to change jobs, and provide those migrants who are enrolled in the Social Security Fund with the unemployment benefits to which they are entitled while searching for employment.
- Remove the condition of an official birth certificate for migrant workers to claim child benefits under the Social Security Fund.
- Ensure migrant access to the Workmen's Compensation Fund regardless of legal status or documentation and apply strict sanctions against employers attempting to avoid providing compensation for medical bills and injuries sustained.
- Provide no-cost health services to migrant workers without social security benefits under the universal coverage programme.
- Conduct an information campaign for parents of child migrants to make them aware of their right to free education, and provide them with an impartial mechanism to resolve their grievances if they are prevented from matriculating.

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## Introduction

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The United Nations General Assembly at its High-level Dialogue on International Migration and Development held in New York in October 2013<sup>2</sup>, declared its commitment to protect the human rights of migrant children. The declaration highlighted the vulnerability of children affected by migration and emphasized the need to provide for their health, education and psychosocial development, ensuring that the best interests of the child are a primary consideration in policy.

The General Assembly declaration moves discussion about children and migration beyond a protection agenda to an approach based on human rights and, in particular, the Convention on the Rights of the Child (CRC). In the context of migration, the rights enshrined in the CRC, which Thailand ratified in 1992, are guaranteed to all children regardless of their migration status. The United Nations Committee on the Rights of the Child, in its discussion on the impact of migration on children<sup>3</sup>, stressed the need to protect the rights of all children affected by migration in accordance with three fundamental principles: *non-discrimination*, meaning that children affected by migration have the same rights as child nationals; a *comprehensive, rights-based approach* that avoids categorization of children, as migration dynamics are complex and categories such as “trafficked”, “unaccompanied” or “asylum-seeking” are fluid and temporary; and application of the principle of the best interests of the child, which should be a primary consideration for States when taking decisions about a child affected by migration.

Migration makes a positive contribution to Thailand’s national development when the human rights of migrants and their families are recognized, promoted and respected. Migration affects children in many different ways in Thailand: children themselves may have migrated alone from neighbouring countries; they may be left behind by parents who have migrated within the country or abroad; or they may be born to parents who have migrated into Thailand. The rights of all these children to health, development, and protection can be threatened by the absence of parents or guardians, legal and social exclusion, xenophobia, and gender-bias.

The United Nations Children’s Fund (UNICEF) emphasizes that an equity focus should be adopted in promoting the rights of children in Thailand: within a set of universal goals, priority should be given to the most vulnerable and marginalized. Children affected by migration in countries of origin, transit and destination are often among the most vulnerable in society and require special attention. Evidence-based policy reform to help ensure that necessary action is taken needs good quality data and research – disaggregated by age, sex and other variables – on access to health care, early childhood education, schooling and social protection by children affected by migration. However, information is generally as lacking in Thailand as it is elsewhere.

In order to assess this gap, this chapter of the Thailand Migration Report seeks to bring together data and

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1 This chapter was commissioned by UNICEF, Thailand.

2 Declaration of the High-level Dialogue on International Migration and Development, United Nations, New York, A/68/L.5, 2013.

3 The Rights of all Children in the Context of International Migration, UNHCHR, Geneva, 2012.

research on children affected by migration. The chapter comprises two parts: the first assembles in one place some of the latest official information and research on children affected by migration. The second part addresses the issue of internal migration – which is a significant phenomenon in Thailand – and its impact on children. It summarizes an innovative piece of research that attempted to measure the well-being of children who are left behind when their parents migrate from rural to urban areas within Thailand.

As in previous versions of the Thailand Migration Report, this chapter highlights the fact that knowledge and data on the situation of children affected by migration remains very limited. As noted below, much more research and data are required on the extent to which the rights of children who themselves have migrated into Thailand, and those who are born to parents who have migrated into Thailand, are being respected, and any barriers to the realization of their rights identified and removed.

## The Situation of Children Affected by Migration<sup>4</sup>

This section outlines recent data and literature available on the status of children affected by migration in Thailand. It includes information about children in four categories: 1) children who migrate from other countries with their families or are born in Thailand to migrant parents (children of in-migrants); 2) children who migrate from other countries on their own or with peers (migrant children); 3) Thai children who migrate on their own within Thailand (Thai internal migrant children) and 4) Thai children affected by the migration of their parents, who migrate to other countries or within Thailand. Table 4.1 presents a typology of the categories of children affected by migration and gives an overview of the availability of data and the nature of the concerns about each group.

**Table 4.1: Typology of children affected by migration**

Typology	Availability of estimates of the number	Concerns about well-being		
		Education	Health	Other aspects of well-being
1 Children of in-migrants	Besides the usual difficulty in measuring the number of unregistered migrants, children are not counted in labour statistics and are less likely to be registered than adults of working age.	Migrant children officially may attend Thai schools but often do not, due to parental fears about illegal status, fear of discrimination or poor treatment, lack of language ability, and/or because they are not planning to stay in Thailand long-term.	Children may lack access to needed health care due to their illegal status, parental fears, and/or not being able to afford care or insurance. Migrant living conditions are poor and children may be prone to respiratory infections and other contagious diseases.	Both migrant parents may be working and cannot spend time with children; if not attending school children have little to do and may be isolated from peers. Children are not part of the social life of their new country, and have little experience in their country of origin.

<sup>4</sup> This section is an abridged version of a paper prepared for UNICEF by Kerry Richter, Institute for Population and Social Research, Mahidol University, "Updating the knowledge base of the situation of children affected by migration", unpublished, Bangkok, 2012.

Typology	Availability of estimates of the number	Concerns about well-being		
		Education	Health	Other aspects of well-being
2 Child in-migrants	Same difficulties as for all migrants, plus children on their own are more likely to be hidden, and less likely to be registered. Children under 15 who are working illegally are most likely to be hidden.	Children migrating on their own are unlikely to be in school and likely to have left school early in their home country.	While all migrants may lack access to health care, children are especially likely to lack access and health knowledge.	Child migrants are vulnerable to exploitation and trafficking; work at “3D” and low-paying jobs; and are more likely to be homeless than adult migrants.
3 Child internal migrants	Most migration surveys use a minimum age of 15, but may ask age of first migration; children on their own are likely to be missed by censuses and other official data sources.	It is not uncommon for Thai children to migrate for educational reasons; but those who migrate for economic reasons usually leave school at the compulsory level or before.	Children not living in a family setting may be less likely to take good care of their health; often working at “3D” jobs.	Same concerns as those living apart from parents because parents migrate; isolation from family and community; and vulnerability to exploitation and trafficking.
4 Children of internal or out-migrants	Several national surveys have estimates of children not living with parents, but many do not show the reason for living separately.	Living apart from parents may be associated with other aspects of vulnerability, poverty and thus lower educational attainment.	Non-parental and especially older caretakers may not be as knowledgeable about child health; abandoned and “left-behind” children may not be cared for as well as those with parents; separate living is associated with poverty and thus poor health and nutrition.	Living apart from parents may be associated with other aspects of vulnerability; non-parents may not provide the same level of nurturing and security as parents; child may be abandoned by parents.

It is important to begin by noting how the “child” is defined in various contexts in Thailand. Thailand’s compulsory level of education is Grade 9, which children complete when they are around age 15-16 years. The minimum age of marriage is 17 years, but those under the age of 20 years must get parental written permission to marry. Thai citizens aged 21 years and older may apply for a passport on their own; those aged 15-20 years may obtain a passport without being accompanied by their parents but must have written

5 3D: dirty, dangerous and demanding.

consent of both parents. While all children are issued a unique 13-digit identification (ID) number at birth, since 2011 they obtain their Thai National Identity Card at the age of 7 years. A child needs to appear in a household registration card to obtain the ID card.

The United Nations CRC defines a child as any person under the age of 18 years, unless applicable local laws assign younger people as having adult legal status. Thailand's Labour Protection Act of 1998 allows children to begin working at age 15 under certain provisions (Royal Thai Government, 1998). Provisions include that children are not allowed to work at certain jobs (such as with heavy machinery) or at certain locations (such as a nightclub), or to work between 22:00 hrs and 6:00 hrs.

## Children of in-migrants to Thailand

As Jampaklay (2011) points out, there is overlap in the official statistics on children who migrated to Thailand with their families, who were born in Thailand to migrant parents, and who migrated on their own for work. It should be noted that the nationality verification (NV) or "regularization" process for migrants was mainly aimed at adult workers and not their dependents (Hall, 2011) although dependents had registered in previous rounds (Sciortino and Punpuing, 2009). Those aged 15 years and older, and thus legally able to work and obtain a work permit, were included in the NV process.

### Estimates of the number of children of in-migrants

Figures from the Ministry of Labour (July 2013) show the total number of registered migrant workers at 1,174,900. No update is available to the IOM figures on the number of migrant children in Thailand that was included in the 2011 Thailand Migration Report (Jampaklay, 2011:96). IOM recently published figures on the number of migrants who have entered the migrant regularization process (IOM, 2013). As seen in table 4.2, only a very small percentage of these are children. Jampaklay's (2011) estimate that the number of international migrants who are children is about 11 per cent has been widely cited (Boonchalaksi et al., 2012; Bourny and Chaipheth, 2012; Salmon et al., 2013) and is likely a more accurate estimate for all migrants (regular and irregular).

**Table 4.2: Number of migrants who had entered the migrant regularization process as of 13 April 2013**

Nationality	Migrant workers	Migrant children	Children as a % of Total
Myanmar	353,841	1,124	0.3
Cambodia	122,899	1,598	1.3
Lao People's Democratic Republic	66,082	912	1.4
<b>Total</b>	<b>542,822</b>	<b>3,634</b>	<b>0.7</b>

Source: IOM, 2013a: p.5.

Chinvarasopak et al. (2013) estimate the number of migrants in the Bangkok Metropolitan Area from Cambodia, Lao People's Democratic Republic and Myanmar using secondary data from the Ministry of Labour and primary data from a survey, both in 2012. The survey, taken from a systematic sample of Enumeration Areas in Bangkok, found that children under the age of 15 years accounted for 5.7 per cent of the total population from these three countries. The study then used the multiplier method, applying this percentage to the number of registered migrants counted by the Ministry of Labour, and using estimates of the ratio of unregistered to registered migrants, to calculate minimum, medium and maximum estimates for migrants



from two age groups from the three countries of origin. The results are presented in table 4.3. For children under 15 years of age, the estimate ranges from around 25,000 to nearly 37,000.

**Table 4.3: Minimum, medium and maximum estimates of the number of migrants from Cambodia, Lao People's Democratic Republic and Myanmar in Bangkok in two age groups, 2012**

	Minimum	Medium	Maximum
Under age 15 years	25,073	26,807	36,771
Age 15 years and older	439,870	470,291	645,096
<b>Total</b>	<b>464,943</b>	<b>497,098</b>	<b>681,867</b>

Source: Chinvarasopak et al., 2013 :221-223.

### Well-being of children of in-migrants

While concerns remain about migrants' rights and their vulnerability to potential exploitation, the policies of the Royal Thai Government on providing services for in-migrants have improved substantially in recent years. As a signatory to the 2000 Dakar pledge, Thailand committed to "Education for All", including ethnic minorities and migrants. In 2005, a Cabinet Resolution explicitly gave all children the right to a free education (Austin, 2012; Salmon et al. 2012). Registered migrant children have also gained improved access to health services; however, barriers to obtaining access to these services remain.

### Education and schooling status

In his study of Chiang Mai and Mae Sot, Nawarat (2012) found that the 2005 Resolution to allow all children to attend schools substantially increased the attendance of migrant children as eight times the number of migrant and stateless children attend school in some districts as did so before 2005; however, this is still likely to be less than 50 per cent of the total number of children. Austin (2012) evaluates educational policy in Thailand from a child rights perspective and maintains that the Government's statements in support of international initiatives and leadership regionally have been strong. Despite this, she documents how other legislation (including some passed since the 2005 Cabinet Resolution) is more ambiguous about non-Thai children's right to education. The stress on regularizing (registering) migrants often means that the denial of non-registered children's access to education is seen as justified. Nawarat (2012) also points out that, while the Royal Thai Government has been successfully influenced by civil society groups to respect children's rights to education, policies on migration which are oriented to temporary and short-term stays sometimes conflict with education policy for migrants' children, which requires longer-term commitment to students and an acknowledgement of their needs.

Several studies have documented the barriers for migrant children to attend schools in Thailand in practice, even though in principle they may do so without cost. Arphattananon (2013) in a study of Ranong and Pattani provinces finds that migrants lack information about the open educational policy, and there are no information campaigns to communicate the policy. Schools operate without guidelines to place migrant children at the proper level, given their limited language ability and often undocumented age. Additionally, the curriculum is often not relevant to students of a different culture. BEAM Education Foundation (2012) points out that there are several sub-groups of migrants from Myanmar: some will settle in Thailand quasi-permanently while some will come and go across the border according to economic needs and opportunities. These groups have very different educational needs. Nawarat (2012) finds that the indirect costs of attending school (such as uniforms, transportation, etc.) are a barrier to many migrants, as are parents' fears that their

children's school attendance will expose them to immigration authorities if they have irregular status. They also fear that their children may face discrimination and poor treatment at school (Salmon et al., 2013).

The Ministry of Education provides statistics on the number of migrant children studying by year of schooling and home country. As seen in table 4.4, the overall percentage of non-Thai students is small (1.4 per cent overall). Moreover, this percentage peaks in the pre-school and early primary grades; as seen in figure 4.1 the highest percentage is found in Grade 1. By far the largest group of students is from Myanmar (60 per cent, as seen in figure 4.2). The higher percentage of migrant children in the younger grades is likely found for several reasons. One is that children born in Thailand are often sent home to live with relatives at a certain age, as evidenced in qualitative studies (Kantayaporn et al., 2013). Another, as outlined in the studies cited above, is that language and cultural factors are often barriers for older children attending school. Finally, the relatively recent change in policy means that children born before 2000 or so did not enter school at a young age and are now unlikely to do so.

### Health status and access to health services

Royal Thai Government policy allows registered migrants access to health care through the Social Security Scheme (SSS) or Migrant Health Insurance Scheme; dependents of registered migrants are eligible if they are also registered. In practice, there are many reasons that migrants face barriers to obtaining this access. For registered migrants to obtain coverage under the health scheme, barriers include the bureaucratic difficulties of registration as well as needing the employer to obtain a health insurance card for the migrant. For unregistered migrants, additional barriers include fear of being arrested and deported, language barriers, fear of discrimination, and lack of knowledge about when care and treatment should be sought (Press, 2005; Veerman and Reid, 2011).

Two recent studies provide information about migrant children's health status. Mitchell et al. (2012) report that 5.1 per cent of refugee children from Myanmar bound for the United States who had been resident in border camps in Thailand had an elevated level of lead in their blood. A survey revealed that children living in camps had risks of lead exposure, including from car batteries used to generate electricity, traditional medicines, and (for young children) mouthing cosmetics containing lead. Akiyama et al. (2012) found that an intervention to improve school health practices in migrant schools had been successful in raising the level of school health; though child health status was not evaluated, the study showed improvement in such practices as teachers' monitoring of child health, school sanitation and children's sanitary behaviour.

### Other aspects of well-being

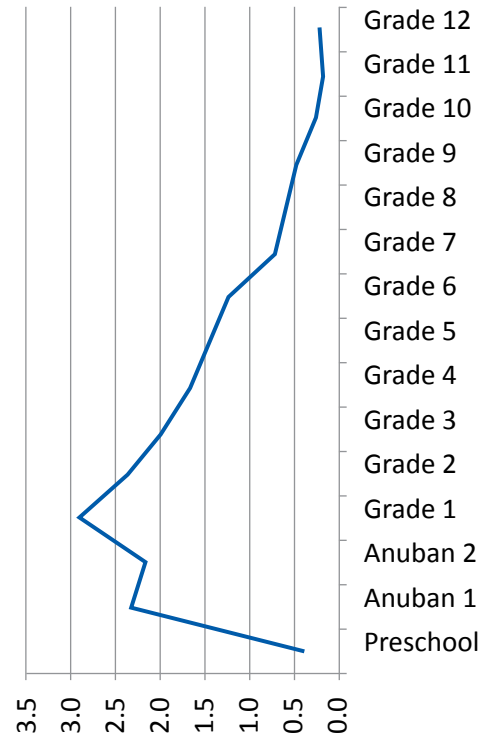
A qualitative study contrasting migrants from Myanmar in Mae Sot and Samut Songkram provinces found differing patterns of child care and family life, based in part on the motivation for migration (Rabibhadana and Hayami, 2013). In Samut Songkram, both husband and wife usually work and obtain work permits, and many send their young children back to live in Myanmar with grandparents. In Mae Sot, most Myanmar migrants have moved to Thailand to escape difficult conditions in their home country rather than for economic gain or sending money back home. Here women mainly stay home to look after the children and do not obtain work permits. Samut Songkram also tends to attract young unmarried migrants, who meet and marry after migration, whereas Mae Sot attracts whole families. This qualitative study illustrates how migrants can differ greatly as to their childbearing and child rearing patterns, and that many children born in Thailand are sent back to the country of origin once they reach a certain age.

Table 4.4: Number of international migrant children in Thai schools by level and country of origin, 2012

	Migrants											Total
	Thai	Myanmar	Cambodia	Lao PDR	Other ASEAN	Other Asian	Other countries	Unknown	Total migrants	Percentage migrants		
Preschool	957,512	11,428	2,568	1,038	61	380	2,167	4,158	17,642	2.2	979,312	
Primary school	3,308,997	33,275	4,726	2,688	162	2,294	10,210	11,612	53,355	1.9	3,373,964	
Lower Secondary	1,873,553	4,369	708	289	21	606	2,749	2,102	8,742	0.6	1,884,397	
Upper Secondary	1,115,046	605	178	76	23	329	598	513	1,809	0.2	1,117,368	
<b>TOTAL</b>	<b>7,255,108</b>	<b>49,677</b>	<b>8,180</b>	<b>4,091</b>	<b>267</b>	<b>3,609</b>	<b>15,724</b>	<b>18,385</b>	<b>81,548</b>	<b>1.4</b>	<b>7,355,041</b>	

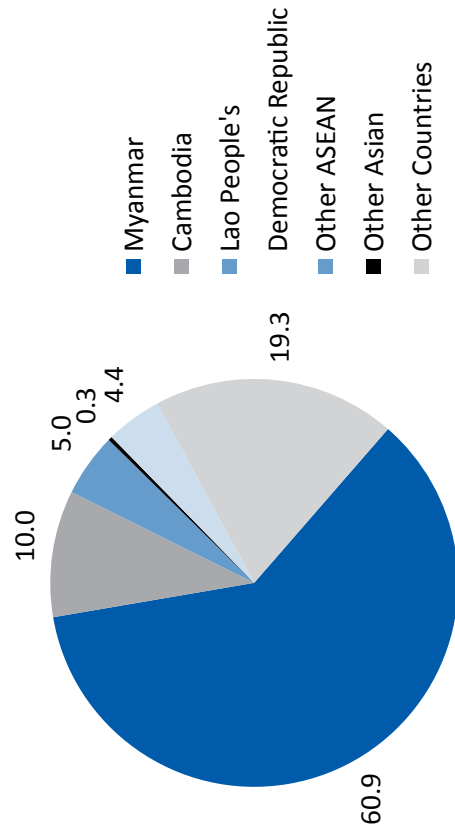
Source: Ministry of Education.

Figure 4.1: Percentage of children in Thai schools who are migrants, by year of schooling



Source: Ministry of Education.

Figure 4.2: Percentage of migrant children by country of origin



Source: Ministry of Education.

A situation analysis of children of migrants conducted in 2012 found that about half of migrant children live in “bad” or “very bad” housing conditions (Bournyand Chaipet, 2012). One-third of migrant children were rated as being in a “very bad” situation with regard to education and work and one-fifth were rated “very bad” with regard to skills. The study lists the barriers to education that migrant children face but does not elaborate the findings on work or skills. However this study, which admitted problems in reaching irregular migrant children and/or those living under the worst conditions, found that the migrant children were rated favourably on other aspects of well-being such as care, wellness, social behaviour and emotional health.

Finally, while concern about child migrant labour is often focused on child workers who have migrated on their own, child migrants who live with their parents often work as well. Sunpuwan and Suksinchai (2012), in a study of child workers in the rubber plantations of Songkhla and Phang Nga provinces, found that more than 85 per cent of the children surveyed lived with at least one parent. While the majority of children started working before the age of 12 years, the vast majority (96%) were working in a family business. The study found that more than half of the children experienced potentially hazardous working conditions, with migrant and stateless children particularly likely to face such conditions.

## Children Born in Thailand

While children who are born in Thailand have somewhat different needs than older children who migrate to Thailand with their parents, they are in fact a sub-group of the first category of children. All children born in Thailand have the right to have their birth registered under the 2008 amendment to the Civil Registration Act, regardless of nationality. Any child who is born in a hospital or other medical facility is issued a “delivery certificate”; those born at home do not receive this. While the delivery certificate is a legal document, it does not register the birth; the parents must register the birth within 15 days at the local registrar (whether they have a delivery certificate or not). Aliens will receive a different form from Thai citizens but, when registered, all children are given a 13-digit Thai identification number that will entitle them to health care and education. The 2008 Civil Registration Act is retroactive, so that it potentially covers thousands of children of migrants (including those who are now adults) who were born in Thailand. In practice, however, hospitals may not always register the births of migrants unless parents specifically ask for the documents, and many migrants are unaware of their right to register the child. Also, migrant women may fear being reported to authorities if they go to a government hospital to give birth, and so will give birth at home with a midwife. Some efforts are now being made in the temporary shelters for displaced persons to register births from the past, and UNESCO has published a guide for stateless people and migrants to birth registration. Any child up to age 15 years may have his or her birth registered (Chiang Rai Times, 2013; IRIN Asia, 2011; Thawdar, 2009; UNESCO, 2008).

### Estimates of the number of children born in Thailand to in-migrants

Of the 377,000 migrant children and children of migrants estimated by ILO to be in Thailand in 2008, perhaps about 150,000 of them were born in Thailand (Jampaklay, 2011: 96). This would constitute about 4 per cent of all migrants, and about 40 per cent of all children classified as migrants. Some small-scale studies cite higher figures. A case study of child labour in Samut Sakhon province estimates that there are 2,920 to 3,650 children of migrants born per year in that province alone (Tang, 2013).

### Well-being of children born in Thailand to in-migrants

As outlined above, children born in Thailand should receive health coverage if their birth is registered and they receive a 13-digit ID number. The main issues of concern for this group are the access to antenatal care

for pregnant women, access to safe delivery services, and access to health services, including immunization, for babies and young children.

### Circumstances of birth and antenatal care

The 2010 Prevention of HIV/AIDS among Migrant Workers in Thailand Project (PHAMIT) data provide some information about whether migrant families are obtaining this care. Of the 3,405 migrants surveyed, 15.5 per cent reported having a child under the age of 5 years. Of these, 68.4 per cent were born in Thailand. Parents of children born in Thailand reported that 19.0 per cent were born at home, 75.6 per cent in a hospital, clinic, or health centre, and the rest (5.4%) in another location. Fully 84.1 per cent reported receiving antenatal care (Chamrathirong, 2012).

### Immunization

Several recent studies have examined immunization status and barriers to receiving immunization services among migrant children. Kantayaporn et al. (2013) conducted a survey of migrants from Myanmar in Bangkok who have children; these include both children living with their mother in Bangkok and those living in Myanmar. Their estimates of coverage for migrant children under one year of age living in Bangkok range from 61 per cent (measles) to 83 per cent (Bacillus Calmette-Guérin or BCG), compared with 98-100 per cent of Thai children and 90-93 per cent of children in Myanmar. For children aged 1-3 years, estimates range from 46 per cent for Japanese Encephalitis (JE2) to 64 per cent for oral polio vaccine/diphtheria, pertussis and tetanus (OPV4/DPT4) compared with 95-99 per cent of Thai children. The qualitative component of the study outlines the reasons why the National Expanded Program on Immunization (EPI) has failed to reach many migrant children. They find that a lack of information about the campaigns is the main obstacle to obtaining immunizations, due mainly to the language barrier. Other barriers include the need to work during the scheduled appointment times and the fear of arrest.

Canavati et al. (2011) report that there is no coordinated effort to provide immunizations to migrant children in Tak province and that vaccine-preventable diseases such as measles, mumps, tuberculosis and hepatitis are prevalent in the migrant population. Their qualitative study revealed that while migrant parents viewed immunization positively, their fear of arrest, distance to the clinic, inconvenience of appointments during working hours, and financial barriers were affecting their ability to get their children vaccinated.

## Child in-migrants

The situation of children who migrate on their own for work differs from those of the previous group, who accompany parents or are born in Thailand. West (2008) maintains that children's migration is more complicated than that of adults, and while the focus has been on child exploitation and child trafficking, much child migration stems from their own decision making and agency. In South-East Asia, such migration should be seen in the context of filial ties and obligation to family, though children who migrate on their own for work often do so due to an unfavourable home situation due to poverty and/or other reasons. Aspirations for a better life, seeking higher education, seeking economic opportunities, and breaking away from traditional culture and parental supervision are all cited as important reasons for children's migration; however, motivations are often part of a family or household strategy rather than being individually based (Pearson et al., 2006). Huijsmans (2011, 2012), in his study of youth migrants from Lao People's Democratic Republic to Thailand, has developed a framework for child migration that conceptualizes aspects of the social context affecting migration rather than making a sharp divide between individual vs. family migration or trafficking vs. free migration. He divides child migration into two types. "Institutionalized" migration

involves contractual relations and includes both older children with formalized registration or broker contracts for jobs, but also young children with formalized adoptions. “Fluid” migration is more informal but dependent on social networks which may be recruiter-based, parent-based or peer-based, and involve children’s agency to a greater or lesser extent.

At the same time, moving or receiving children for the purposes of an exploitative job is trafficking “regardless of whether any force, threats or coercion were involved” (ILO, 2008:6). Because many jobs that migrant children take include long work hours, no days off, and often hazardous and unhealthy working conditions, the line is blurred between child migrants who migrate on their own but end up in exploitative jobs and those who were coerced or deceived into migrating for work.

### Estimates of the number of child migrants

Official statistics from the Department of Labour Protection and Welfare (DLPW) estimated the number of migrants aged 15-18 years with a work permit at 510,000 in 2011 (The Nation, 2011). These numbers are likely to greatly underestimate the number of child migrants to an even greater extent than adults since children often work at hidden or marginal jobs. Retrospective data on the age that a migrant first came to Thailand provides some insight into these numbers. Table 4.5 presents data from the PHAMIT study on this for both males and females by country of origin. At least 4 per cent in each category came before the age of 15 years, but whether they came alone for work or with a family member is not known. Migrants from Lao People’s Democratic Republic, especially women, appear to come to Thailand at a younger age than the other groups. From one-fifth to one-quarter of migrants from Myanmar and Cambodia said that they first came to Thailand when they were below the age of 18 years, but for women from Lao People’s Democratic Republic more than one-third came before 18 years of age.

Several recent in-depth studies on child migrant workers provide insight on the extent to which children migrate on their own. A study of child workers aged 12-18 years in Mae Sot found that, while 31.9 per cent said that they migrated with parents, only 21.7 per cent had a mother living in Mae Sot, with 15.6 per cent having a father in the province (FTUB, 2006). The implication is that parents may have migrated elsewhere to find work while the child remained in Mae Sot. Only 1.7 per cent of those surveyed said that they migrated alone. A study of agricultural child workers in Tak province found that 95 per cent migrated with a relative or close relative and that 76 per cent lived with one or both parents (Nawarat, 2006).

**Table 4.5: Percentage of migrants who first came to Thailand while under 18 years of age, by country of origin and sex**

	Myanmar			Cambodia			Lao PDR		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
<12	2.4	1.2	1.8	1.7	1.8	1.8	2.6	2.9	2.8
12-14	3.9	3.4	3.7	2.6	4.5	3.1	4.6	6.6	5.7
15-17	18.2	16.1	17.2	18.0	17.2	17.8	19.6	24.8	22.5
<b>Total &lt;age 18</b>	<b>24.5</b>	<b>20.7</b>	<b>22.7</b>	<b>22.4</b>	<b>23.5</b>	<b>22.7</b>	<b>26.8</b>	<b>34.3</b>	<b>31.0</b>
(N)	(1,216)	(953)	(2,169)	(541)	(257)	(798)	(151)	(287)	(438)

Source: Chamrathirong, et al., 2012.



## Aspects of well-being

Most concerns about children who migrate alone stem from their vulnerability to exploitation and the fact that they tend to work at the so called “3D” jobs. Bourny and Chaipet (2012) cite studies that estimate that half of the child beggars in Thailand are migrants; children from Cambodia are particularly seen as vulnerable to becoming street children in Thailand. Several recent studies have investigated industries that employ child labour on an in-depth scale. Pearson et al. (2006) examined the extent of exploitation of young workers in four key industries (fishing, domestic work, manufacturing and agriculture) and found evidence of child labour and exploitation in all sectors. Overall 25 per cent of their sample were under the age of 18 and 75 per cent were females. Only 10 per cent said that they used a recruiter to find their job. The study found most reason for concern about exploitation in the domestic work and fishing sectors; conditions included restricted movement, violence, and lack of access to ID, as well as long working hours and little time to rest. On fishing boats, those aged 15-17 years were most likely to say that they had been forced into their job; overall 20 per cent on fishing boats and 8 per cent in fish processing said they were forced to work. Among domestic workers, 8 per cent said they had been locked up by their employer and 60 per cent said they were not allowed to leave the house.

Another study of the Thai fishing industry by the ILO found 6 per cent of workers surveyed were under the age of 18 years, though the Thai minimum age for working on a fishing boat was recently raised to 18 (TRIANGLE and Asian Research Center for Migration, 2013). None of the child workers was working alongside a parent (as per the previous regulation for workers aged 15-17 years on fishing boats) and working conditions were in violation of labour laws. In examining children in the manufacturing sector in Mae Sot, an ILO study concluded that child workers faced long working hours, little time off, and debt bondage at the factories where they worked (FTUB, 2006). Most were unable to leave the factories as their ID documents were being held. A study of child agricultural workers in Tak province found that “a substantial majority” worked under conditions defined under the worst forms of child labour, including long working hours, no holidays, low wages and poor working conditions (Nawarat, 2006). Sankharat (2013) found children from Cambodia working at a market in Sa Kaeo province did mainly petty jobs for low wages; some girls aged 14-18 years were selling sex from the market and surrounding streets.

## Education

While it is assumed that migrant learning centres in Thailand are serving children who migrated with their parents or were born in Thailand, Akiyama et al. (2013) found that many of the children living in boarding houses associated with the schools in Tak province had been sent to Thailand alone by their parents. Others had lost their parents or had been separated from them. Their survey of Burmese and ethnic minority youth aged 12-18 years found that 62.8 per cent of them reported that both their parents lived in Myanmar; only 11.8 per cent said both parents were living in Thailand. The remainder had at least one parent in Myanmar, had one or both parents deceased or were of uncertain status. The average length of time they had been living at the learning centre boarding house was three years.

Most other studies, however, are focused on child workers and collect information about past education. Among child migrant workers, only a few surveyed in Mae Sot said that they were currently studying; however most said that they had been studying in school in Myanmar before migrating to Thailand for work (FTUB, 2006). Nawarat (2006) found that 76 per cent of child workers in the agricultural sector had less than five years of schooling. Sankharat (2013) also found that child migrants from Cambodia cited a lack of money for education as a motivation for migrating.

## Health

Royal Thai Government policy allows registered migrants to access health care through the Social Security Scheme or Migrant Health Insurance Scheme (Baker, 2011). This means that registered migrants aged 15-17 years with work permits theoretically have access to health care. As discussed above, in reality there are many barriers to access. Young people also have a greater likelihood of having restricted autonomy to seek health care, since they work long hours and may feel intimidated by their adult employers. They also have limited experience in addressing health issues and caring for themselves.

A study of child workers in Mae Sot found that many face hazardous conditions in the workplace, including respiratory problems due to pesticide spraying among agricultural workers and accidents among factory workers (FTUB, 2006). Nawarat (2006) also found that children working in the agricultural sector suffered from the effects of pesticide and herbicide spraying. Nearly half (49%) said that they used only self-treatment when affected by health ailments while only 5 per cent said that their employer paid for their medical bills. In their survey of children working in the rubber industry, Sunpuwan and Suksinchai (2012) found that three fifths worked excessive hours and/or at night. They found that more than 20 per cent of the sample had health problems related to their work.

## Thai children migrating on their own

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### Motivations for migration

Thai children may migrate away from home on their own to further their education, for work or for another reason. Before secondary schools were available in every district, it was common for adolescents to move to a dormitory or live with relatives in the nearest big city to attend school. It remains common for upper secondary students to move to Bangkok for study, particularly for youth who live in nearby provinces. Except for a few scholarship students, children in this group are likely to come from families who can not only afford to keep children in school longer, but can pay for the child's separate residence and tuition. The vast majority of adolescents who migrate to attend secondary school away from home are likely to be planning for university study as well.

Although statistics on the number of children migrating on their own before age 18 are not readily available, it is clear that the majority of young internal migrants do so to find economic opportunities. They may help to support their family at home through remittances, but it also may be the case that their family simply cannot afford to support them. There is a large body of literature on the tendency of migrants to remit to rural families left behind, but most migration data sets focus on adults aged 18 years and older (Piotrowski, 2008).

Economic "pull" factors are not the only reasons that children migrate at a young age. Children who are abandoned by their parents, who live apart from them for long periods, or who come from an abusive home situation may respond to push factors and seek a better life. Jirapramukpitak et al. (2011) look at the association between childhood abuse (emotional, physical and sexual) and early migration in a study of young people in Bangkok. They find a significant association between early migration and abuse, but are unable to determine whether the abuse happened before or after the migration. Thus, they speculate that early migration with parents is associated with a higher risk of family abuse, owing to social isolation factors; but acknowledge that abuse can also be a push factor causing young people to leave home.

## Estimates of the percentage of migrants among young people

The 2009 Socioeconomic Survey of the National Statistical Office, which is a household survey with the objective of measuring income and expenses, shows that 1.4 per cent of 13- and 14-year-olds have migrated for educational reasons. But this figure only includes those who live in households, not in dormitories or other institutional arrangements, and the data were not collected for those aged 15 years and older. Census data show that just over 10 per cent of adolescent girls in urban areas in Thailand had migrated there in the past five years (Temin et al., 2013).

## Well-being of Thai children migrating on their own

Yiengprugsawan et al. (2011) used longitudinal data to measure health outcomes among young migrants and obtained findings similar to the Jirapramukpitak et al. study cited above. They found that urban-urban migrants who migrated before the age of 20 years had more self-reported health problems than rural-urban migrants, however. Harmful behaviours such as smoking and excessive drinking were also found to be associated with migration. The data come from a sample of adults enrolled in distance learning in Bangkok, implying a higher-than-average level of education.

## Thai children affected by parental migration

A growing body of literature is examining the situation of children who live separately from parents who have migrated. “Transnational households”, with support for children coming from parents who live in another location, are a global phenomenon. “Skip generation” households are those occupied only by grandparents and grandchildren, where both parents have migrated. Internationally, the number of children living separately from their parents is thought to be increasing, particularly with regard to the number of women who migrate leaving children behind (Knodel and Saengtienchai, 2007; Zentgraf and Chinchilla, 2012).

Living apart from young children is not a new phenomenon in Thailand, partly due to the fact that internal migration rates have been high for many years (Punpuing and Richter, 2011). A 1991 study in Bangkok found that 15 per cent of children lived separately from their mother for at least a month before they reached age five (Richter, 1996). The percentage of children living separately from their parents seems to have increased in recent years, as noted by many researchers (Rigg et al., 2012).

## Estimates of the percentage of children living separately from their parents

Several national surveys are available to examine the percentage of children living separately from parents. As seen in table 4.6, three data sources found remarkably similar results on children’s living arrangements (National Statistical Office, 2006, 2008, 2009). Less than 60 per cent of children under age 18 (Multiple Cluster Indicator Survey, 2012; National Survey of Children and Youth) and the same percentage under age 15 (Socioeconomic Survey) live with both parents. About 14-15 per cent live with their mother but not their father, while only about 3 per cent live with their father only. About 19-24 per cent live with neither parent. While only the Socioeconomic Survey gives further detail on who these children are living with, nearly all are found to be living with other relatives. There is no difference in living arrangement by the sex of the child. It should be noted that these figures only include children who live in households and exclude those living in dormitories or other institutional arrangements.

Regional differences in living separately from parents should also be noted. The Multiple Cluster Indicator Survey (MICS) found the highest percentage of children living with neither parent in the North-East (31%)

and the North (23%) (Thailand NSO, 2012). These are the regions of highest out-migration in Thailand. Non-municipal children were also more likely to be apart from both parents than municipal children (26% vs. 18%).

**Table 4.6: Living arrangements of Thai children under 18 years of age, and reason for separation from parents**

Status	MICS 2012			Survey of Children and Youth 2008			Socioeconomic Survey 2009†		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
<b>Living arrangements (%)</b>									
Both parents	58.3	56.8	63.0	62.5	61.2	61.8	62.4	62.1	62.2
Father only	3.7	3.3	2.6	3.0	3.1	3.1	3.6	3.4	3.5
Mother only	15.2	15.6	13.8	14.7	15.3	15.0	14.1	14.0	14.1
With relatives*	22.1	23.6	19.3	19.8	20.4	20.4	19.7	20.2	20.0
With non-relatives*				0.3	0.3	0.3			
Impossible to determine	0.9	0.7	1.2	-	-	-	-	-	-
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Reason for separation</b>									
% mother's absence due to migration+	-	-	-	78.4	78.8	78.6	-	-	-
% father's absence due to migration+	-	-	-	72.8	71.6	72.2	-	-	-
(N)	NA	NA	(43,470)	NA	NA	NA	(15,350)	(14,309)	(29,559)

Sources: Thailand National Statistical Office, 2008, 2012.

\*Not living with either parent.

+Of those living separately.

†Children 0-14 only.

## Well-being of children affected by parental migration

Two major studies have been conducted in Thailand in recent years to investigate the well-being of children whose parents have migrated: the Child Health and Migrant Parents in South-East Asia (CHAMPSEA) study, which examined children of international migrants, and the Children Living Apart from Parents due to Internal Migration (CLAIM) study, which examined children of internal migrants (Jampaklay et al., 2012; Jampaklay, Vapattawong and Prasithima, 2012). Several other studies have been conducted in recent years, and are summarized here; a summary of the CLAIM study is presented in the next part of this chapter.

## Education

The CHAMPSEA study compared children in transnational households (with international migrant parents) with non-migrant households; the transnational children were nearly universally cared for by their mother while their father migrated. The study found no significant difference in school performance between

children from transnational households (TH) and those from non-migrant households. It should be noted that multiple studies show that “children’s education” is often the most frequent answer for the use of remittances from migrant parents (Knodel et al., 2010; Rigg et al., 2012) and that many migration studies have found that parental migration has a positive effect on children’s education (Gerritson et al., 2013). A study in Kanchanaburi province, however, finds that adolescents whose mother has migrated are at greater risk of leaving school, and several earlier studies also found that mother’s absence has a greater impact on school attainment than father’s absence (Korinek and Punpuing, 2012).

## Health

The CHAMPSEA study found that children from transnational households and from non-migrant households did not vary on key health indicators such as nutritional status, general health, health behaviour, and health risk behaviour.

## Other aspects of well-being

The MICS survey in 2012 found that children living in the poorest economic quintile were much more likely to live apart from both parents than those in the wealthiest quintile (31% vs. 8%). In contrast, the CHAMPSEA study found that transnational households (where the father had migrated internationally and remitted) were more likely to be wealthy than non-migrant households.

The CHAMPSEA study did not find differences between children with international migrant parents and those without, as discussed above. However, it did find that transnational household children were more likely to have psychological problems than their non-migrant counterparts (24% vs. 28%). Psychological problems were measured using the Strengths and Difficulties Questionnaire (SDQ) measuring conduct disorder, emotional disorder, hyperactivity/inattention, peer relationship problems, and pro-social behaviour; the subscales measuring conduct problems, hyperactivity, and peer problems were particularly likely to show differences by parental migration status (Graham and Jordan, 2011; Jampaklay, Vapattawong and Prasithima, 2012). However, children in Thailand were less likely to have abnormal scores on the SDQ than those in the other three countries in the study (Indonesia, the Philippines and Viet Nam).

## Research on Children Left Behind

As noted above, there has been increasing attention in recent years to the impact of parental migration on children who are left behind. The phenomenon has usually been studied in Thailand and elsewhere in relation to children whose parents migrate outside the country of origin, particularly as the long-term nature of such separation is thought to be detrimental to the health and well-being of children. The impact of internal migration on children left behind has received comparatively little attention.

In Thailand, internal migration is a significant phenomenon as large numbers of people move from rural to urban areas – particularly greater Bangkok – in search of work and other opportunities. As is typical of migrants in general, many internal migrants are young and of childbearing age. The practice in Thailand has been for parents to leave children behind with other caregivers, often grandparents, when they migrate. The reasons for this practice are due to a variable mixture of socioeconomic and cultural forces. The scale of internal migration and its impact on children is evident from the latest Multiple Indicator Cluster Survey conducted by the Thailand National Statistical Office, which shows that almost 24 per cent of children under 18 years of age do not live with their biological parents, mostly due to internal migration. This is equivalent to more than three million children.

In order to better understand the potential impact on children left behind when their parents migrate within Thailand, a research team at the Institute for Population and Social Research at Mahidol University led by Aree Jampaklay conducted a survey in Khon Kaen and Phitsanulok provinces in 2010. The research was conducted with technical and financial support from UNICEF. The following is an abstract of their full research report (Jampaklay et al., 2012).

### Children Living apart from Parents due to Internal Migration (CLAIM)

The CLAIM study examines the impact of parental internal migration on health (physical and psychological) and well-being of children left behind, as well as its impact on the well-being of caretakers and on household socioeconomic status. It was conducted in rural areas of two provinces, Khon Kaen and Pitsanulok and included 1,456 children aged 8-15 years, and caretakers and responsible adults in three types of households: both-parent migrant, one-parent migrant, and non-migrant parents.

The study found that the majority of children experience being apart from parents for a lengthy period, often since they were born, due to parents' work in other provinces. In most cases, the mother is the primary caretaker in one-parent migrant and non-migrant households, while the maternal grandparent is usually the caretaker when both parents are absent. Almost all migrant households remain in close contact with the migrant parents.

Parental migration is generally viewed as more negative than positive to children. The negative view of the impact of parental migration concerns the family less than the children. Mother's migration is more negatively perceived than father's migration. Respondents from both-parent migrant households have more positive views on parental migration than one- and non-parent migrant households.

In terms of outcomes indicative of positive impacts, migrant households are wealthier than non-migrant households, especially one-parent migrant households, according to the wealth index. Remittances contribute to migrant households, and household wealth is positively associated with remittances. More than half of the adult informants reported that the remittances have "a lot of benefit" for the child. A higher proportion of children of one-parent migrants reported that they are better off financially after their parental migration than of children with both parents migrating. Caretakers are less likely to have psychological problems if the household receives more money in remittances and if the household is wealthier.

For the outcomes indicative of negative impacts, caretakers from both-parent migrant households and older caretakers are more likely to have psychological health problems than their counterparts. More children of both-parent migrants reported doing worse in school than those of non-migrant parents and one-parent migrants. Children of one-parent migrants tended to be involved in alcohol drinking more than those of non-migrant parents and both-parent migrants. Children of one-parent migrants are less satisfied with where they live than other children.

Almost 40 per cent of the children reported not being as close to one another in the family as they were before parents' migration. Children of migrant parents reported never or hardly ever sharing time together with their family compared with other children while the adult informants in migrant-parent households expressed lower family functioning than their counterparts in almost all aspects. Children of both-parent migrants feel less independent and less happy than their counterparts. Consistently, children of migrant parents (both-parent or one-parent migrants) are reported to be less responsible, less independent and less happy than children of non-migrant parents.

About 60 per cent of the children reported being sad or missing their migrant parent(s), especially among girls, younger children, and if the mother is the migrant. Children's feelings of sadness and missing migrant



parents were reported by adult informants to a lesser extent (27 per cent if the father is the migrant and 30 per cent if the mother is the migrant).

The findings from this study indicate some possible consequences of parental migration. Policy makers should establish plans or programmes that focus more on the social impact of this type of migration, especially at the micro-level.

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The health status of the Thai population has substantially improved over the past decade. The under-5 mortality rate has decreased from 19.4/1,000 live births in 2003 to 13.2/1,000 live births in 2012 while life expectancy at birth for males has increased from 68 years to 71 years and for females from 75 to 77 years during the same period (World Bank, 2012). These achievements have resulted from a combination of overall economic development, expansion of high-quality health infrastructure, increased numbers of health professionals and introduction of universal health coverage for the country.

Thailand has been lauded for its efforts to extend these health benefits equitably throughout the population, including to non-nationals (Brolan et al., 2013). A recent review of national health insurance for migrants among all Association of Southeast Asian Nations (ASEAN) countries also points out the relatively extensive efforts that Thailand has made to provide health services to this group (Kidambi, 2012). A complete synopsis of the social protection for migrant workers in Thailand provided in Chapter 3 and elsewhere (Schmitt et al., 2013) highlights the significant progress that has been made in extending benefits, including health, to vulnerable groups in Thailand. However, as noted in the same chapter, the provision of services to migrants remains incomplete and faces considerable challenges in implementation.

In addition to issues related to health financing and human resource capacity, a core challenge to fully expanding health services to migrants has been related to the lack of timely and reliable information on the health status of this group in Thailand. Disease specific reviews (Jitthai et al., 2010) and periodic epidemiologic overviews focusing on migrants have been conducted (D'Sousa, 2007) but these assessments have been episodic and might not always be well disseminated or fully utilized by concerned agencies. A comprehensive review of migrant health research gaps conducted in 2010 highlighted the lack of a comprehensive, consolidated, evidence-based picture of migrant health to help decision makers both set priorities and monitor programmatic progress (Baker et al., 2010). At that time, the study noted not only the gaps in data, but the fragmentation of existing data. Recent positive steps have been taken to address these gaps and multiple programmes now routinely collect migrant information. However, available information remains scattered in different Government ministries and bureaus as well as with non-governmental organizations and academic institutions.

This increased attention to migrant health data may reflect Thai public health officials' growing recognition of the integral links between the health security of Thai and non-Thai populations, including migrants. All types of migration can have both direct and indirect effects on the public health environment and health system in Thailand. As with population flows around the world, the influx of migrants into Thailand raises concern about the potential increased risk of infectious diseases and increased demands on the health-care delivery system, especially in border regions. Even though most migrants are young and healthy, they might also be especially vulnerable to illness owing to occupational hazards, poor living conditions, mobility, and lack of access to health services. The scope and nature of this vulnerability needs to be fully appreciated by both communities and Government officials. Public misperceptions about migrants' health and the

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1 This chapter commissioned is by the World Health Organization, Thailand.

lack of comprehensive epidemiologic data hinder moving the health policy environment forward and fully implementing integrated health services for both Thai and non-Thai populations (Calderon et al., 2012).

The objective of this chapter is to provide a brief overview of the health status of migrants in Thailand through focusing on four key topics as they relate to migrants: (1) background health policies; (2) monitoring and surveillance systems; (3) recent epidemiologic data; and (4) implementation status of health services. While far from comprehensive, this brief situation analysis and follow-up recommendations strive to provide a background for further discussion on how to move the policy discussion forward in strengthening overall health security in Thailand through a comprehensive, systematic approach to migrant health issues.

## Health policies

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Ultimately, attaining the overall objective of health security for migrants in Thailand may require a coordinated integration of political, labour, national security, and economic interests as well as public health priorities. Thailand has already endorsed several global, regional, bilateral, and national agreements directed to migrant health that significantly affect attaining this objective. Many of the global and ASEAN agreements are broad-based endorsements of the need to address migrants' rights, although some are directed explicitly to ensuring the general health of migrants (see Calderon et al., 2012). Additional regional agreements target particular health-related topics such as surveillance (e.g., the Mekong Basin Disease Surveillance System) or specific diseases such as HIV (e.g., "Greater Mekong Sub-Region Memorandum of Understanding (MOU) on Joint Action to Reduce HIV Vulnerability Associated with Population Movement"). Although the degree of implementation of these agreements is variable, taken together, they provide an overview of the progression of the migrant health agenda that has become increasingly relevant in the Greater Mekong Sub-region (GMS).

On a bilateral basis, Thailand signed a "Memorandum of Understanding on Health Cooperation" with the Republic of the Union of Myanmar in September 2013 and also began discussions in the same year with Cambodia on strengthening collaboration for health services in border areas. Among other areas of cooperation, the MOU with Myanmar endorses the need for disease surveillance and cooperation in sharing epidemiologic data. These developments underscore the health connectivity between countries in the GMS, particularly in border areas, as well as among mobile populations in general.

Thailand's own national policies also reflect a gradually broadening framework of support for migrant health issues (see Srithamrongsawat et al., 2009, and Burns, 2012, for recent summaries of relevant Thai health policies). In addition to the Government's Migrant Health Strategy (which has existed in draft form since 2006), the second Border Health Development Master Plan 2012-2016 (Bureau of Policy and Strategy, 2011) particularly points out the need to address migrants as a vulnerable group. At the programme level, there are specific strategies developed which target HIV services to migrants (see National Master Plan for HIV/AIDS Prevention, Care and Support for Migrants and Mobile Population, 2007-2011). The recent decisions in 2013 by the Cabinet to grant the MoPH authority to comprehensively address migrant health services reflects a significant policy step which was furthered by the revised migrant health insurance scheme promulgated in August 2013, extending services to all migrants regardless of documentation status. However, consolidating migrant-relevant policies from the multiple relevant ministries as well as translating the policies into a comprehensive strategic implementation plan for migrant health remains a challenge.

## Monitoring and surveillance

Challenges to monitoring the status of migrant health are linked to both the status of the migrants themselves and the currently available health information systems. This situation is not unique to Thailand but the problematic nature of most migrants' legal status, complicated socioeconomic issues, and fragmented data collection processes lead to a lack of comprehensive information on migrant populations.

Owing to constantly changing and often cumbersome registration processes in Thailand, many migrants remain in the country without documentation and essentially off any government registers, thus presenting major challenges to gathering accurate demographic information. These difficulties in obtaining reliable estimates of the numbers of migrants as well as more detailed age-sex information generally preclude determining accurate denominators. Epidemiologic analysis is further complicated by the inherent mobility of migrants and the inclusion of patients who cross borders primarily to seek health care. Surveillance systems that are in place may only differentiate between "Thai" and "non-Thai" patients. While this latter category may primarily comprise migrants, other groups such as ethnic or stateless populations, or even tourists, may also sometimes be included.<sup>2</sup>

Routine health surveillance systems are limited to reporting patients who passively present themselves for care. However, surveys on health-seeking behaviour among migrants indicate that over 60 per cent of those who are ill may not receive any treatment, self-medicate, or seek care in the private sector and thus would not be captured through Government surveillance systems (Boonchalaksi et al., 2011). Other surveys have shown that health-seeking behaviour may vary considerably by location and national origin (Wangroongsarb et al., 2011). In any case, avoidance of public health services may be due to a complex mix of fear of apprehension, lack of funds, and real or perceived stigma associated with presenting to Government health facilities. This last factor, in addition to several practical issues including location of health services, language barriers and availability of time may also limit migrants' access to services even among those who have the requisite health insurance (Press, 2011). Cross-sectional surveys provide some insights on migrant health at a given point in time; however, these results are often targeted to a specific disease and may be limited in geographic scope, occupational group, and/or sample size, which limits generalizations to migrant populations as a whole.

There are several Government systems that regularly collect data relevant to migrant health status and utilization of services (see Chamchan and Apipornchaisakul, 2012, and Mounsookjareoun, 2007). Only very basic epidemiologic analysis of migrant health is conducted at the national level and data from the multiple sources are rarely compared or analysed. The most comprehensive national data on migrant health is available from the routine epidemiology surveillance reporting system of the Bureau of Epidemiology (also known as the "506 system"), which aggregates information from all 77 provinces for major notifiable diseases.<sup>3</sup> Data are available weekly on-line as well as through a consolidated annual report, the Annual Epidemiology Surveillance Review (AESR). The 506 system is acknowledged to under-report disease incidence, yet still can provide a useful synopsis of the health burden for selected diseases and a comparative analysis over time (Baker et al., 2010).

2 There are an additional 130,000 "displaced persons" from Myanmar who have resided in temporary shelters in Thailand along the border for many years. A separate supplemental surveillance system for monitoring the health status of these displaced persons was initiated in 2002 by the Bureau of Epidemiology and the Committee for Coordination of Services to Displaced Persons in Thailand. Since 2012, efforts have been made to further integrate data from this system with the routine 506 system but data from displaced persons is not included in this chapter. (see BOE, 2012a.)

3 The number of notifiable diseases changes periodically. The Annual Epidemiology Surveillance Report (AESR) for 2011 reports on 49 major diseases.



Vertical disease programmes for HIV, tuberculosis (TB), and malaria also each have their own separate surveillance systems which capture migrant case-based data but, again, the degree of migrant-specific analysis is generally limited. Individual provinces, districts, and hospitals may also have supplemental surveillance systems and collect additional information which may not be routinely recorded in national databases. Particularly in border regions, these local facilities may conduct specific analysis on migrant health, but with widely varying degrees of reliability.

Several bureaus within the Permanent Secretary's Office of MoPH collect information on migrants as part of their wider responsibilities to monitor various aspects of national health programmes. The Bureau of Policy and Strategy (BPS) collects aggregated information on health service delivery from hospitals ("12 File System") and various levels of primary care facilities ("18 File System") throughout Thailand.<sup>4</sup> Data on inpatient and outpatient services are coded by nationality as well as nationality verification status so that inferences can be made regarding care provided to migrants. The Health Insurance Group collects registration and utilization data on the Compulsory Migrant Health Insurance Scheme (CMHIS) primarily in order to provide financial monitoring.

All migrant workers enrolling in the CMHIS are required to undergo an annual medical exam.<sup>5</sup> Workers are categorized as normal, needing follow-up, or prohibited from work. Results from these exams are reported to MoPH and can provide a snapshot of overall migrant health, but cannot be considered representative of the migrant population. The Bureau of Health Administration (BHA) is mandated to collect these data on health check-ups for migrants from 76 provinces and Bangkok.

In addition to the MoPH systems, other ministries and agencies collect data relevant to migrant health. The National Health Security Office (NHSO) collects extensive data on health service utilization in order to track financial expenditures for the Thai population; however, this may not include migrants. The Ministry of Interior gathers household information for registered migrants, but these data are often incomplete and do not capture those migrants who fail to register. The Ministry of Labour's Department of Employment similarly collects numbers of registered migrants and the Social Security Office also collects information on migrants eligible for its scheme. While these systems are primarily focused on generating data to follow health insurance usage or monitor work regulations, they may also contain relevant epidemiologic data which is not routinely gleaned from these sources.

All these routine systems, supplemented by periodic surveys, can provide a general overview of migrant health status and service utilization. Yet the gaps in demographic data, and the scarcity of mortality data in general and non-communicable disease data specifically, indicate that currently available information may only offer a partial understanding of a complex and changing situation. Furthermore, drawing comparisons between the Thai and non-Thai populations can be limited by differences in age-sex profiles, socioeconomic status, education level, access to health care and occupational exposure.

## Epidemiologic data and health services

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### Overall mortality

Mortality data for migrants are sparse. The National Health Examination Surveys which provide extensive mortality data on the Thai population do not capture migrants. The Annual Epidemiology Surveillance Review (AESR) reported only 14 deaths among migrants due to notifiable diseases in 2011 compared with

<sup>4</sup> This system is gradually being expanded to 43 Files throughout the country.

<sup>5</sup> Tests screen for tuberculosis, filiarasis, syphilis, leprosy and amphetamines.



an average of 62 deaths from 2007-2010, although the number of diseases under surveillance may have been reduced for 2011 (BoE, 2012b). The small number of reported deaths and the lack of information on accidents or non-communicable diseases indicate that this source provides only an incomplete picture of migrant mortality. While not necessarily representative of the national picture, data from Mae Sot Hospital for fiscal year 2012 can give an indication of relative causes of mortality among Thai and non-Thai populations, at least for one district with a large migrant population. The profile for Thais in Mae Sot is consistent with national data that show over 70 per cent of mortality is due to non-communicable diseases in a rapidly aging population (UNFPA, 2011). Migrant deaths are primarily due to infectious diseases and accidents. This scenario may reflect the young age structure of this population (see Baker et al., 2010, which estimates that over 90% of migrants are less than 45 years old).

**Table 5.1: Top five causes of mortality among Thai and non-Thai populations, Mae Sot Hospital, FY 2012**

Thai	Non-Thai
Chronic Obstructive Pulmonary Disease (COPD)	Pneumonia
Pneumonia	AIDS (7*)
Chronic kidney disease	TB (not in top 10*)
Stroke	Motorcycle accident (not in top 10*)
Sepsis	Stroke

\*indicates rank of cause of death among Thai population in Mae Sot.  
Source: Mae Sot Hospital, Tak Province, 2013.

## Overall morbidity

Also reflecting the relatively young age of migrants, fewer than one per cent of health screening tests for CMHS between 2005 and 2011 found any abnormalities (Health Service Systems Development Bureau, quoted by Tharathep, 2013). A review of outpatient services from 2004-2006 found utilization by CMHI members was far below that of Thais enrolled in either the social security or universal coverage scheme. Hospitalization rates of CMHI members were similar to those under social security but still only half that of those under universal coverage (Srithamrongsawat et al., 2009). However, as noted above, this difference may be due either to challenges with migrants' access to care or to actual differences in morbidity.

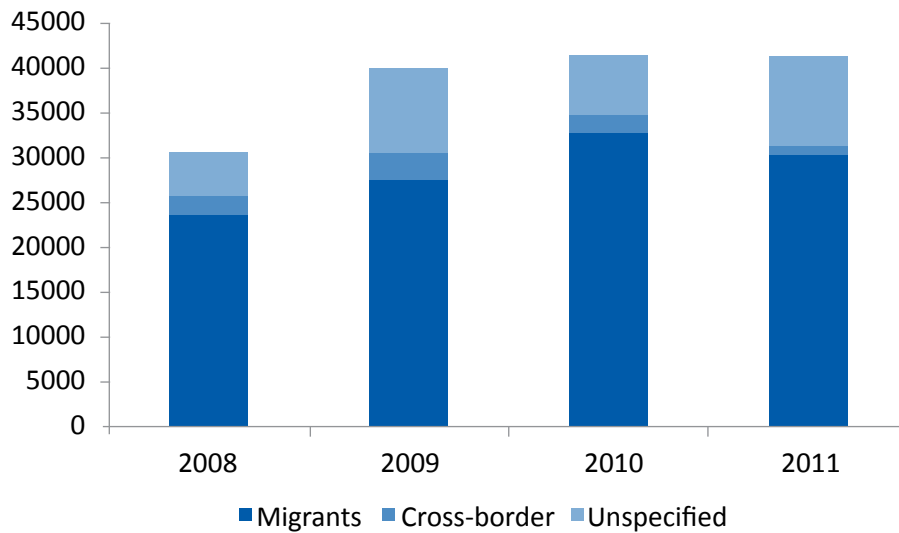
The Annual Epidemiology Surveillance Review (AESR) from the Bureau of Epidemiology provides a general synopsis of the overall health situation of "foreigners", including migrants, based on reports from the 506 surveillance system (BoE, 2012b). The AESR for 2012 reported an average of just over 41,000 notifiable disease cases among migrants, cross-border patients<sup>6</sup>, and those with "unspecified status"<sup>7</sup> from 2008-2011 (Figure 5.1). Fifty-five per cent of all reported cases were male. Gender differences were relatively minor except that males accounted for over 64 per cent of malaria and dengue cases. Almost one third of cases did not specify nationality. However, for those cases for whom nationality was known, 77 per cent were from Myanmar, 14 per cent from Cambodia and just over 5 per cent from Lao People's Democratic Republic. Over two thirds of all reported cases came from only four provinces in the north-west region on the border with Myanmar.<sup>7</sup> However, these same provinces accounted for less than 10 per cent of registered foreign workers (e.g. those who had completed nationality verification or entered via the MOU process) in December 2012 (Office of Foreign Workers Administration, MOL, 2012), indicating differences in access to

6 "Cross-border" cases are patients who live in another county and cross into Thailand primarily to seek health services. This mainly applies to Myanmar, but also to a lesser extent to Cambodia and Lao People's Democratic Republic.

7 In order of magnitude: Tak, Chiang Mai, Mae Hong Son and Chiang Rai.

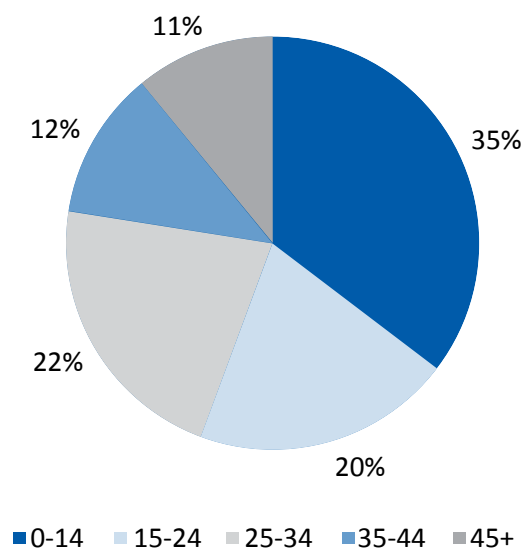
health services, health vulnerabilities, or perhaps large numbers of unregistered or cross-border migrants seeking health care in the north-west. Owing to questions of completeness and representativeness, the AESR cannot provide a complete cross-sectional snapshot of the health status of any population under surveillance. Yet it does provide the most comprehensive and standardized national overview available on migrant communicable disease status.

**Figure 5.1: Number of cases of notifiable diseases reported among migrant, cross-border, and unspecified status populations by routine surveillance, 2008-2011, Thailand**



Source: BoE, 2012b.

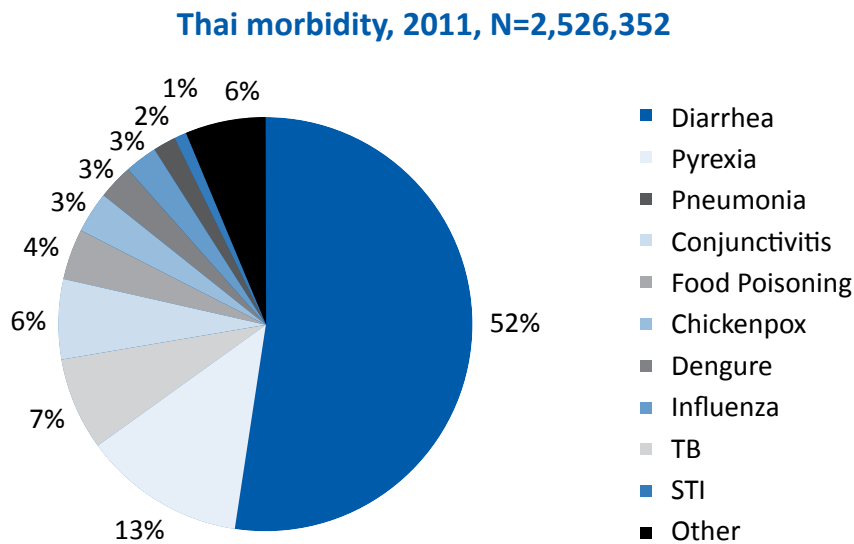
**Figure 5.2: Percentage distribution of reported cases of notifiable diseases among migrants, by age-group, Thailand, 2011 (N=30,333)**



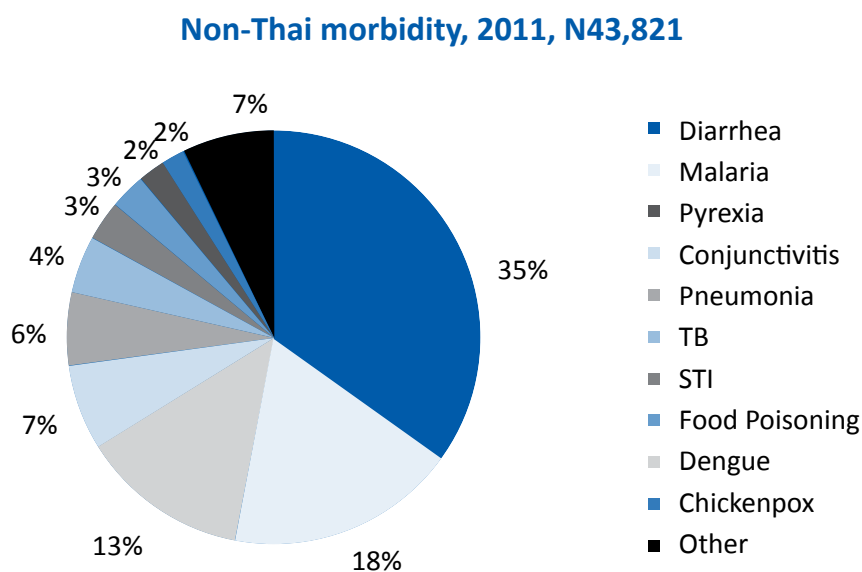
Almost 90 per cent of all cases reported among migrants were under 45 years of age (figure 5.2). While complete demographic details of the migrant population are not available, these case reports would be consistent with available data from 2007 that indicate 85 per cent of migrants were between 15 and 45 years old and 6 per cent were 0-14 years. Dependent children may be disproportionately represented in case reports due to the generally higher incidence of infectious diseases in this age group (Baker et al., 2010).

According to the AESR reports for 2011, the morbidity patterns of common communicable diseases show some general similarities between Thai and non-Thai populations (figures 5.3a and 5.3b). The three most commonly reported causes of morbidity among Thais are diarrhea, pyrexia, and pneumonia; among non-Thais the most common conditions are diarrhea, malaria, and pyrexia. Malaria, TB, and sexually transmitted infections (STIs) appear to be proportionally more frequent in the non-Thai population. However, vertical disease surveillance for TB and malaria identify more cases among both Thai and non-Thai populations than are reported through the routine 506 system (see specific sections below).

**Figure 5.3 (a): Percentage of overall morbidity due to 10 major causes, Thai population, 2011**



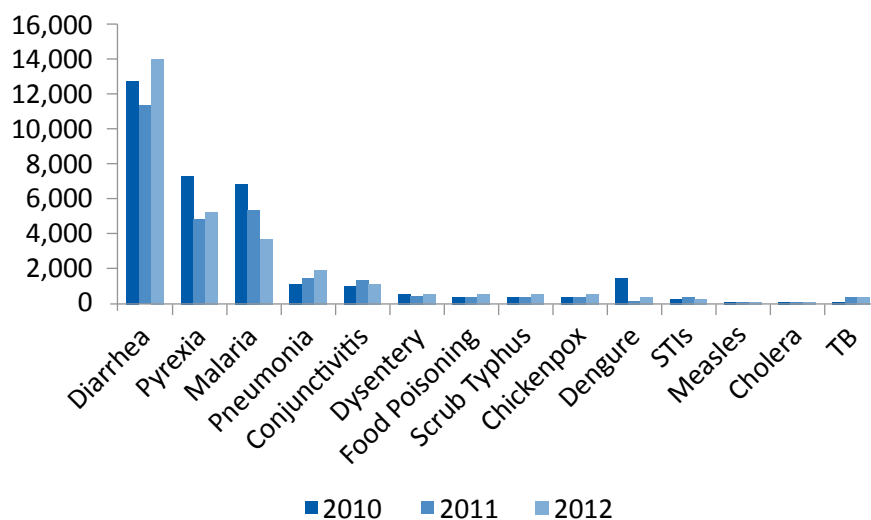
**Figure 5.3 (b): Percentage of overall morbidity due to 10 major causes, non-Thai population, 2011**



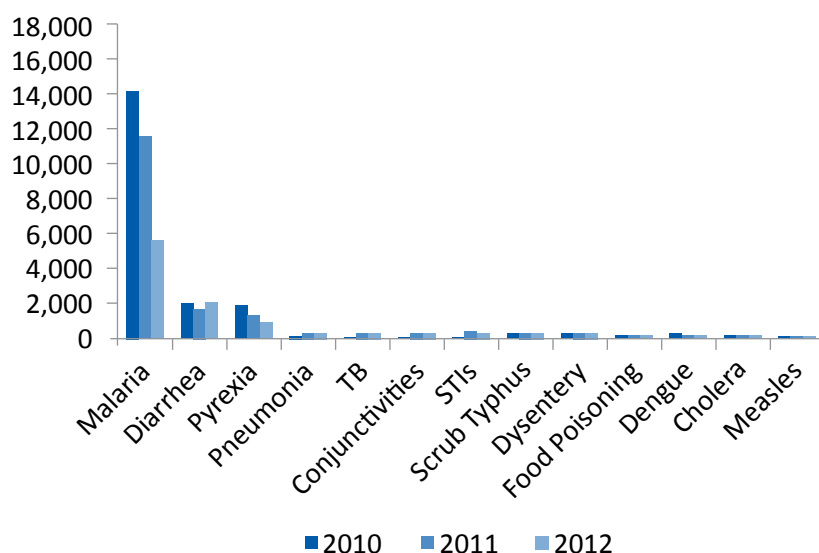
Source: BoE, 2012b.

Data from Tak Province, which has a significant proportion of non-Thai population<sup>8</sup> provides some further insights as to how morbidity patterns have changed over time. The top four diseases are the same among both Thais and non-Thais, albeit in a slightly different order and magnitude (figures 5.4a and 5.4b). For both groups, cases of malaria have continued to drop steadily while diarrhea has continued at similar or even higher levels. The profile of diseases and continued incidence of diseases related to problems with water and sanitation conditions indicate the importance of addressing environmental prevention measures for both Thai and non-Thai communities.

**Figure 5.4 (a): Major causes of morbidity among the Thai population in Tak Province, 2010-2012**



**Figure 5.4 (b): Major causes of morbidity among the non-Thai population in Tak Province, 2010-2012**



Note: Diseases are shown in order of highest to lowest incidence in 2012. Source: Tak PHO, 2013a.

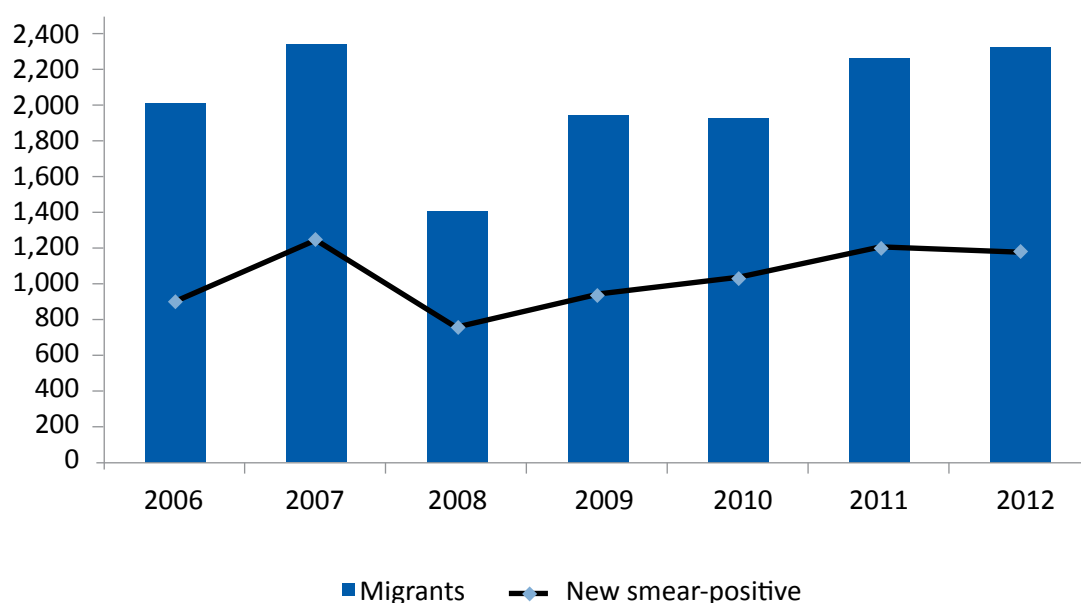
8 The estimated population in Tak Province as of June 2013 equaled 605,000 Thais and 347,000 non-Thais (Presentation from Tak Public Health Office, 14 August 2013b).

## Specific causes of morbidity and related health service implementation

### Tuberculosis (TB)

With an estimated 110,000 ongoing TB cases and 86,000 new cases in 2011, Thailand is one of 22 “high TB burden” countries in the world (WHO, Global TB Report, 2012b). On a national scale, migrants constitute only a relatively small proportion of these TB cases. While public health officials suspect that TB among migrants is much higher than reported, determining the true incidence of TB among the non-Thai population is problematic due to the lack of valid denominator data. In Fiscal Year 2012, 2,333 non-Thai cases of all types of TB, including 1,175 cases of new smear-positive TB, were reported to the National TB Programme (Figure 5.5). Over 75 per cent of these cases were between 15 and 45 years old compared to the Thai TB cases in which the majority is over 45 years of age (Bureau of Tuberculosis, 2013). The geographic distribution of the non-Thai cases is concentrated in Bangkok and along the Myanmar border (Figure 5.6). In Tak Province, non-Thais constitute the majority of reported TB cases (Tak Public Health Office, 2013b). The Ministry of Health in Myanmar reports that the case notification for new smear-positive TB cases for their townships bordering Tak all have rates 1.5-2 times higher than the national average (WHO, TB Forum Report, 2013d). In general, the home countries of the migrants all have national TB incidence rates 2-3 times that of Thailand.<sup>9</sup>

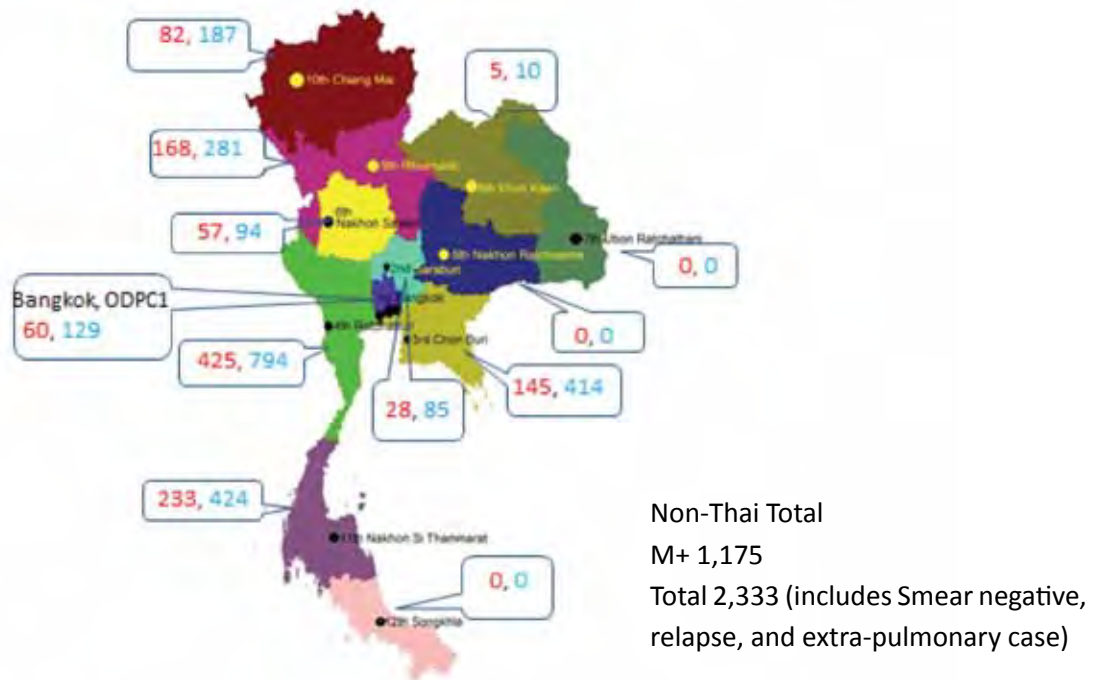
**Figure 5.5: Trend in TB case notification among non-Thai population, 2006-2012**



Source: Bureau of Tuberculosis, Department of Diseases Control, and MoPH (updated 31 July 2013).

<sup>9</sup> For 2011, the estimated incidence in Thailand was 124/100,000, in Myanmar it was 381/100,000, in Cambodia it was 424/100,000 and in Lao People's Democratic Republic it was 213/100,000 (WHO, Global TB Report, 2012b).

**Figure 5.6: Number of new smear-positive (M+ in red) and total (in blue) new TB cases among non-Thais, by Office of Disease Prevention and Control (ODPC) region, 2012**



Source: Bureau of Tuberculosis, 2013.

### TB services and performance

In general, regardless of insurance status, non-Thais are offered diagnostic and both first- and second-line treatment care in MoPH health facilities as well as through a few selected non-government providers. Costs are covered through a variety of sources, including the Global Fund and other donors, but local hospitals often cover a substantial portion of costs for those cases without insurance.

There are limited data on the HIV/TB situation among non-Thai patients at the national level. Scattered provincial reports indicate that the percentage of new non-Thai TB cases that are tested for HIV is below that of the Thai cases owing to lack of funding to sustain anti-retroviral (ARV) drugs for this population (WHO, August 2013a).

Cure rates among migrants are consistently lower than for Thai TB patients (65% vs. 76% in 2012) and have been declining steadily since 2009 (Bureau of Tuberculosis, 2013). Default and “not evaluated” cases are uniformly higher among the migrant TB cases. On average, almost 10 per cent of non-Thai cases defaulted in 2012, but the rate appears to be appreciably higher in certain border areas. A national TB programme review in 2013 found that follow-up and referral are problematic for non-Thai patients, especially for undocumented and cross-border migrants (WHO, Joint International Monitoring Mission, 2013). The review also found that Directly Observed Treatments (DOTs) coverage is lower among non-Thai than Thai TB patients in almost all locations. Non-Thai patients are not routinely screened for drug sensitivity upon initial diagnosis and, although those who fail first-line treatment are eligible for drug sensitivity testing, it is not clear how many are actually followed-up. A published study in Tak Province from 2006-2007 found the incidence of Multi Drug Resistant (MDR) TB among new migrant TB cases was 1.4 per cent (Hemhongsra et al. 2008). On a national scale, from October 2011 to March 2013, 12 of the 286 MDR TB cases reported to the National Tuberculosis Programme (NTP) were non-Thai (Bureau of Tuberculosis, personal communication, 2013).



## Human Immunodeficiency Virus (HIV)

The prevalence of HIV among the adult Thai population 15-49 years old is estimated to have declined from 1.7 per cent in 2001 to 1.2 per cent in 2011 (AIDS Data Hub). However, prevalence has remained elevated in high-risk populations: people who inject drugs (26.6% in 2011), men who have sex with men (20% in 2010) and female sex workers (1.8% in 2011) (AIDS data hub). While migration itself does not consign migrants to this high risk category, they are considered to be highly vulnerable to HIV due to various socioeconomic factors (Press, 2011).

Until recently, most of the HIV prevalence data for migrants came from either provincial level programme screening data or sporadic surveys usually targeting specific occupational groups with presumed high-risk behaviours. The HIV Sentinel Surveillance (HSS) system from the Bureau of Epidemiology in five provinces<sup>10</sup> has noted a steady decline of HIV prevalence among fishermen (most, but not all, of whom are migrants) from over 4 per cent in 2005 to 2.0 per cent in 2011, but an increase among other migrant workers from 0.41 per cent in 2007 to 2.1 per cent in 2011 (Bureau of Epidemiology, HSS, 2012b). A comprehensive review of sero-surveys and programme data from 2003-2006 comparing Thai and migrant female sex workers and pregnant women in six provinces<sup>11</sup> generally found higher, but declining prevalence among migrants (Jitthai et al., 2010). However, wider extrapolation of results and direct comparisons from these studies may be problematic due to the shifting programme recipients and the surveys' small sample sizes and differing methodologies. Since 2010, the national Integrated Biological Behavioral Surveillance (IBBS) survey has included specific sero-sampling among migrants aged 15-49 years from Myanmar, Cambodia and Lao People's Democratic Republic who have been staying in Thailand for more than six months and working in five sectors (fishing, seafood processing, construction, agriculture, and factories). The sample size is sufficient to provide separate estimates of HIV prevalence, knowledge and relevant behaviour at the provincial level (BoE, IBBS, 2012c).

IBBS results from 2010 and preliminary data from 2012 show a median prevalence of 0.83 per cent (range 0.7% to 5.0%) and 1.09 per cent (range 0% to 2.4%), respectively, among migrants in 10 selected provinces throughout the country (table 5.2).

**Table 5.2: HIV prevalence among migrants in 10 selected Thai provinces, 2010 and 2012**

Province	2010	2012
1 Samut Prakarn	1.7	1.3
2 Kanchanaburi	1.3	1.0
3 Chonburi	0.7	1.2
4 Trat	5.0	2.4
5 Chiang Mai	1.7	1.3
6 Tak	0.3	0.4
7 Nakornpanom	0.7	1.5
8 Ubonrachatani	0.3	0
9 Trang	1.0	0
10 Songkla	0.7	0
<b>Median</b>	<b>0.83</b>	<b>1.09</b>

Source: Bureau of Epidemiology, IBBS.



10 Pattani, Ranong, Samut Sakhon, Kanchanaburi, and Prachuap Khiri Khan.

11 Samut Sakhon, Trat, Prachuap Khiri Khan, Phang Nga, Ranong, and Tak.

The IBBS surveys found the highest prevalence among migrants from Cambodia in both years, but found a marked decline from 2010 to 2012, and a slight increase among migrants from Lao People's Democratic Republic in the same period (table 5.3). Migrants from all nationalities had a higher HIV prevalence than found in the latest national survey from their home country;<sup>12</sup> however, direct comparisons cannot be made to national surveys as migrants are not representative of the total population. Combined data in the 2010 survey for migrants from all countries indicated that prevalence was lowest (0.4%) among those who had been in Thailand for less than a year and gradually increased with duration of stay until peaking at 2.3 per cent among migrants who have been working here for 10-14 years (quoted in UNAIDS, 2013).

**Table 5.3: HIV prevalence among migrants in 10 selected Thai provinces, by nationality, 2010 and 2012**

Nationality	Migrants in 10 selected Thai provinces	
	2010	2012
Myanmar	1.22	1.00
Cambodia	2.53	0.94
Lao PDR	0.50	0.81

Source: Bureau of Epidemiology, IBBS.

Additional data from 2010 indicate that, while the overall prevalence among men and women was similar (1.26% vs. 1.34%), workers involved in fishing and seafood processing had higher rates than those in other occupations (fishing, 2.3%; seafood processing, 2.0%; factory workers, 1.1%; construction, 0.9%; and agriculture, 0.7%). The highest prevalence (2.4%) was among those 30-40 years old (UNAIDS, 2013).

## HIV services and performance

Thailand has had a specific national Government plan to address HIV among migrants since 2007 (see National Master Plan for HIV/AIDS Prevention, Care and Support for Migrants and Mobile Population (MMP), 2007-2011). However, the first phase of the Prevention of HIV/AIDS among Migrant Workers in Thailand Project (PHAMIT) was implemented with Global Fund support from 2003 to 2008 (see Press, 2011, for an extensive review of this effort).

Efforts of MoPH and other Government ministries, international organizations and multiple non-governmental organizations have targeted prevention services among migrants primarily in border and central provinces through community-based condom distribution, health education, voluntary counselling and testing, and STI screening. PHAMIT has now been extended through at least 2014 and covers 36 provinces. The National Access to Antiretroviral Programme for People Living with HIV (NAPHA) funded by the Global Fund has provided antiretroviral treatment (ART) to migrant workers since 2004. The number of migrants covered for ART has been capped at 2,700 but is open to all pregnant women under the Prevention of Mother to Child Transmission (PMTCT) programme. The estimated number of HIV+ migrants on the waiting list ranges from 500 (Bureau of AIDS, TB and STIs, personal communication) to 3,000 (Press, 2013.) The range of estimates may reflect different eligibility assumptions and uncertainties around the estimated prevalence. However, to increase access to ART by migrants, as of August 2013, the MoPH has expanded the benefit package (along with a fee increase) to cover ART for all migrants who enroll in the Compulsory Migrant Health Insurance Scheme.

<sup>12</sup> Myanmar, 0.6 per cent (2011) ; Cambodia, 0.8 per cent (2009) ; Lao People's Democratic Republic, 0.3 per cent (2011), AIDS Data Hub.

## Malaria

Thailand has achieved a steady and significant decrease in malaria cases and deaths over the past 30 years. In the decade from 2000 to 2010 alone, the number of malaria cases in Thailand decreased from more than 160,000 to fewer than 50,000, and the number of deaths decreased from more than 600 to only 80 (Satimai, 2011, and Hewitt et al., 2013). Malaria cases are now concentrated in border areas, particularly along the Thailand-Myanmar and Thailand-Cambodia borders. A dramatic shift in the predominant species from *Plasmodium falciparum* (Pf) to *Plasmodium vivax* (Pv) has been accompanied by rising concerns over drug efficacy for Pf and emergence of artemisinin resistance in the remaining endemic areas along the border, which may threaten further malaria control efforts (Bustos et al., 2013). Both direct and indirect linkages of migration to these recent phenomena are expected to increase in the near future (Jitthai, 2013).

Much more so than other major communicable diseases, malaria in Thailand is highly restricted to border areas where the non-Thai populations are inextricably mixed between longer-term residents and those who cross the border from neighbouring countries for short periods or even only to seek medical care. The Bureau of Vector Borne Disease (BVBD) attempts to categorize these non-Thai groups into “M1” (residing at least six months in Thailand) and “M2” (residing less than six months in Thailand); however, the differentiation can be blurred due to challenges in determining residence status. Nevertheless, the epidemiologic situation in Thailand is highly influenced by the markedly higher levels of malaria incidence in the bordering areas of Myanmar, Cambodia and, to a lesser extent, Lao People’s Democratic Republic.<sup>13</sup>

**Table 5.4: Reported cases of malaria by border areas of Thailand, Thai and non-Thai populations, FY 2006-2010**

Border area	FY2006		FY2007		FY2008		FY2009		FY2010	
	Thai	Non-Thai	Thai	Non-Thai	Thai	Non-Thai	Thai	Non-Thai	Thai	Non-Thai
Thai-Myanmar (10 provinces)	17,455	33,672	15,547	25,087	19,924	23,227	14,193	24,755	15,181	21,072
Thai-Lao PDR (10 provinces)	655	98	876	105	480	13	618	20	455	9
Thai-Cambodia (6 provinces)	2,963	923	2,767	1,024	2,010	847	2,516	837	2,437	760
Thai-Malaysia (4 provinces)	6,471	153	13,203	188	8,263	167	3,430	66	4,269	128
Other provinces	2,633	1,467	3,042	1,363	2,384	1,192	2,086	902	2,504	1,177
<b>Total</b>	<b>30,177</b>	<b>36,313</b>	<b>35,435</b>	<b>27,767</b>	<b>33,061</b>	<b>25,446</b>	<b>22,843</b>	<b>26,580</b>	<b>24,846</b>	<b>23,146</b>
National Total	66,490		63,202		58,507		49,423		47,992	
Non-Thai as % of national total	54.6		43.9		43.5		53.7		48.2	

Source: W. Satimai, 2011.

<sup>13</sup> The estimated malaria incidence (rate/1,000 population) in 2010 in Thailand was 0.64; in Myanmar, 8.77; in Cambodia, 3.26; and in Lao People’s Democratic Republic, 3.68 (Hewitt et al., 2013).

The total number of malaria cases declined further between 2006 and 2010 for both Thai and non-Thai populations. Non-Thais continued to comprise approximately half of all cases in this period and even outnumbered the native population in the 10 provinces on the Thai-Myanmar border (table 5.4). While complete epidemiologic data are not available for all these cases under routine surveillance, an observational study of migrant clinics in the same Myanmar border area in 2011 found that 72 per cent of all Pf cases were less than 15 years old and the vast majority (80%) of these were male, most likely reflecting their occupational exposure (Carrara, 2013).

Utilizing data from the BVBD surveillance system, the electronic Malaria Information System (eMIS) maintained by the Centre of Excellence for Biomedical and Public Health Informatics (BIOPHICS), Mahidol University, provides timely information on both the epidemiologic situation and programme implementation related to malaria control for 22 highly endemic provinces (Figure 5.7). For January to December 2012, the system reported a total of 24,918 confirmed cases of malaria in Thailand: 15,296 among Thais and 9,622 among non-Thais (including 7,189 M1 cases and 2,433 M2 cases). 60 per cent of Thai and 56 per cent of non-Thai cases were Pv, reflecting the shift in predominant species. As Figure 5.7 shows, the incidence of malaria remains highest along the Thai-Myanmar border, where non-Thai cases out-number those among Thais. In several areas along the north-west Thailand-Myanmar border and also along the Thailand-Cambodia border there are more M2 than M1 cases, indicating the high mobility of migrants in these areas.

**Figure 5.7: Distribution of all species of malaria by Office of Disease Prevention and Control (ODPC) Regions in Thailand, January-December 2012**



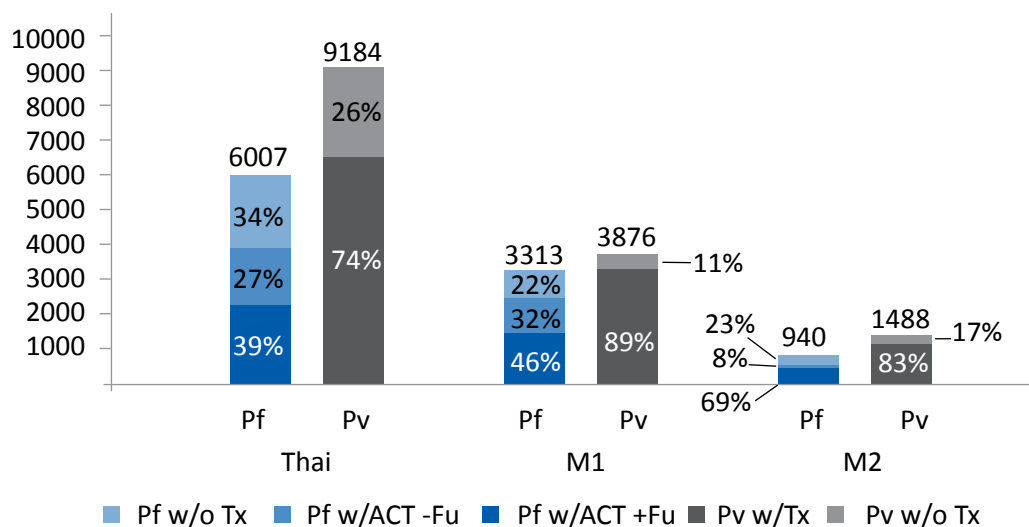
Source: BIOPHICS, ([gisbiophics.org](http://gisbiophics.org), accessed 20 October 2013).

## Malaria services and performance

The Bureau of Vector Borne Disease has an extensive vertical malaria programme, including small malaria posts focused on the border areas, supplemented by community-based efforts from non-governmental organizations and academic research organizations, primarily funded through the Global Fund and other international donors. Both prevention (primarily through distribution of long lasting insecticide-treated bed nets) and early detection and treatment (EDT) services are available for both Thai and non-Thai populations. Detection and follow-up have been hampered by the mobility of both migrants and some rural Thai populations in border areas. Additional challenges have been created by the lack of a standardized drug regimen and changing protocols for countries in the Greater Mekong Sub-region (GMS) necessitated by rising concerns about artemisinin resistance. In addition to ongoing malaria control and further elimination efforts, numerous international organizations and donors have launched expanded programmes to combat these concerns, specifically artemisinin resistance.<sup>14</sup>

In 2012, 66 per cent of the 6,077 Thai cases and 78 per cent of the 4,253 (3,313 M1 + 940 M2) non-Thai cases confirmed to have *P. falciparum* malaria received artemisinin-based combination therapy (ACT) (Figure 5.8). Almost 27 per cent of Thai and 32 per cent of M1 uncomplicated Pf cases treated with ACT were followed up to day three (DOTs) in target areas. However, most likely due to their increased mobility, fewer than 10 per cent of M2 cases received the same follow-up. The percentage of confirmed *P. vivax* that received appropriate anti-malarial treatment according to national guidelines was 74 per cent for Thais and 86 per cent for non-Thais (89 per cent for M1 and 83 per cent for M2). These data appear to indicate that once migrant malaria cases are identified through either active or passive case detection, the vast majority receives treatment. What is less known is the number of cases that remain un-detected or that may receive only partial or inadequate treatment through either private sources or local remedies. A corollary concern is the rise of drug resistance in this population. In a small number of follow-up cases among migrant and cross-border populations on the Thailand-Myanmar border, the drug efficacy of artesunate declined steadily, with the proportion of patients still infected with malaria at day three of treatment increasing from 0 per cent in 2000 to 28 per cent in 2011 (Carrara et al., 2013).

**Figure 5.8: Treatment status for confirmed uncomplicated *P. falciparum* and *P. vivax* for Thai and non-Thai populations, January-December 2012**



Source: BIOPHICS ([gisbiophics.org](http://gisbiophics.org), accessed 20 October 2013).

14 For example, WHO, Emergency Response to Artemisinin Resistance.

## Other causes of morbidity

Tracking morbidity among migrants for diseases or other causes which do not have specific vertical surveillance or monitoring systems has been extremely difficult. For example, while vaccine-preventable diseases (VPD) are tracked closely by disease control units in the MoPH due to their outbreak potential, data are not routinely characterized by nationality. Essential Expanded Programme of Immunization (EPI) services are offered to migrant and non-Thai children through community public health facilities; however, the lack of accurate denominator data precludes determination of coverage rates for this population. Overall national EPI coverage estimates for Thailand have been more 98 per cent for all basic vaccines for 2008-2012 (WHO EPI Fact Sheet, 2012f). Yet there have been several recent small outbreaks of measles and diphtheria in border areas of Thailand due to pockets of unimmunized populations among hill tribes or areas affected by insecurity (Yoocahroen, 2013). The latest vaccination coverage estimates for DTP3 (a routine marker for service effectiveness) for 2012 were 85 per cent for Myanmar, 95 per cent for Cambodia and 79 per cent for Lao People's Democratic Republic (see WHO, Estimated Vaccination Coverage, 2013e). However, in many countries, for example in Myanmar, coverage is thought to be much lower in border areas, which may be more inaccessible (EPI Epidemiology Unit, Ministry of Health, Myanmar, 2012).

Data for non-communicable diseases and other causes of morbidity, such as occupational injuries or road accidents, are even sparser. Financial data for inpatient care by diagnostic related group (DRG) indicate that migrants seek care for chronic diseases, especially cancers and cardiovascular disease (see Health Insurance Group-MoPH Report, 2011). However, DRG information does not provide a clear indication of the epidemiology of the patient population. There is also limited information from workmen's compensation claims; however, most migrants are either ineligible or unlikely to seek claims. Similarly, aside from the Mae Sot data indicating that motorcycle accidents are a leading cause of mortality for migrants in the district (Table 5.1), there are no national data on the overall picture of accidental deaths or injuries for this population.

## Conclusion

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In growing recognition that the health as well as economic security of Thailand is linked to the wellbeing of migrants and her neighbouring countries, the Royal Thai Government (RTG) has progressively expanded the health coverage offered within its borders and championed a regional approach to health security. Major challenges remain in terms of implementing and sustaining the expansive Migrant Health Insurance Scheme as proposed. Nevertheless, the extension of basic health care benefits to migrants in Thailand regardless of documentation status is a pioneering policy proposal. This initiative could be part of a comprehensive Migrant Health Strategic Plan, which remains to be fully outlined with clear strategies and objectives. Thailand's policy approaches should be seen in the context of strengthening health coverage for all countries in the GMS and recognition that addressing migrant health issues in Thailand will require both national and regional commitments to the goal of integrated health security (WHO, Bi-regional Meeting on Healthy Borders in the Greater Mekong Sub-region, 2013c).

While the overall health status as well as the health infrastructure of the countries of origin for migrants is generally lower than in Thailand, initial health screening checks for insurance enrollment indicate that most migrants tend to be relatively young and healthy upon arrival. Occupational hazards, isolation, poor living conditions, and lack of access to adequate prevention and curative services can combine to increase the vulnerability of migrants and their dependents to disease. Determining how this vulnerability is actually manifested in the health status of migrants is problematic due to the challenges in monitoring and surveillance for this group. Available data indicate that the overall health profile for migrants is not all that dissimilar to the Thai population. Patients crossing the border to seek health care may give an additional dimension



that may more closely reflect the neighbouring country's health situation. Still, there is no evidence that migrants in general are responsible for large-scale introduction of disease into Thailand.

Trends and prevalence of each disease, along with the subsequent demands on the health-care systems, may differ markedly by disease and by geographic location. In terms of number of patients, TB is not a major cause of morbidity among migrants except in certain border provinces. However, challenges to follow-up and high default rates among migrants may lead to increased rates of MDR-TB and generate further concerns for local populations. Malaria is a significant factor among migrants, who comprise a substantial portion of the disease's overall burden in Thailand. Yet the disease is primarily limited to border regions where the mobility of both Thai and non-Thai populations and environmental factors are major challenges to prevention and control. The prevalence of HIV appears to be roughly the same between Thai and migrant populations but the occupational risk groups seem to differ and there is no widespread evidence of disease transmission across nationalities.

Addressing the health needs of the migrant population will require a broad health systems approach that not only deals with strengthening the system as a whole for all patients regardless of nationality but also deals with issues specifically relevant for migrants. The 2010 WHO/IOM Global Consultation on the Health of Migrants recommended priority action areas covering the gamut of the health building blocks, including monitoring and surveillance; policy and legal frameworks; migrant-sensitive health systems; and partnerships, networks, and multi-country frameworks (WHO/IOM, 2010). As evidenced by the recent inclusion of migrants in the IBBS, Thailand has taken progressive steps to specify the epidemiology of migrants as a separate vulnerable group. Nevertheless, major gaps remain in understanding the health status of migrants due to fragmented approaches, lack of coordinated analysis, and limited dissemination of information. A more coherent monitoring system could provide more detailed information to guide decision making, improve quality of services, and enable objective evaluation of new policy initiatives. All of these efforts will be necessary but not sufficient to increase migrant access to health services. Developing "migrant-friendly" health facilities with relevant language capacity is a critical step that is already being undertaken in many areas. Community-based approaches involving both Thai and non-Thai populations, which have proven to be highly effective in tackling ongoing outbreaks, can also be utilized to follow up patients requiring long-term treatment or monitoring (Swaddiwudhipong et al., 2008). These follow-up efforts, in addition to expanding programmes targeting prevention of both communicable and non-communicable diseases in coordination with neighbouring countries, will be essential to reaching general and disease-specific goals for Thailand and the region.

### Key recommendations:

1. In the context of other wider ASEAN and GMS initiatives, and in collaboration with key stakeholders in both health and non-health sectors, the Thai Government should consider updating their Migrant Health Strategic Plan in order to define a comprehensive, multi-year, systematic stepwise approach to implementing a financially sustainable system for affordable, high-quality care for migrants in Thailand linked to ongoing development of health system capacity for Thailand's neighbours.
2. A focal point within the Ministry of Public Health should be designated, with responsibility to collaborate with other relevant stakeholders to routinely gather, analyse and disseminate information on migrant health status and health service performance.
3. As part of overall efforts to strengthen the health system, stakeholders should incorporate policies to improve migrant access to and utilization of services by encouraging use of migrant community health volunteers, engaging employers, developing outreach services, and implementing health services tailored to specific populations at risk, such as seafarers.

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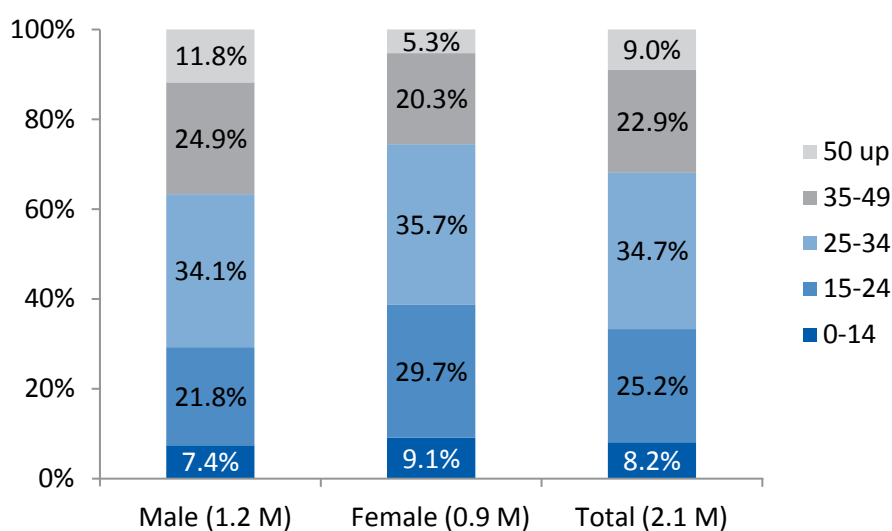
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## Background

According to the latest Population and Housing Census in 2010, the non-Thai population - of those not in the household registration record - was recorded as 2.1 million persons out of the total population of 65.9 million.<sup>2</sup> Of this, the majority are cross-border migrant workers and dependents from three neighbouring countries – Cambodia, Lao People’s Democratic Republic and Myanmar. Among cross-border migrants, about 1.2 million are male and 0.9 million are female. More than 80 per cent are in the reproductive ages of 15 to 49 years (Office of the National Economic and Social Development Board, 2013). Owing to disparities between migrants and Thais in many aspects relating to livelihoods and the social determinants of health, which have been affected by the migration process (Zimmerman, et al., 2011), this chapter addresses the situation regarding reproductive health and access to relevant services by migrants.

**Figure 6.1: Non-Thai population by sex and age group (n=2.1 million)**



Source: Office of the National Economic and Social Development Board, 2013, p. 21.

Improvement of reproductive health for all, regardless of nationality or citizenship, has been prioritized as a development goal by the international community. The International Conference on Population and Development (ICPD) Programme of Action and the Millennium Development Goals (MDGs) are two notable mandates in this area. Both emphasize the importance of maternal health improvement, reduction of

1 Chalermpol Chamchan, Institute for Population and Social Research, Mahidol University. This chapter was commissioned by the United Nations Population Fund, Bangkok.

2 A recent estimation by Archavanitkul (2013) indicates a much higher number of non-Thai population than the number reported by the Census. Including cross-border migrants from Myanmar, Lao People’s Democratic Republic and Cambodia; ethnic minorities; stateless persons and displaced persons; the number is estimated at larger than 4 million, of which cross-border migrants from three neighbouring countries count for more than 80 per cent, or approximately 3.6 million persons. (See chapter 1 for a breakdown of these figures and for a comprehensive estimate of the foreign population in Thailand.)

maternal mortality and universal access to reproductive and sexual health services by all population groups – i.e. family planning, antenatal care, birth delivery, postnatal care, services regarding sexually transmitted infections, HIV/AIDS, infertility and safe abortion and the prevention of abortion – as key linkages between population and development. Achieving universal access to reproductive health by 2015 is the target of MDG Goal 5, with a set of indicators to monitor global progress, including the contraceptive prevalence rate, adolescent birth rate, antenatal care coverage and the unmet need for family planning (Office of the National Economic and Social Development Board, 2010). A key approach to improving reproductive health and access to relevant services suggested by the ICPD Programme of Action is to advocate for women’s empowerment through broadened access to education, health services, skills development and employment opportunities (Ministry of Public Health of Thailand, 2010).

Among migrants in Thailand, the unmet need for family planning, incorrect use of contraception, unwanted and adolescent pregnancy, poor maternal and child health, high prevalence of sexually transmitted diseases (STDs) and HIV/AIDS infection, and other problems (i.e., gender-based violence) have been identified as reproductive health concerns (Caouette, et al., 2000; Sethaput, et al., 2007; Limanonda and Peungposop, 2011; Huguet and Chamrathirong, 2011; Archavanitkul (editor), 2007; Denduang and Denduang, 2012; OPTA, n.a.). A major cause of these problems is the limited ability of migrants to obtain access to sufficient reproductive health services and appropriate health education and health information, due to constraints from the migrants’ side and existing barriers in the Thai health service system.

This chapter aims to provide a review of migrant reproductive health in Thailand and to address persistent issues, concerns and challenges in improving the situation by enhancing access to necessary services and protecting the basic reproductive health rights of migrants. The review is focused on cross-border migrants from Cambodia, Lao People’s Democratic Republic and Myanmar, whose total number in Thailand is estimated to be as high as 3.6 million (Archavanitkul, 2013). The chapter consists of five sections, namely background, an overview of national policies and regulations towards migrant reproductive health, a review of the reproductive health situation and access to relevant services by migrants from recent studies, analysis and discussion, and the challenges to be addressed and way forward.

## National policies and regulations related to migrant reproductive health

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Policies toward migrant administration and management in Thailand were ambiguous and without a strategic direction until 2001 when the Illegal Alien Workers Management Committee was set up, and in 2004, when a two-stage approach to migrant regularization was accepted by the Cabinet (see chapter II for more details). The first stage in this process was a procedure to semi-regularize illegal migrant workers under an amnesty programme, allowing a one or two year work permit for registered migrants. The second stage was a procedure to regularize all migrant workers in the country through the “nationality verification” (NV) process and importation of migrant workers under the bilateral memoranda of understanding (MOUs) (Chamchan and Apipornchaisakul, 2012). The MOUs with neighbouring countries continue to be implemented; however, many issues remain concerning the implementation and the frequency of changes in migrant regulations.

Concerning migrant health insurance, irregular migrant workers who registered under the amnesty programme were required to enroll in the Migrant Health Insurance Scheme (MHI), which previously cost 1,300 baht per year, plus 600 baht for medical checkups. In August 2013, the cost of the MHI was adjusted to 2,200 baht (plus 600 baht). The 900-baht increment is used primarily to finance anti-retroviral (ARV) treatments for those infected with HIV. This was not included in the previous benefit package. Health benefits covered by the MHI are almost equivalent to the benefits offered by the Universal Coverage Scheme (UC)

for Thai nationals. Migrant workers who have completed the NV process are required to enroll and make monthly contributions to the Social Security Scheme (SSS) (although this is not effectively enforced), and are entitled to social security benefits, including health benefits equivalent to those available to Thai workers (Chamchan & Apipornchaisakul, 2012).

In the past, dependents of migrant workers – most of whom are women and children aged less than 15 years – were mostly uninsured as they were not eligible to enroll in any insurance scheme. This changed in August 2013, when the Ministry of Public Health (MOPH) introduced a new policy allowing migrants of all ages not currently receiving health benefits under the SSS<sup>3</sup> to enroll in the MHI. As mentioned above the insurance premium is 2,200 baht (plus 600 baht for a medical checkup) for those aged seven years and over, and 365 baht for children aged less than seven years. The benefit package covers treatment for general illness (including child delivery), high-cost care and ARV treatment,<sup>4</sup> accident and emergency conditions, medical referral, health promotion and prevention services (including family planning services, antenatal and post-natal care, ARV treatment for pregnant women for prevention of mother-to-child transmission of HIV). Along with the new MHI policy, a new initiative called “Health cards for mother and child” was also introduced. The ultimate objective of the card is to promote universal access to free-of-charge maternal and child health services by all mothers and children aged less than seven years. In addition to Thai nationals, non-Thais are explicitly included. Maternal and child health services covered by the card include quality antenatal care, delivery services, post-natal care and services at the Well Child Clinic (WCC) for children aged up to five years. It was noted in the policy announcement for this initiative that migrant mothers and children who have not enrolled in the MHI (paying a 2,200 baht annual premium for the mother and 365 Baht for the child), will be required to pay out-of-pocket service fees, despite being issued with a card when visiting for maternal and child health (MCH) services (Bureau of Policy and Strategy, Ministry of Public Health, 2013).

Prior to the launch of Health Cards for Mother and Child announced in August 2013, there had never been a specific national policy and master plan for the reproductive health of migrants. Thailand has endorsed the 1st National Reproductive Health Development Policy and Strategy for 2010-2014, but the scope of the policy in terms of its key contents and monitoring indicators do not focus on or explicitly include the migrant population. As there were no concrete national guidelines for practice towards provision of reproductive health services to migrants, the provision of services at most public health facilities was more reactive than proactive and was practiced differently from province to province (Yongpanichkul and Chusri, 2012).

Recent interventions relevant to migrant reproductive health are mostly focused on prevention of STDs and HIV/AIDS infection and the provision of care for infected persons. This forms part of efforts to improve the knowledge and practices of migrants on reproductive health and access to public health services through health education on family planning and contraceptive use, and promotion of access to maternal and child health by female migrants and children. The Prevention of HIV/AIDS among Migrant Workers in Thailand (PHAMIT) project, which is supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria, and implemented through a non-governmental organization (NGO) network in collaboration with government agencies and international counterparts, is a good example of such interventions (Panitchpakdi, et al., 2011). The available information and evidence from existing studies on migrant reproductive health in Thailand is thus focused more on issues related to STDs and HIV/AIDS. Information on other aspects of migrant health is still limited and fragmented.

3 Benefits under the SSS will not be activated until the insured has made a contribution to the fund for at least three months. During these three months, migrants can enroll in the MHI and pay 550 baht for the premium, plus 600 baht for a medical checkup (Bureau of Policy and Strategy, Ministry of Public Health, 2013).

4 ARV treatment was not included in the benefit packages before August 2013.

Other noteworthy programmes and initiatives relevant to migrant health with a broader scope include the endorsement of the 2nd Border Health Development Master Plan (2012-2016) by the Bureau of Policy and Strategy, Ministry of Public Health (MOPH) (Bureau of Policy and Strategy, 2012); the Master Plan for HIV/AIDS Prevention, Care and Support for Migrant and Mobile Population (2007-2011) by the Department of Disease Control, MOPH; Border Health Programs initiated in 2001 by the World Health Organization (WHO) with support from the Department of International Development (DFID), United Kingdom; and the Migrant Health Program initiated in 2003 through collaboration among the MOPH, the International Organization for Migration (IOM) and WHO. These plans and programmes share the ultimate goal of improving migrant health – of which reproductive health is an important component, and include efforts to mitigate obstacles in accessing health services for migrants (emphasizing capacity-building of human resources for migrant health and the promotion of a migrant-sensitive health service system), strengthen coordination and collaboration among relevant stakeholders, and develop a well-functioning migrant health information system (Chamchan and Apipornchaisakul, 2012; Jitthai, 2009).

## Reproductive health and access to services

### Fertility and birth trends

In the countries of origin of migrant workers in Thailand, the majority of the population works in the agricultural sector, and a preference for having many children in a family still persists, resulting in a low rate of contraceptive use (Yongpanichkul & Chusri, 2012). This would be expected to yield a higher rate of fertility among migrants in Thailand, as compared with Thai nationals. According to the Report of the Public Health Situation among the Migrant Population by the Bureau of Policy and Strategy, MOPH (Bureau of Policy and Strategy, 2013), the number of pregnant female migrants recorded ranged from 15,000 to 20,000 per annum during 2010-2012, of which 70-80 per cent were female migrants from Myanmar. However, the number of births recorded each year is lower. For example, the number of pregnancies recorded in 2012 was 15,011 but the number of births was only 11,084. The lower number might be due to an unrecorded number of migrant newborns who were delivered at home or by traditional birth attendants, or because some migrant mothers returned to their countries of origin to give birth (Yongpanichkul & Chusri, 2012). As the exact number of the denominator, or the total number of female migrants of reproductive age (15-49 years), is unknown, whether or not the fertility rate of migrants is higher than for Thais is unknown.

**Table 6.1: Number of pregnancies and child births among female migrants, fiscal years 2010-2012**

Fiscal year	Number of recorded pregnancies				Number of recorded births	
	Total	Myanmar	Lao PDR	Cambodia	Total	% of teenage mothers (age < 20 years)
2010	15,148	11,926	1,492	1,730	9,480	11.3
2011	19,654	14,263	1,971	3,420	16,205	8.4
2012	15,011	11,970	1,044	1,997	11,084	5.4

Source: Bureau of Policy and Strategy, MOPH (2013).

In 2010, supported by the Raks Thai Foundation, the Mahidol Migration Center (MMC), which forms part of the Institute for Population and Social Research (IPSR), conducted the PHAMIT-2 Baseline Survey among

3,405 migrants living in 11 provinces in Thailand<sup>5</sup>, of which five provinces are located in border areas (Tak, Ranong, Ubon Rachathani, Nongkhai, and Trat) and six provinces are in inner areas of the country (Bangkok, Samut Sakhon, Samut Prakarn, Rayong, Khon Kaen and Surat Thani) (Chamrathirong, et al., 2012). Survey results indicated more than half (55%) of married migrants living with a regular partner, reported having at least one child; 54.3 per cent and 55.9 per cent for migrants in inner provinces and border provinces, respectively. On average, among those who had children, the number of children per couple was 2.1, which was lower than the number that they preferred to have, which was 2.7.

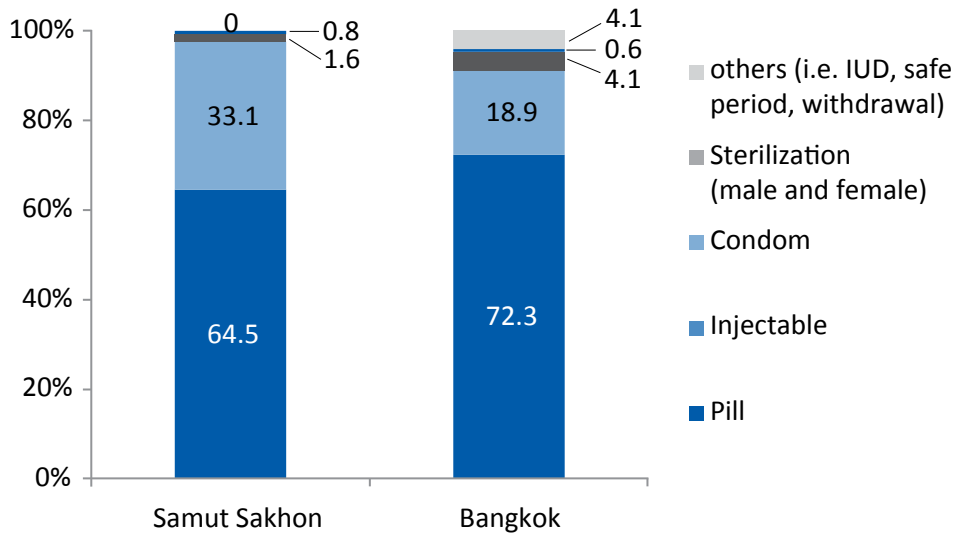
For migrant females aged 15-49 years regardless of marital status, the average number of children per woman was 1.16; 1.10 for inner provinces and 1.22 for border provinces. This number is slightly higher than for Thai nationals, which according to the 2010 National Population and Housing Census, is 1.00 child per woman; 0.81 for urban areas and 1.18 for rural areas (National Statistical Office, 2013: 3).

### Family planning and contraceptive use

As reported by recent studies, the rate of contraceptive use among migrant couples in Thailand is approximately 60 to 70 per cent (Chamrathirong, et al., 2012; OPTA, n.a.; Health Counterparts Consulting, 2012), significantly higher than the rate of use in their countries of origin (32.8% in Myanmar as cited by Yongpanichkul and Chusri, 2012) but still lower than the rate of 75 to 80 per cent for Thai Nationals (MOPH, 2010). Contraceptive pills and injectables are the most commonly used methods as they are the most accessible for migrants; they can be obtained from drug stores, public health units or health posts located not too far from their communities. From recent studies in Samut Sakhon and Bangkok (OPTA, n.a. and Health Counterparts Consulting, 2012), the pill is the favourite method of contraception among migrants in urban areas (used by 65% of migrant couples who currently use contraception in Samut Sakhon and by 72.3% of those in Bangkok) (Figure 6.2). In Samut Sakhon, about half of the migrants using contraception reported that they accessed the contraceptive service (or simply bought pills) from a nearby drug store, while one quarter accessed services at a private clinic, and fewer than 5 per cent visited a public health facility (OPTA, n.a.). Among migrant couples, contraception is mainly practiced by the women. Male practice is mainly condom use, but the rate of use was reported a slow, and their knowledge about contraception has also been found to be very poor (Denduang and Denduang, 2012; Health Counterparts Consulting, 2012). According to Denduang and Denduang (2012), 80 per cent of male migrants in Ranong, Samut Sakhon and Tak reported not practicing contraception with their wife or partner. About 15 per cent of males used condoms and 4 per cent practiced withdrawal for contraception.

5 These provinces were selected purposively from the total of 34 provinces covered by the PHAMITR-2 Project, based on the criterion of hosting the highest number of migrant workers (Chamrathirong, et al., 2012: 28). It is worth noting that findings from the survey do not statistically represent the whole picture of cross-border migrants in Thailand. In this chapter, the survey findings are presented by province types – border and inner provinces – to reflect migrant reproductive health situations in different contexts or areas.

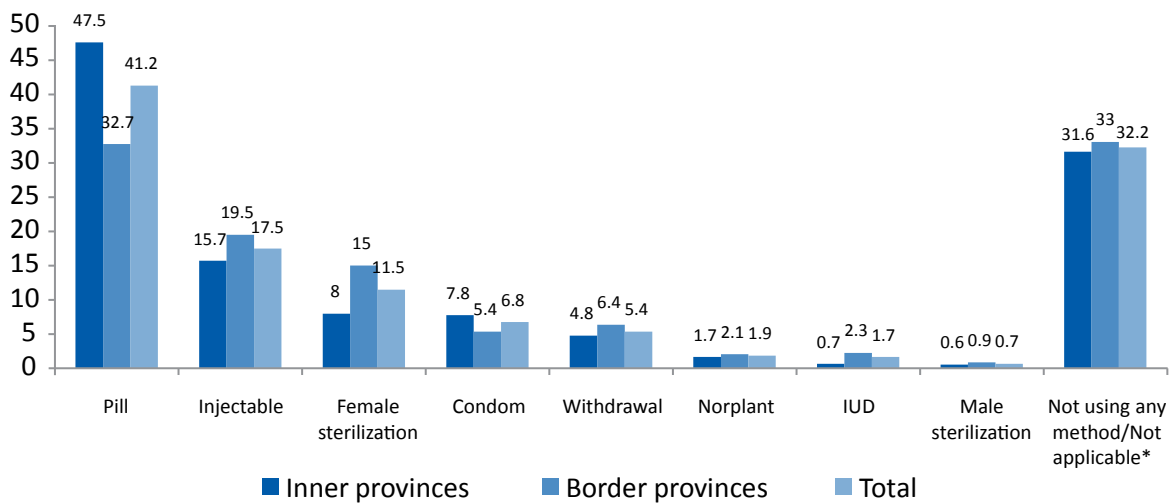
**Figure 6.2: Methods of contraception used by female migrants currently practicing contraception in Samut Sakhon and Bangkok**



Sources: Samut Sakhon (OPTA, n.a.) ; Bangkok (Health Counterparts Consulting, 2012).

Although 60-70 per cent of migrant couples reported using a contraceptive method (figure 6.3), many practiced withdrawal or safe period counting as the methods, which are not as effective as modern contraceptive methods such as the pill, injectables or condoms (Denduang & Denduang, 2012; Chamrathirong, et al., 2012). For those using a modern method (especially pills), some also reported incorrect use owing to insufficient knowledge and understanding (Health Counterparts Consulting, 2012). The inefficient and incorrect use of contraception is hypothesized as one cause of unintended pregnancy, which was found to be high among migrants. Evidence of unintended pregnancy rates among migrants, however, varied from one study to another; 32.1 per cent of children born to migrants in Samut Sakhon (OPTA, n.a.), 14.5 per cent of migrant children aged 0-2 years in Bangkok (n=86; Health Counterparts Consulting (2012)), and 6 per cent of migrant children aged 0-4 years in 11 provinces of PHAMIT-2 project (n=569; Author).

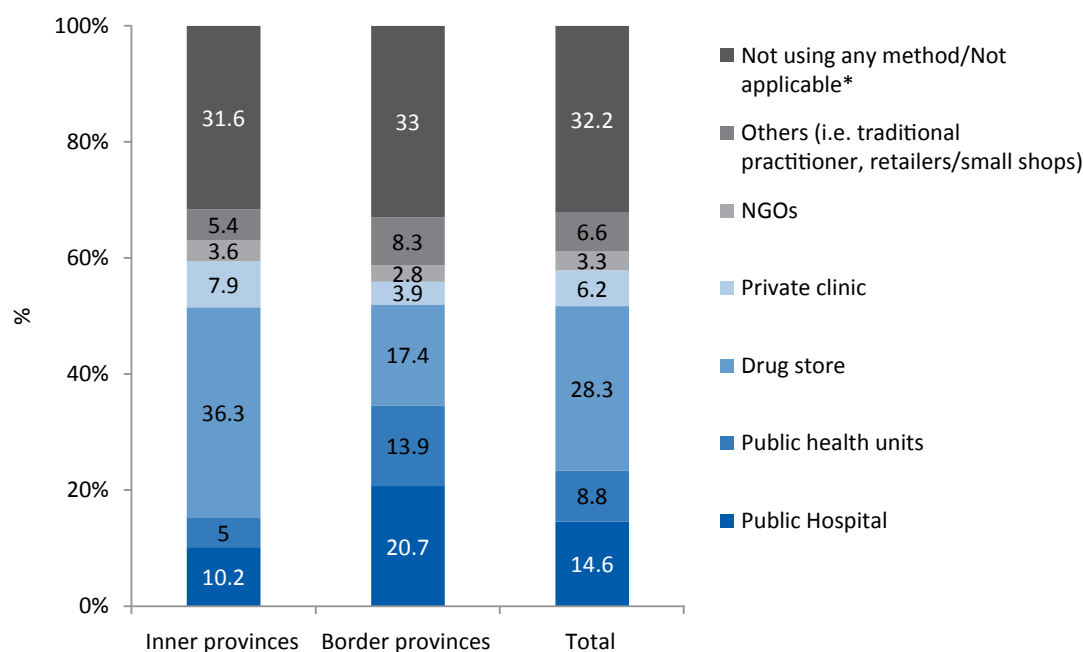
**Figure 6.3: Contraceptive use by migrants, by method and area (%)**



Note: (i) Includes only migrants whose marital status was reported as married or living with a regular partner (total n = 1,876). (ii) Those not using any contraceptive method and for whom the question did not apply include those who reported being pregnant, whose spouse or partner is sterilized, and those in menopause. (iii) For those using contraception, it is possible that more than one method was reported.

Source: Calculated by the author from the PHAMIT-2 Baseline Survey in 11 provinces.



**Figure 6.4: Migrants' source of contraceptive services, by area**

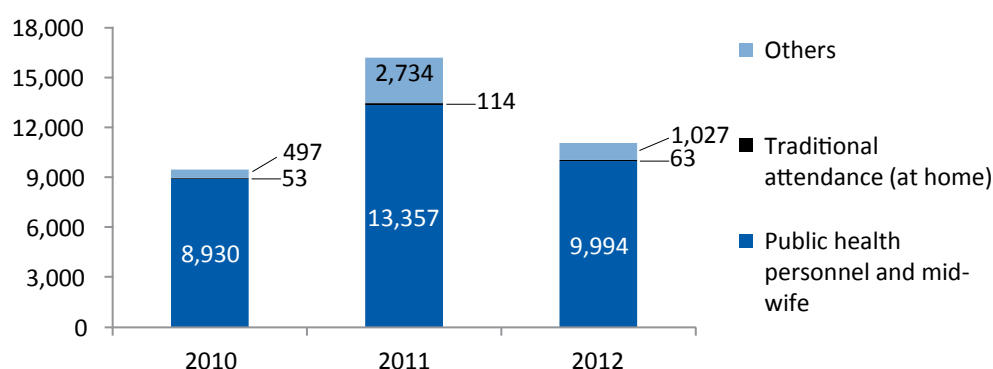
Source: Calculated by the author from PHAMIT-2 Baseline Survey in 11 provinces.

From the PHAMIT-2 Baseline Survey data, the contraceptive prevalence rate among migrant couples of reproductive age is nearly 70 per cent. Education and income levels, and an ability to speak Thai, are identified as key determinants positively influencing current use (Chamrathirong, Ford and Apipornchaisakul, 2013). Unmet demand for contraception, however, was reported as nearly zero by non-users (Chamrathirong, 2012). There are differences in the methods used and sources of contraception between the migrants in inner provinces and those in border provinces (figures 6.3 and 6.4). Although the pill is the most-used method in both types of province, a larger proportion of migrants in border provinces reported using injectables, female sterilization and withdrawal than those in inner provinces, while fewer used the pill or condoms. Condom use was quite low in both types of province but especially in border provinces, where it was only 5.4 per cent. Although its effectiveness is low, withdrawal was reported being used for contraception by 6.4 per cent and 4.8 per cent of migrants in border and inner provinces respectively. Among migrants in the inner provinces, the main source for contraceptive commodities, particularly pills and condoms, was drug stores (36.3%), while most migrants in border provinces sought contraceptive services from public health facilities (34.6%). This implies differences in accessibility to contraceptive and family planning services between migrants in inner and border provinces.

### Maternal and child health

According to the MOPH Report of the Public Health Situation among the Migrant Population in 2010-2012, about 80-95 per cent of children born to migrants in Thailand were delivered by public health personnel or a trained midwife (figure 6.5). The others, only 5-20 per cent, were non-institutional deliveries by traditional birth attendants (in particular, for delivery at home) and others (which are not exactly defined in the report). Information about access to antenatal care (ANC) and post-natal care by migrant mothers at the national level remains limited.

Figure 6.5: Number of migrant childbirths in Thailand, by type of birth attendant (fiscal years 2010-2012)



Source: Bureau of Policy and Strategy, Ministry of Public Health, 2013.

The Baseline Survey of PHAMIT-2, conducted in 11 provinces, found that among female migrants who gave birth in Thailand in the past five years, more than 90 per cent reported receiving ANC at a health facility, of which the majority (73.7%) was a public hospital (figure 6.5). As the survey did not ask when or how frequently the visit(s) took place, the quality and continuity of care cannot be assessed. When viewed by area, the percentage of those who did not receive ANC was lower in inner provinces, at only 5.7 per cent, consistent with findings from Health Counterparts Consulting (2012: 78) and OPTA (n.d.), who found only 1.2 per cent and 6 per cent of pregnant migrants in Bangkok and Samut Sakhon, respectively, did not receive ANC, compared with 10.7 per cent of those in border provinces.

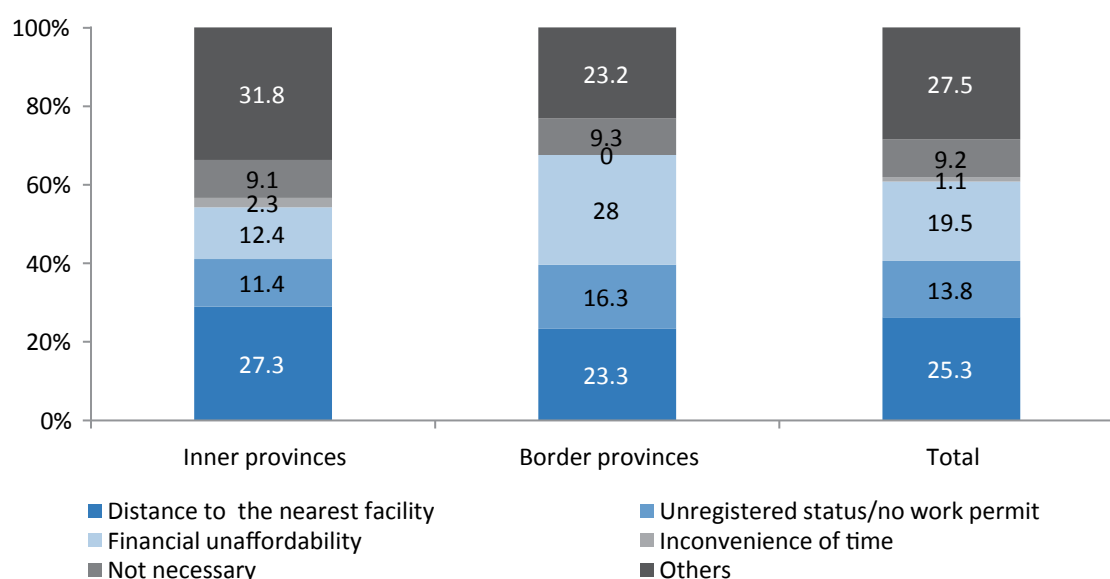
Based on the survey, in general, geographical barriers (distance to the health facility), illegal status and financial cost were the key reasons why migrant mothers did not access ANC. Problems with registration status and financial constraints (e.g. money for care fees and cost of transportation) were found to be more important in border provinces than inner provinces. Interestingly, nearly 10 per cent of migrant mothers in both types of area responded that they did not see the importance of the ANC during pregnancy (figure 6.6).

**Table 6.2: Percentage who received ANC, delivery service, and postnatal care among migrant mothers who gave birth in Thailand in the past five years, by type of province**

Facility type/Place	Inner provinces (n=192)			Border provinces (n=169)			Total (n=361)		
	ANC	Delivery	Post-natal care	ANC	Delivery	Post-natal care	ANC	Delivery	Post-natal care
Public hospital	82.8	97.9	71.4	63.3	76.9	38.5	73.7	88.1	56.0
Private hospital	1.6	0.5	1.0	0	0	0	0.8	0.3	0.6
Public primary care units	3.6		4.2	11.2		18.9	7.2		11.1
Private clinic	6.3		2.1	4.1		1.8	5.3		1.9
Others	0	0.5	0.5	10.7	7.7	2.4	5.0	3.9	1.4
Did not receive the service	5.7		20.8	10.7		38.5	8.0		29.1
At home		1.0			15.4			7.8	
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Calculated by the author, from PHAMIT-2 Baseline Survey in 11 provinces.

**Figure 6.6: Reasons for not accessing ANC by migrant mothers who gave birth in Thailand in the past five years, by type of province**



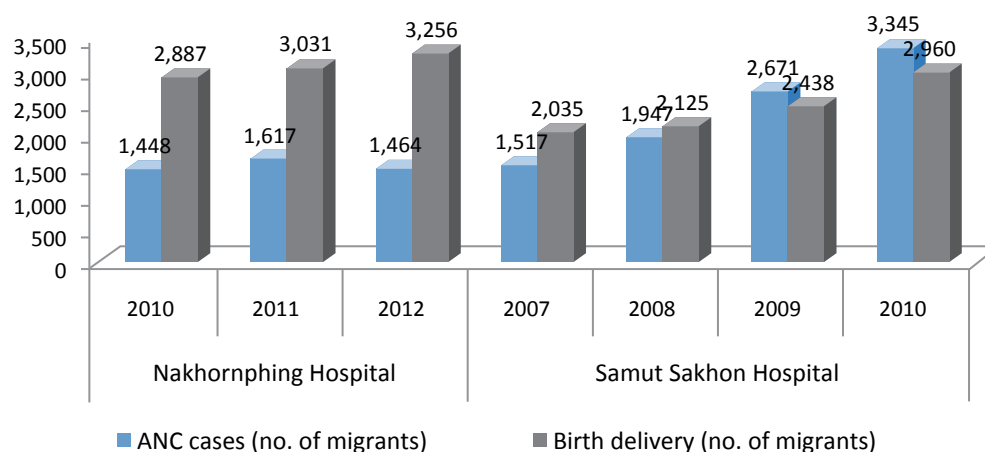
Source: Calculated by the author, from PHAMIT-2 Baseline Survey in 11 provinces.

Similar to results shown in figure 6.5, table 6.2 indicates that nearly 90 per cent of migrant mothers reported delivery at a public facility. The rest reported delivery at home (7.8%, assisted by relatives or traditional birth attendants) or at other places (3.9%). Interestingly, non-institutional deliveries (at home or at other places) were found to be more prevalent among migrants in border provinces, where they accounted for about one quarter of all deliveries.

The percentage of mothers using public hospitals for ANC (73.7%) was lower than the percentage who used them for delivery (88.1%), as many migrants visited a health unit or clinic for ANC but delivered the child at a hospital. From records at Nakhonphing Hospital in Chiangmai (fiscal years 2010-2012), the number of migrants making ANC visits was about 1,500-1,600 per year, which was only half of the number of deliveries by migrants (The Secretariat of the House of Representatives, 2013). This presented a challenge for the hospital to track the ANC history and health records of migrants who came to give birth. A recent study in Samut Sakhon Hospital, however, found the opposite (figure 6.7). During 2009-2010, the number of ANC cases among migrants at the hospital was higher than the number of migrant deliveries. This implies that a number of pregnant migrants received ANC at one place but delivered the child at another place, which may have been at another public hospital, at home in Thailand, or even back in their country of origin. This presents another challenge for the Thai health system in addressing the maternal and child health of migrants. A well-functioning migrant health information system that is able to monitor the continuity of ANC visits and place of delivery of migrant mothers is crucial and should be strengthened. The introduction of the Health Card for Mother and Child in August 2013 is a positive step taken by MOPH, but it is still too soon to evaluate if the Health Card has improved access to and utilization of maternal and child health services among migrants.

The PHAMIT-2 survey found that the rate of migrant mothers utilizing (or accessing) postnatal care was only about 70 per cent overall. About 20 per cent of the mothers in inner provinces and 40 per cent in border provinces reported not visiting a health facility for a check-up after delivery. A study by Chamrathirong, Ford and Apipornchaisakul (2013) using data from the survey, has revealed that access to ANC, birth delivery and postnatal care varied by the type of occupation of migrants. Income level and ability to speak Thai were also significant facilitators of access to maternal and child health services by migrant mothers.

**Figure 6.7: Number of migrant ANC cases and birth deliveries at Nakhornphing Hospital (2010-2012) and Samut Sakhon Hospital (2007-2010)**

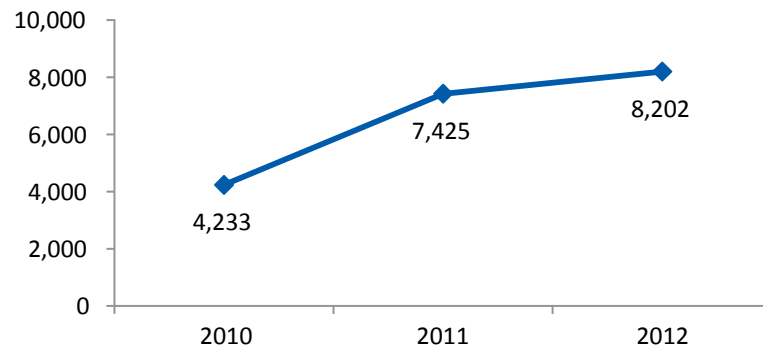


Sources: Nakhornphing Hospital: (*The Secretariat of the House of Representatives, 2013*). Samut Sakhon Hospital: (*Yongpanichkul & Chusri, 2012*).

In addition to issues of inaccessibility and discontinuity of care received by migrant mothers, especially for postnatal care, recent studies (OPTA, n.a.; Health Counterparts Consulting, 2012) have addressed such other concerns as a high prevalence of anemia during pregnancy, underweight newborn children (less than 2,500 grams) and incomplete basic vaccinations of migrant children. Key factors for these problems include limited access to health services (e.g. for ANC, post-natal care and vaccination) among migrant mothers due to changes in residence, fear of arrest and deportation, inconvenience of time, difficult working conditions, and poor nutrition living conditions during the pregnancy (Health Counterparts Consulting, 2012; Yongpanichkul and Chusri, 2012). The number of migrant children aged 0-5 years who received basic vaccinations increased every year between 2010 and 2012 (figure 6.8). However, the coverage rate is believed to be significantly lower than for Thai nationals, and tends to be lower for higher-aged children. From a study in Bangkok, among migrant children aged less than two years who have a health record, the coverage rate of those who received the Bacillus Calmette-Guérin vaccine (BCG – a vaccine against Tuberculosis) at birth was high at 92.3 per cent, but rates of vaccinations for the third dose of Diphtheria-Tetanus-Pertussis-Hepatitis (DTP-HB3) and oral poliovirus (OPV3) vaccines at age six months and Measles-Mumps-Rubella (MMR) vaccine at 9-12 months old were lower, at 69.2 per cent and 53.8 per cent respectively (Health Counterparts Consulting, 2012).

Figures on the prevalence of abortion and migrant infant mortality are not available at the national level. However, data from Samut Sakhon Hospital indicate that there were 249 abortions and 19 deaths of infants from a total of 2,960 deliveries by migrant mothers at the hospital in 2010 (Yongpanichkul and Chusri, 2012). From another study in the province, about 9.3 per cent of married female migrants reported ever having had abortions; of which three-quarters were spontaneous abortions (OPTA, n.a.: 12-13).

**Figure 6.8: Number of migrant children aged 0-5 years who received basic vaccinations, fiscal years 2010-2012**



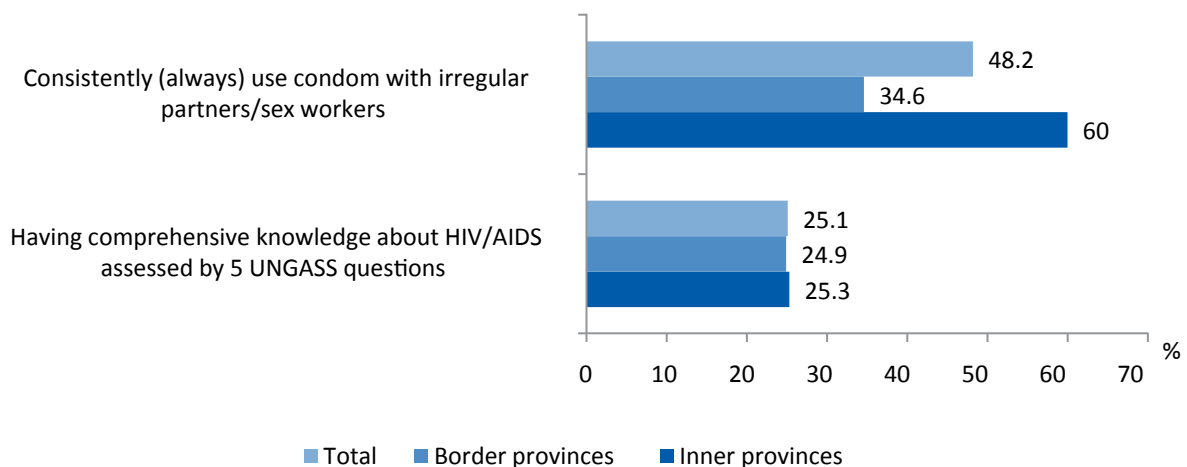
Source: Bureau of Policy and Strategy, Ministry of Public Health, 2013.

### Sexually transmitted diseases and HIV/AIDS infection

Although migrant workers are defined as one of the key affected populations for HIV infection in Thailand, the infection rate among migrant workers aged 15-24 years in 2012 was only 0.8 per cent, lower than the rate of other groups, i.e., men having sex with men (MSM) at 8.83 per cent, female sex workers at 2.31 per cent and injecting drug users at 21.52 per cent (Bureau of Epidemiology, Ministry of Public Health, 2012). The overall prevalence rate of HIV and the level of risk of infection are believed to be higher among the migrant population than among Thai nationals. According to figures reported by UNDP, for example, the prevalence of HIV infection among pregnant female migrants was as high as 4.6 per cent, while that for Thais was about 2 per cent (AIDS Data Hub cited in Yongpanichkul and Chusri, 2012).

Recent studies have raised concern about a lack of access by migrants to appropriate knowledge and information on sexually transmitted infections and HIV/AIDS, especially among those of reproductive age and those living in border areas (Jitthai, 2009). Another concern is that of risky sexual behaviour among migrants. Although the Bureau of Epidemiology has reported that 78.8 per cent of migrants used a condom during their last episode of sexual intercourse, among those who had ever had sex with irregular partners and sex workers, fewer than 50 per cent reported always using a condom (figure 6.9).

**Figure 6.9: HIV/AIDS knowledge and condom use behaviors of migrants, by area types**

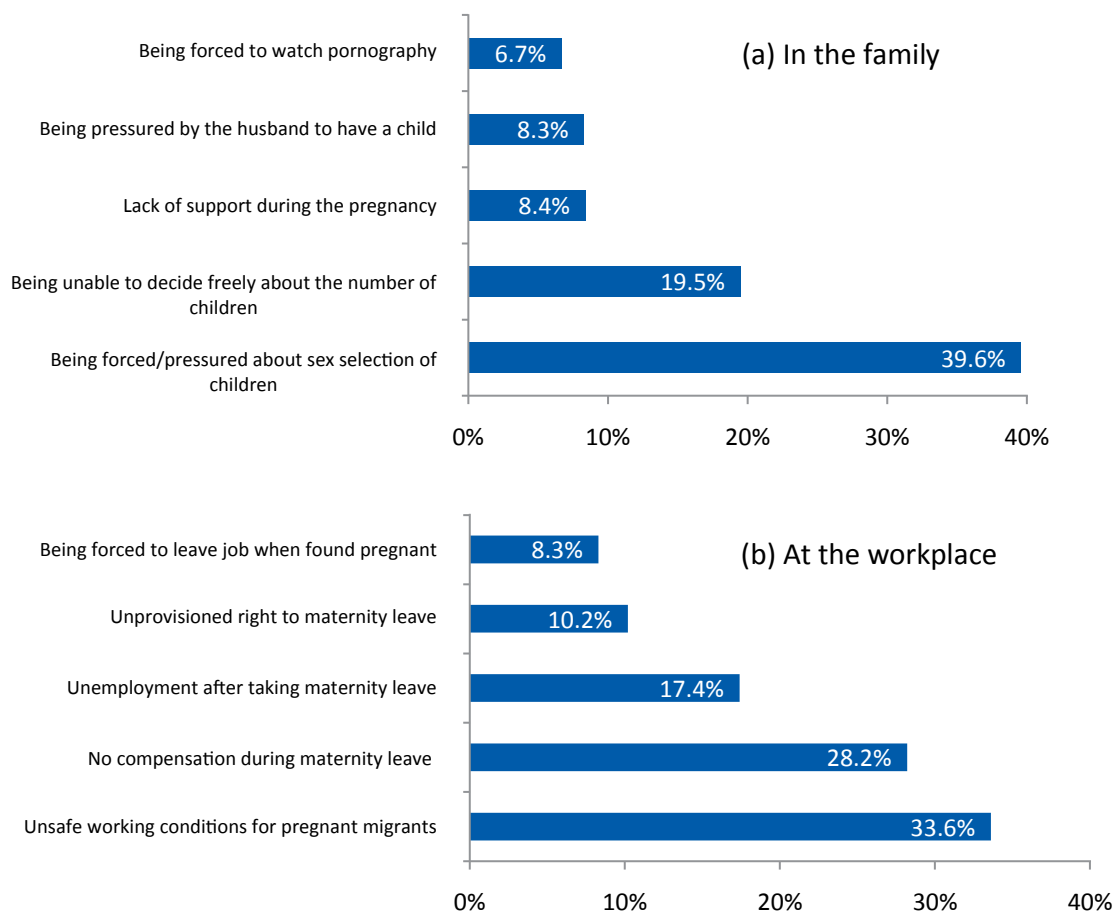


Note: UNGASS refers to questions approved by a United Nations General Assembly Special Session on HIV/AIDS.  
Source: Calculated by the author, from PHAMIT-2 Baseline Survey in 11 provinces.

## Gender-based violence

Although the statistics are limited, some studies have reported incidences of violence against migrant women in terms of physical violence, forced sex work, sexual harassment or rape (Press, 2011). The most recent study in three provinces (Tak, Ranong, Samut Sakhon) by Denduang and Denduang (2012) found that 83 per cent of female migrant respondents (n=1,501) had experienced violence at least once in the past year (figure 6.10). 68 per cent had experienced violence in the family and 61 per cent at the workplace, most of which was associated with the violation of their reproductive rights. In the family, being forced or pressured about the sex-selection of the children, not being able to decide freely the number of children, and a lack of moral and physical support from the husband and the family during pregnancies were most prevalent. About 5 per cent of female migrants reported having been forced to terminate a pregnancy. In the workplace, the most prevalent forms of violence were unsafe working conditions for pregnant migrants, no compensation during maternity leave and unemployment after taking maternity leave. On this issue, a concern is that systematic mechanisms and collaborative interventions have not been put in place to protect female migrants from all patterns of violence, to address their right to access services and to provide assistance to those who have experienced violence in the family, at the workplace or even by government officers.

**Figure 6.10: Top five forms of violence related to reproductive health experienced by female migrants in the past year (n=1,501)**



Source: Denduang and Denduang (2012): 99, 131.



## Barriers to access to reproductive health services

### Legal status in Thailand – concerning residence or working permits

As many female migrants entered Thailand as dependents of male migrant workers, a large number of them are undocumented, without legal status. This increases their vulnerability and fear of being arrested and deported, which consequently results in insufficient access to institutional services for reproductive health. The PHAMIT-2 Baseline Survey found that undocumented female migrants – or those who reported holding no legal documents – tended to access contraceptive services at a drug store more so than at a health facility. Undocumented or irregular female migrants also reported reduced access to most kinds of reproductive health services, e.g. maternal and child health services such as ANC, institutional delivery and post-natal care, relative to documented or regular migrants. Without a legal work permit, female migrant workers tend to be poorly treated by employers, experience unsafe working conditions and find it difficult to access labour protection mechanisms. Many pregnant migrant workers were required to keep working until the date they gave birth. Some reported losing their job or not being paid during their maternity leave. These circumstances significantly affect quality of pregnancy and access to ANC for pregnant women, post-natal care for migrant mothers and basic vaccination of migrant children. For example, a study among migrants in Bangkok found that many migrant children failed to receive vaccinations because their parents had to work and had no time to take their children to a health facility (Health Counterparts Consulting, 2012).

### Implementation of health insurance schemes for migrants: access, coverage of benefit packages, and standard practices for service provision

Before a policy change by the MOPH in August 2013, undocumented migrants were not eligible to enroll in any health insurance scheme. Although at present all migrants, regardless of their legal status, can enroll in the MHI scheme, it is still difficult to expect large numbers of migrants to access health insurance given the high insurance premiums (2,800 baht, inclusive of a medical check-up, for migrants aged seven years and over) and fears of being arrested because of their irregular status. Lack of health insurance inevitably results in a lack of financial protection and means migrants often cannot afford health care and services when needed. Maternal health services such as ANC, delivery services, and post-natal care are covered in the benefit packages of the MHI and the SSS. The MHI also includes family planning services, vaccination for children and provision of Azidothymidine (AZT) for pregnant women with HIV as means of disease prevention and health promotion, which the SSS does not. Benefits offered to migrants have been criticized for focusing mainly on birth control and contraception. Reproductive health education and capacity building activities for female migrants are recommended to be strengthened, and financed by health insurance schemes for migrants (Yongpanichkul and Chusri, 2012; Limanonda and Peungposop, 2011). Without standard guidelines and a concrete policy on the practice of service provision for migrants (particularly those who are without insurance) the quality and practice of health provision (e.g. vaccinations for migrant children and AZT for pregnant migrants with HIV) will continue to vary according to each provider or health facility. This causes confusion, and means migrants, not only the uninsured but also the insured, are less confident about accessing care and services at health facilities.

### Sociocultural barriers, including language barriers

From a migrant's perspective, sociocultural barriers, particularly for female migrants, may include the language barrier as a key obstacle in accessing health services, health education and relevant information; embarrassment regarding talking, consulting or gaining knowledge about reproductive health and sexual

issues; a persisting preference to receive or seek care from traditional healers or by traditional methods; and unequal gender relations in their culture which affect health-seeking behavior and access to reproductive health services. In a recent study, more than 70 per cent of pregnant migrants in Bangkok reported that they gained knowledge about care during pregnancy from family members and the host community. Fewer than 30 per cent reported gaining knowledge and information from public health personnel (Health Counterparts Consulting, 2012). From the side of service providers, poor attitudes and negative prejudices toward female migrants, limited awareness about migrants' health rights and an inappropriate understanding of their culture also continue to present key barriers. A study by Denduang and Denduang (2012) indicated that insufficient service provision for female migrants from public officials consisted mainly of poor service provision of ANC during their pregnancy, and unsupportive assistance during and after delivery. Confidentiality and privacy of treatment or counselling for reproductive health services are also crucial factors determining access to services at health facilities by migrants (Sethaput, et al., 2007).

### **Inadequate reproductive health knowledge and understanding**

Insufficient access to health education and relevant information in the host country (partly owing to language barriers) generally results in poor knowledge and misunderstanding among migrants, especially about family planning, contraceptive use, STDs, HIV infection and their reproductive health rights. Because of this, lack of knowledge and misunderstanding are key reasons why migrants are not accessing appropriate reproductive health services (e.g. knowledge about the necessity of ANC and post-natal care, and how to find contraceptive services). Other adverse consequences include incorrect practices among migrants concerning their reproductive health and sexual behaviour (e.g. incorrect use of contraception which might result in unintended pregnancy or unsafe abortion). In a recent study among female migrants, it was found that domestic workers had less access to health information and education than factory workers and sex workers (Global Alliance Against Traffic in Women, 2007 cited in Yongpanichkul & Chusri (2012)).

### **Nature of work and livelihoods (with frequent relocations) of female migrants**

Many female migrants of reproductive age migrate with male migrants working in remote areas, especially in border areas, e.g. on rubber plantations, agricultural farms, or as seafarers. A number of women work or accompany family members who are working in the construction sector, an industry which by its nature requires frequent relocation. Access to reproductive health services and continuity of services received by female migrants, particularly for maternal and child health, is hence constrained. As evidenced by the PHAMIT2-Baseline Survey, the geographic area that migrants are living in also matters. Findings indicated better reproductive health situations, including access to relevant services, for migrants living in inner provinces compared with those living in border provinces - in terms of reproductive health knowledge, awareness and practices about family planning and contraception, maternal and child health including child vaccinations, and STD and HIV infection.

## **Recommendations**

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The MOPH initiative to provide health services to both documented and undocumented migrant workers and dependents through a health insurance card demonstrates Thailand's progress towards achieving the goal of universal access to health-care services, including reproductive health services. The way forward for the enhancement of migrant reproductive health and access to services should not involve treating it as a stand-alone issue, but rather it should form part of a comprehensive strategy to improve migrant health as a whole. Key recommendations on migrant reproductive health are provided in the following paragraphs.

The first recommendation is to monitor and evaluate the impact of the MHI, Health Card for Mother and Child, and the adjustment of the health benefit packages provided under the SSS. The introduction of health cards for mother and child and the permission granted to all migrants to enroll in MHI in August 2013 were significant steps forward taken by MOPH but these initiatives need to be monitored and evaluated. Furthermore, a re-examination of the conditions and benefits of the SSS is required. It has been pointed out that some of its rigid requirements are not appropriate for a migrant population<sup>6</sup> and that incentives for disease prevention and health promotion are not included in the benefit packages.

The second recommendation is to make a stronger attempt to develop a migrant-friendly health service system. Such a system should take into account sociocultural characteristics of migrants, including language, confidentiality, and privacy issues, and should strengthen other components of the health system specific to migrants, including:

- (a) the migrant health information system – gathering and disseminating information and statistical data relevant to migrant reproductive health for better evidence-based policy planning, monitoring and evaluation, while noting that existing migrant statistics on reproductive health are mostly on HIV/AIDS prevention and sexual behaviours;
- (b) health-care financing – improving the efficiency of management and the financial sustainability of existing migrant health schemes to provide equitable protection and mitigate financial risks for all migrants;
- (c) health governance – developing a master plan with a set of strategic policies on migrant reproductive health and guidelines for practice for public health providers, enhancing enforcement of labour laws, and protection of migrant reproductive rights; and
- (d) human resources for migrant health – promoting positive attitudes among health providers towards migrants and their rights to health (International Organization for Migration, 2010), and officially recognizing the employment of migrant health workers and volunteers in public health facilities.

The third recommendation is to proactively provide reproductive health education to migrants, male as well as female. The objectives should be to provide sufficient knowledge and understanding about reproductive health to create awareness and lead to safe practices. This health education should carefully consider appropriate language and information materials, and encourage outreach activities and the use of peer educators with a strong knowledge of the sociocultural characteristics of migrants (United Nations Population Fund, 2011; Panitchpakdi, et al., 2011; Press, 2011).

Other specific recommendations include enhancing understanding and utilization of post-natal care by migrant mothers; promoting the importance of migrant newborns and children receiving all essential basic vaccinations; and encouraging appropriate roles of male migrants in the reproductive health of female migrants. Migrants living in border areas should be given priority, in accordance with evidence provided through the results of the PHAMIT2-Baseline Survey, which suggest that the reproductive health situation and access to relevant services is worse for migrants living in border provinces than those living in the inner provinces of Thailand.

<sup>6</sup> For example, benefits cannot be obtained during an initial period of three to five months after the first contribution, or seven months for maternity benefits. Some benefits provided by the SSS such as old age benefits and unemployment allowances, are also not practical or do not accommodate the needs of migrant workers (Chamchan & Apipornchaisakul, 2012).

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*“While migration presents new opportunities for women and may be a means for their economic empowerment through wider participation, it may also place their human rights and security at risk.” There are “circumstances that contribute to the specific vulnerability of many women migrant workers and their experiences of sex- and gender-based discrimination as a cause and consequence of the violations of their human rights.”*

CEDAW General Recommendation No.26 on Women Migrant Workers

## Introduction

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Forty per cent of the 1,420,492 documented migrant workers in Thailand are women, as of April 2014<sup>2</sup>. Based on available data in 2013, an additional 1,670,545 migrants are estimated to be working in Thailand in an irregular status (chapter 1). Ninety per cent of the documented migrants in Thailand are from three neighbouring countries, i.e., Cambodia, Lao People’s Democratic Republic and Myanmar. These migrants are documented through the national verification process and the MOU process<sup>3</sup>, suggesting a concentration in low-skilled employment. Forty-two per cent of the documented migrants from neighbouring countries are women<sup>4</sup> (Ministry of Labour, Department of Employment, 2013).

The gendered labour segregation both in the countries of origin and countries of employment determines labour market positioning of women and men during migration (Piper, 2005). Women are often found in the informal sector earning lower pay when compared with men, and are often left without adequate access to social protection benefits, thus increasing their vulnerabilities. Many women have to balance their time and energies between income-generating activities and unpaid roles of care and household work.

In the past few decades, labour demand for care work has consistently increased. This trend is underpinned by incorporation of women in the labour force, the ageing of societies, intensification of work and frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work. While domestic workers have made up a large portion of the workforce, their work remains undervalued and largely unregulated (ILO, 2010). The majority of domestic workers are women, owing to the gendered role in respect to care work and the gendered attribution of domestic work as a “female job”.

In Thailand, internal migration for domestic work by young women was prevalent, but the trend has

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1 Ryratana Rangsitpol is the Country Programme Coordinator (Thailand), UN Women. The Chapter is contributed by UN Women, with inputs from the ILO.

2 Of the 1,420,492 documented migrant workers, as of April 2014, 573,879 are women and 846,613 are men.

3 Thailand entered into bilateral Memoranda of Understanding on Employment Cooperation with Lao People’s Democratic Republic in October 2002, Cambodia in May 2003 and Myanmar in June 2003. Additionally, in an attempt to regularize migrant workers in the country, the nationality verification system was announced on 18 May 2009 by an Order of the Ministry of Interior. See chapter 2 for more information on the nationality verification process and the MoUs.

4 There were 547,459 female and 745,039 male documented migrant workers from Cambodia, Lao People’s Democratic Republic and Myanmar as of April 2013.

shifted (Boontinand, 2010). The policy of nine years of compulsory education and provision of 12 years of basic education implemented in the past decade has kept more girls in school and broadened their job qualifications. Thailand's economic growth, which has largely been driven by the export and service sectors, generates higher demand for women in the labour force. Better economic opportunities in Thailand compared with the neighbouring countries and a shortfall of low-skilled labour in different sectors attract labour migration from Cambodia, Lao People's Democratic Republic and Myanmar. This labour demand includes demand for domestic workers, of whom most are women.

Domestic workers, when compared with other workers, are considered at high risk of exploitation, abuse and discrimination due to the "hidden" and isolated nature of their work in the private sphere of the home<sup>5</sup>. More isolated from potential support and help, migrant domestic workers are vulnerable to discrimination, exploitation and abuse, which occur throughout the migration cycle. Additionally, as female migrant domestic workers, the risks of gender discrimination, abuse and economic exploitation are compounded.

Migrant domestic workers, because of their weak bargaining position, can be charged high fees by recruitment agencies and often enter into a workplace without prior knowledge of working terms and conditions and having language barriers. In many cases, passports and identification papers are kept by recruiting agencies or employers. Rarely are migrant domestic workers fully protected by labour laws of the country of employment, particularly when they are irregular or undocumented migrants. These factors intensify their dependency and vulnerabilities, including to gender-based violence and sexual exploitation and abuse. There are reports of women migrant workers who gain confidence through their economic roles and experiences and are well regarded back in the home communities. Yet, there are cases where reintegration for jobs back home is difficult (CEDAW/C/2009/WP.1/R; MWC/C/GC/1).

There are an estimated 251,000 domestic workers in Thailand as of 2012 (ILO, 2013). As of 2011, there were 83,066 migrant domestic workers from Cambodia, Lao People's Democratic Republic and Myanmar registered with the Thai authorities (ILO, 2013), almost all of whom are women. Taking into account migrant domestic workers in an irregular status, the number is estimated to be much higher. It is estimated that up to 90 per cent of domestic workers in Thailand are documented or undocumented migrants from the neighbouring countries (ILO, 2013).

Thailand has made progress in attempts to regulate and protect migrant domestic workers. Domestic work is recognized as a sector where migrants can register and receive a work permit as part of the MOU and the nationality verification processes<sup>6</sup>. Most recently, in November 2012, Ministerial Regulation No. 14 under the Labour Protection Act was issued. The Regulation provides increased protection and additional entitlements to national and migrant domestic workers, thus narrowing gaps between national and migrant domestic workers, and between domestic workers and other types of workers. Considering specific characteristics and associated risks and vulnerabilities of migrant domestic workers in Thailand, the majority of whom are women, this chapter aims to explore their status and protection vis-à-vis existing legal and policy frameworks in Thailand. The chapter analyses the triple intersectionalities of discrimination – as a woman, a migrant and a domestic worker.

5 "Even if certain protections for migrant domestic workers are provided under national laws, there is often a gap between protections enjoyed by such workers in law and in practice. Some of the practical obstacles faced relate to the 'hidden' nature of domestic work and factors preventing or deterring migrant domestic workers from claiming their rights" (Committee on the protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1, 23 February 2011).

6 It should be noted that domestic work has not been recognized and approved officially as a work sector for recruitment and sending under the Memorandum of Understanding between Lao People's Democratic Republic and Thailand (UN Women, 2007).



## Risks and Vulnerabilities of Migrant Domestic Workers

“There was nothing to do to earn money in our source communities. Our families do not require more female labour on the farm.” “Unresolved conflicts between the Government and the ethnic group had impact on our crop productivity.”<sup>7</sup>

“It took me eight days to travel from my home in HpaAn, Myanmar to my employer’s house.” “It took us two to three days from Myawaddy, Myanmar.” “During the trip, we had to change vehicles and hide ourselves in the forest to avoid being found by immigration officials.”<sup>8</sup>

“I travelled on a dangerous route passing through forests to be able to cross the border from Cambodia. I started walking from 3 a.m. and arrived in Thailand at 6 a.m. the following day.”<sup>9</sup>

“There are times when we are asked to work after 10 p.m. or on our holiday without overtime or compensation.” “We are not allowed to take any holidays or rest days. Because of these, we looked for new employers.”<sup>10</sup>

“Our passports and work permits were kept by the employers for the first few months.” “This is necessary to prevent domestic workers from running away.”<sup>11</sup>

Limited systematic information is available on the lives of migrant domestic workers in Thailand, mainly due to difficulties in gaining access to those workers themselves. Research from the Asian Research Center for Migration (ARCM) of Chulalongkorn University, the Institute for Population Studies and Social Research (IPSR) of Mahidol University, ILO, and UN Women show migrant domestic workers in Thailand share common situations, risks and vulnerabilities with those documented elsewhere (Boontinand 2010, Chantavanich et al., 2009; Punpuing et al. 2004).

Many migrant domestic workers from Cambodia, Lao People’s Democratic Republic and Myanmar migrate through recruitment agencies known by word of mouth within their villages and communities. Many have to pay a high service fee to recruitment agencies, putting them in debt in the first place. There are anecdotal reports of women migrants for domestic work who had to take difficult and dangerous routes to Thailand due to hardship at home and their irregular status as migrants. Many arrived at the workplace without prior knowledge of working terms and conditions. Language is another barrier for migrant domestic workers, except those from Lao People’s Democratic Republic. Women migrant domestic workers from Myanmar have reported experiences of fleeing hardship in the economic, social and political situations in their hometowns. While many female migrant workers are low-skilled, there are reports of women migrant domestic workers who migrated right after graduating from college, showing examples of the “de-skilling” of women due to non-conducive social, political and economic environments. At the destination, many found themselves in jobs with long working hours and doing all kinds of housework, which was not pre-defined. There are reports of forced labour and detention, i.e. not being allowed to leave the home. Despite entitlements of a weekly day-off, traditional holidays and annual leave, some migrant domestic workers do not know these rights, or are not in a position to negotiate with employers. Non-governmental organizations (NGOs) working to empower migrant domestic workers report that, when probed, most migrant domestic workers have to fulfill their morning tasks of cleaning prior to taking a day off. Accordingly, the entitlement of a 24-consecutive-hour break is not enforced.

7 As recounted by eleven female domestic workers from Cambodia, Lao People’s Democratic Republic and Myanmar. Focus Group Discussions by Chaitawat Boonjubun, 2013.

8 Ibid

9 Ibid

10 Ibid

11 Ibid

Gender-based violence, exploitation and sexual abuse are not uncommon for migrant domestic workers. However, there is no record of reports of domestic violence abuse of national or migrant domestic workers in any of the annual reports on the Domestic Violence Act implementation. In a study conducted with 320 migrant domestic workers in Myanmar, it is found that 182 experienced being yelled at, 123 scolded, 115 harassed, 59 touched involuntarily, 28 slapped, 25 grounded, 25 pushed, 20 thrown things at, 4 sexually molested, 19 pinched, and 4 raped (Punpuing, Sureporn et al.).

It is very rare that migrant domestic workers access and make use of public complaint mechanisms, either through the labour inspection officials or other channels. Inability to access private homes, which are the workplace of migrant domestic workers, by labour inspection officers is a key obstacle. Insufficient numbers and limited understanding of officials are other challenges. In addition, many migrant domestic workers are undocumented, thus reporting to public officials means a risk of being deported. Also, employees are required to leave the country within seven days after termination of their contract unless new employment is secured. This puts migrant workers in a disadvantaged position and does not allow them to be able to seek justice in time in Thailand.

General sentiments towards migrant workers and gender discriminatory attitudes in general underpin risks, vulnerabilities and lack of or inadequate legal protection of migrant domestic workers, almost all of whom are women.

## International Standards in the Protection of Rights of Migrant Domestic Workers

The following international treaties bear direct relevance to the protection and enjoyment of fundamental rights of migrant domestic workers.

### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW, which came into force in 1981 and ratified by Thailand in 1985<sup>12</sup>, offers a significant normative framework in guaranteeing fundamental freedoms and rights of migrant domestic workers. CEDAW, through its principles of substantive equality, non-discrimination and state accountability, protects women's human rights in both public and private spheres (table 7.1). This recognition of applicability to the private sphere is very relevant to domestic workers and migrant domestic workers as CEDAW holds states accountable for private acts if they "fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and to provide for compensations" (UN Women 2013).

Thailand became a signatory to CEDAW in 1985 and its Optional Protocol in 2000.

**Table 7.1: CEDAW Articles and applicability to migrant domestic workers**

CEDAW Article	Key Content	Applicability to Migrant Domestic Workers
Article 1: Discrimination against women	Definition of discrimination against women; recognition of violation of women's human rights in private sphere, for which states could be held accountable	Domestic workers and migrant domestic workers perform duties in the private sphere of the home.

<sup>12</sup> Thailand ratified the CEDAW Optional Protocol in 2000.



CEDAW Article	Key Content	Applicability to Migrant Domestic Workers
Article 2: Policy measures	State obligation to take concrete steps to eliminate discrimination against women in laws, policies and programmes, backed by institutional mechanisms.	State obligation to design and implement policies related to migrant workers, including migrant domestic workers, such as training programmes, information campaigns, workplace safety programmes, health schemes and access to justice.
Article 3: Sex role stereotyping and prejudice	State obligation to modify social and cultural patterns to eliminate prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.	Traditional assumptions about women's roles in public and private life often limit women's opportunities and choices of employment in country of origin. Stereotypical assumptions and prejudices result in women being segregated into certain employment sectors in destination countries which are often undervalued and not equally protected by law.
Article 6: Trafficking and prostitution	State obligation to stop all forms of trafficking and exploitation of prostitution of women.	Migrant domestic workers often lack information and awareness of their rights. Coupled with their isolated nature of work, migrant domestic workers risk conditions of forced labour and trafficking.
Article 11: Employment rights	Women must enjoy the same opportunities as men in employment, remuneration, promotion, training, social security, and healthy and safe working conditions.	Article 11 obligates States to recognize domestic work as "work" and to ensure coverage of migrant workers by labour laws, workplace safety regulations and social security laws on an equal basis with men.
Article 15: Equality before the law	State obligation to establish justice mechanisms that enforce the prohibition of discrimination against women by individuals, organizations or enterprises.	Article 15 requires that women migrant workers, including migrant domestic workers, have equal access to justice to redress any discrimination faced during the migration cycle.

Source: UN Women, *Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States: A Gender and Rights-based Perspective*, 2013.

State parties are required to submit country reports every four years to the Committee on the Elimination of Discrimination against Women. The Committee considers alternative reports prepared and submitted by non-governmental organizations, as well as communications submitted by individuals or groups of individuals whose rights set forth in the Convention have been violated by a State party. The Committee may initiate an inquiry in a case of reliable information of serious or systematic violations of CEDAW (UN Women, 2013).

### **CEDAW General Recommendation 26**

While CEDAW does not have a specific article on women migrant workers, in 2005 the Committee on the Elimination of Discrimination Against Women issued General Recommendation No. 26 on Women Migrant Workers which “aims to elaborate the circumstances that contribute to the specific vulnerability of many migrant workers and their experiences of sex- and gender-based discrimination as a cause and consequence of the violation of their human rights”. The General Recommendation notes the gendered differential position and experiences of male and female migrant workers, describes factors influencing women’s migration and sex- and gender-based human rights concerns related to migrant women, and provides recommendations to State parties. It emphasizes State’s obligations in “recognition of the social and economic contributions of women migrant workers to their countries and countries of destination, including through care giving and domestic work” (CEDAW/c/2009/WP.1/R: 2-3).

### **The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)**

MWC, which Thailand has not ratified, entered into force on 1 July 2003 and offers the most comprehensive international instrument for the protection of rights of both documented and undocumented migrants, and of fair treatment not less favourable than that applicable to nationals of country of employment. This includes remuneration, working conditions and terms of employment, e.g. overtime, hours of work, weekly rest, paid leave, safety, health, termination of employment and minimum age. It outlines obligations and responsibilities of countries of origin as well as destination countries in the employment of migrants. Article 7 of MWC articulates the principle of non-discrimination, requiring State parties to protect all migrant workers and members of their families within their territory or subject to their jurisdiction “without distinction of any kind”, including on grounds of sex, ethnic or social origin and nationality.

The provisions of MWC that are specifically relevant to migrant domestic workers, who are often undocumented, are provisions that obligate State parties to ensure that migrant workers are not deprived of any rights derived from the principle of equality of treatment by reason of irregularity in their stay or employment. Additionally, MWC binds employers to any legal or contractual obligations regardless of such irregularity. Under MWC, it is unlawful for anyone other than a public official to confiscate, destroy or attempt to destroy identity documents, documents authorizing stay in the national territory or work permits. MWC also covers issues of social security and medical care - migrant workers and members of their families shall enjoy the same treatment granted to nationals in the country of employment regardless of irregularities of their stay or employment (UN Women, 2013).

MWC is monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The communications mechanisms of the Committee may be used in reporting individual cases of violation of rights as well as systematic abuse. A State party may choose to recognize the competence of the Committee to receive and consider communications from one State party or from or on behalf of individuals within States’ jurisdiction (UN Women, 2013).

## General Comment No. 1 on Migrant Domestic Workers

In 2010, the Committee issued General Comment No.1 on Migrant Domestic Workers as guidance to State parties on how to implement their obligations under the Convention with regard to migrant domestic workers. The General Comment describes State obligations and legal and practical gaps in the protection of rights of migrant domestic workers, and provides recommendations to State parties. In 2013, the Committee issued General Comment No. 2 on the rights of migrant workers in an irregular situation and their families.

## ILO Convention Concerning Decent Work for Domestic Workers (No. 189)

The ILO Convention Concerning Decent Work for Domestic Workers, which Thailand has not yet ratified, was adopted in June 2011, and came into force on 5 September 2013. It is a landmark international treaty specifically targeting domestic workers (UN Women, 2013). It is the first time that “domestic work” and “domestic workers” have been defined in an international instrument. The Convention emphasizes State obligations towards enjoyment of rights and conditions no less favourable than those applicable to other workers.

The Convention embodies the principle of non-discrimination, highlighting the elimination of discrimination in respect of employment and occupation. The Convention also covers rights to freedom of association, elimination of all forms of forced or compulsory labour, and abolition of child labour, including a minimum age of domestic work and rights to education of domestic workers under the age of 18 years. The Convention emphasizes effective protection against all forms of abuse, harassment and violence, and enjoyment of fair terms of employment as well as decent working conditions. These include working hours, rest periods, minimum wage coverage, safe and healthy working environment, and access to complaint and justice mechanisms. Domestic workers are to be informed of their terms and conditions and to have written contracts where possible.

As for migrant domestic workers, the Convention specifically highlights that national laws and regulations “shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed” prior to crossing national borders. It also set standards of what are to be included in the written job offer or contract of employment (Article 7 and Article 8). The Convention obligates Members to take measures to ensure that domestic workers “are entitled to keep in their possession their travel and identity documents” (Article 9).

The Domestic Workers Recommendation, 2011 (No. 201) was adopted on 16 June 2011 to supplement the Convention.

## Protocol to the ILO Convention No. 29 on Forced Labour

The Protocol strengthens the Forced Labour Convention No. 29 (1930) and the international legal framework on forced and compulsory labour through addressing new contexts and forms of forced or compulsory labour, including that in the private economy as well as trafficking in persons for the purposes of forced and compulsory labour, which may involve sexual exploitation.

The Protocol reaffirms coverage of forced and compulsory labour in all its forms and manifestations and that it is applicable to all human beings without distinction, but also makes explicit coverage of all groups of workers, including those with a higher risk of becoming victims of forced or compulsory labour, especially migrants. The Protocol specifies that the measures to be taken shall include “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement

process” (Article 2). Migrant workers are covered under the Protocol regardless of immigration status, as Article 4 of the Protocol explicitly binds Members to ensure that “all victims of forced and compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation” (Article 4).

The Protocol binds Members to “develop a national policy and plan of action for effective and sustained suppression of forced or compulsory labour, in consultation with employers’ and workers’ organizations” (Article 1). Its Recommendation guides Members that such policies and plans of actions should have time-bound measures, using gender- and child-sensitive approaches (Recommendation No. 1 (a)).

The Protocol also includes prevention measures such as educating and informing vulnerable populations and employers, extending the coverage and enforcement of relevant legislation to apply to all workers and all sectors of the economy, enhancing roles of labour inspectors, as well as supporting due diligence of public and private actors to prevent, respond to and address root causes and factors that heighten risk factors.

In these aspects, the Protocol provides a protection framework to migrant domestic workers, who are estimated to be mostly undocumented and likely to be subject to forced and compulsory labour due to specific characteristics of their work and workplace.

The Protocol shall come into force twelve months after the date on which ratification of two Members have been registered by the Director-General (Article 8).

Other important treaties for the protection of rights of migrant domestic workers are the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2003 and the Protocol against Smuggling of Migrants by Land, Sea and Air, 2004 (both of which supplement the United Nations Convention against Transnational Organized Crime); and the International Covenant on Civil and Political Rights (ICCPR) (UN Women 2013).

Other relevant ILO Conventions include the Abolition of Forced Labour Convention (No. 105), Minimum Age Convention (No. 138), Worst Forms of Child Labour Convention (No. 182), Discrimination (Employment and Occupation) Convention (No. 111), Freedom of Association Convention (No. 87), Right to Organize and Collective Bargaining Convention (No. 98), Migration for Employment Convention (Revised) (No. 97), and Migrant Workers (Supplementary Provisions) Convention (No. 143) (UN Women 2013).

## National Legal and Policy Frameworks – Progress and Gaps

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Acceding to and ratifying related international treaties and ensuring their domestic application are critical steps towards standard setting and guarantee of full protection of rights of migrant domestic workers. Thailand ratified CEDAW in 1985 and its Optional Protocol in 2000, and accordingly has obligations to protect female migrant domestic workers. Thailand has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, but in the Universal Periodic Report of Thailand, Thailand commits to “assess its readiness to become a Party” to the convention (UPR Report Thailand, 2011: 101). Thailand has not ratified the ILO Convention Concerning Decent Work of Domestic Workers No. 189. Thailand is in support of the Protocol to ILO Forced Labour Convention No. 29.

Thailand’s ratification status of international treaties related to women migrant workers is presented in table 7.2.

**Table 7.2: Thailand's ratification status of international treaties related to women migrant workers**

Treaties	Ratification
MWC	
CEDAW	9 August 1985
ICCPR	29 October 1996
ICESCR	5 September 1999
ILO C29 Forced or Compulsory Labour	26 February 1969
ILO 87 Freedom of Association	
ILO C97 Migration for Employment	
ILO C98 Right to Organize and Collective Bargaining	
ILO C100 Equal Remuneration	8 February 1999
ILO C105 Abolition of Forced Labour	2 February 1969
ILO C111 Discrimination in Employment	
ILO C 138 Minimum Age for Admission to Employment	11 May 2004
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	
ILO C181 Private Employment Agencies	
ILO C182 Prohibition of the Worst Form of Child Labour	16 February 2001
ILO C189 Decent Work for Domestic Workers	

Source: UN Women, *Review of Laws, Policies, and Regulations Governing Labour Migration in Asian and Arab States: A Gender and Rights-based Perspective*, 2013.

Thailand has made considerable progress over the years in the protection of women's human rights in general and for migrant domestic workers in particular. However, there remain gaps in both legal compliance with international standards and in the implementation of laws and policies. The following section reviews progress and gaps in key areas significant to the protection of the rights of migrant domestic workers.

### Employment Rights

One key legal instrument in the protection of migrant domestic workers in Thailand is the Labour Protection Act, 1998, and its revisions in 2009 and 2011, and the various ministerial regulations issued by the Ministry of Labour in support of the Act. Both Thai and non-Thai employees are protected under the Act, regardless of their legal status, and under the Civil and Commercial Code, unless stipulated otherwise in the Act.

In November 2012, the Ministry of Labour issued Ministerial Regulation No. 14 in an attempt to increase the protection and rights of domestic workers. The Ministerial Regulation cancelled non-applicability of a number of articles under the law to domestic workers, namely non-entitlements to traditional holidays, sick leave, annual leave and minimum age of employment.

The Labour Protection Act and its associated ministerial regulations currently provide the following entitlements to domestic and migrant domestic workers.

- Equal treatment of women and men: The Labour Protection Act requires equal treatment of female and male workers with respect to employment, except in cases where the nature of work or work conditions do not allow (Article 5)<sup>13</sup>.
- Sexual harassment: Article 16 of the Act prohibits sexual harassment by employers.
- Holidays: Domestic workers and migrant domestic workers are entitled to at least one day off per week, after a maximum of six days of consecutive work (Article 28). They are also entitled to no less than 13 days of annual leave, which employers are required to announce at least one year in advance (Article 29). After one year of work, domestic and migrant domestic workers are entitled to six days of annual leave, which can be accrued to the following years.
- Sick leave: Domestic and migrant domestic workers are entitled to sick leave. In a case where the sick leave lasts longer than three days, employers may require a medical certificate (Article 32).
- Termination of contract: A work contract ends on the date of termination without prior notice. In a case of contracts with unlimited duration, employers or employees can terminate the contract in writing prior to a pay cycle for the termination to be effective at the next pay cycle. Immediate termination is allowed in cases of wrongdoings from employees in accordance with the Act or the Civil and Commercial Code (Article 17).

Ministerial Regulation No. 14 still excludes domestic workers and migrant domestic workers from the following protections in the Act.

- Working hours: Articles in relation to determination of working hours of a maximum of eight hours per day, and that of a one-hour break after five consecutive hours of work (or four consecutive hours of work, in the case of workers below 18 years of age), are not applicable to domestic workers and migrant domestic workers (Article 46, 47, 48), even through the Article prohibiting hiring young people below 15 years old applies (Article 44). Employers are also not required to specify the starting and ending of working hours to domestic workers and migrant domestic workers under this exemption (Articles 23, 25, 27).
- Overtime payment: Articles with regard to overtime payment are exempted from application to domestic workers and migrant domestic workers (Articles 24, 26, 53- 55, 58, 60-61, 63, 65, 68-77).
- Minimum Wage: Articles in relation to the Wage Committee (Articles 78-91) are not applicable to domestic workers and migrant domestic workers. Accordingly, they are not entitled to the minimum wage.
- Employees younger than 18 years of age: Although the Act bars employment of youth younger than 15 years of age, the articles in the Act aiming to protect employees younger than an age of 18 years old in terms of working hours, working conditions, types of work, and entitlement to take leave for capacity development are not applicable to domestic workers, whether nationals or migrants.
- Welfare: Articles on welfare of workers are not applicable to domestic workers (Section 7).

13 It should be noted that an observation of the ILO Committee on the Application of Conventions and Recommendations (CEACR) released in 2011 states that protection under this article is narrower than that stipulated in the Equal Remuneration Convention, 1951 (ILO No. 100) which Thailand ratified. The State party is encouraged to amend the law to an effect that women and men enjoy equal pay for equal work (ILO publication, undated).



- Protection of pregnant women: Articles on compensation during maternity leave (Article 41 and 59) are not applicable to national or migrant domestic workers. The same goes for articles barring dismissal on grounds of pregnancy and prohibition of pregnant women in performing certain tasks (Article 39).
- Capacity development and well-being of women workers: Domestic workers are not covered by Article 36 entitling employees to take leave for training and capacity building, as stipulated in ministerial regulations. In addition, Article 37 protecting women from carrying items that are too heavy is not applicable to domestic workers.

Discrepancies in benefits and entitlements amongst types of workers exemplify gaps in full compliance with international commitments. They also have both direct and indirect gender discriminatory impacts, as a great majority of domestic workers are women (UN Women, 2013).

## Social Protection

Article 33 of the Social Security Act, 1990 (Amended 1999) covers employees aged 15 to 60 years old. The Social Security Act, 1990 (Amended 1999) identifies seven areas of coverage for employees: compensation for non-work related accidents and illness, maternity benefits, compensation for non-work related disabilities, compensation for non-work related death, child care benefits, old age benefits and unemployment benefits.<sup>14</sup> A Ministerial Regulation issued in 1992 specifies application of the Act to an undertaking having one employee or more<sup>15</sup>. However, the definition of “employee” in Article 5 only covers “any person who works for the employer in return for wages irrespective of the name of such relationship, but does not include a person who works for the employer who does housework which is not related to a business undertaking.” Accordingly, migrant domestic workers are only eligible under the Social Security Act if the household also engages in business with the migrant domestic worker’s help. This coverage is also based only on an assumption that employers enroll workers in the Social Security Scheme, which is found to be rare.

There are different interpretations whether national and migrant domestic workers are covered by Article 39 and 40 of the Social Security Act. Article 39 covers workers who were employees under Article 33 and become unemployed but had contributed to the Social Security Fund for no less than 12 months. Article 40 covers workers who are not considered ‘employees’ and whose benefits in accordance to the Act are determined by the associated Royal Decree which includes compensation for non-work related accidents and illnesses, non-work related disabilities, death and old age. Benefits under the Royal Decree vary depending on the amount of contribution by an insured person and the consecutive period of contribution.

Migrant domestic workers risk both direct and indirect discrimination vis-à-vis coverage under the Social Security Act. Non-coverage by the Social Security Act of national and migrant domestic workers has a gender discriminatory impact, as a great majority of domestic workers in Thailand are women (UN Women 2013). Even if an employer decides to insure an eligible migrant domestic worker under the Social Security Act, actual benefits could be minimal. Benefits such as old age benefits require a continuous contribution of 15 years, which is not a likely scenario for migrant workers. Coverage under Article 39 and 40, if interpreted to cover national and migrant domestic workers, migrant domestic workers would be less likely to contribute over long consecutive months. Migrants are required by the Alien Employment Act of 2008 to leave the country within seven days after termination of contracts unless new employment is secured (UN Women, 2013).

<sup>14</sup> The unemployment benefits are not yet applicable to an insured person under Article 39.

<sup>15</sup> The decrease in the number of employees in an undertaking required to join the Social Security Scheme - from ten employees or more as originally stipulated in the Act to one employee or more as in the ministerial regulation - is favourable to employees.

**Table 7.3: Number of migrant workers insured under the Social Security Act**

Year/Country of origin	2013	2014 (as of May)
Myanmar	239,462	244,438
Lao People's Democratic Republic	11,297	10,341
Cambodia	72,125	70,723
Others	74,362	75,014
<b>Total</b>	<b>397,246</b>	<b>400,561</b>

Source: Research and Development Division, Social Security Office, Ministry of Labour.

Note: There is no disaggregation by occupation.

## Health care

As of 2013, all migrant workers are required by law to have health insurance coverage, either under the Social Security Act or under the health insurance scheme for migrants administered by the Ministry of Public Health. Under the latter, migrant workers who are not eligible for social security benefits are required to purchase a health insurance card which bears an annual fee of THB 1,600 in addition to the mandatory THB 500 medical examination, or an insurance fee of THB 900 and a medical examination fee of THB 500 for the coverage of six months, or an insurance fee of THB 500 and a medical examination fee of THB 500 for the coverage of three months. Insured migrants will receive medical benefits of examination, diagnosis and treatment, including dental care, maternity care and child care up to 28 days, basic vaccine for children up to 15 years old, and ARV. Benefits are not paid for psychosis, organ transplant, denture, hemodialysis, and peritoneal dialysis among others (Order of the Ministry of Public Health, 2014).

The enrollment rate of migrants in the health insurance scheme remains low in general. A point of concern in the scheme is the mandatory testing for pregnancy, although normally hospitals are required to keep the results confidential. Examinations considered as preventive measures with regards to reproductive health are not included. In addition, exclusion of treatment for psychosis may exclude migrant domestic workers suffering abuse, whose treatment is required.

## Skill development and education

Non-formal education courses are available to migrant workers, including migrant domestic workers. Children of migrant workers, including migrant domestic workers, are also entitled to basic education in Thailand. The Labour Protection Act entitles employees to leave for training and skills development (Article 36). This Article, however, is not applicable to national and migrant domestic workers.

CEDAW Article 10 obligates State parties to ensure women's equal rights with men in the field of education, including "the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women". The majority of national and migrant domestic workers are women.

## Protection against violence and abuse

Thailand promulgated the Protection of Domestic Violence Victims Act in 2007. The Act, often referred to as the DV Act, defines "family members" as spouse or ex-spouse, a person who cohabits or used to cohabit as

husband and wife without marriage registration, legitimate child, adopted child, member of family, including the persons who live mutually in the same household. Although clear and standard interpretations of who are “family members” remain contested amongst different legal professionals, it is indeed an intention of the law to extend protection against domestic violence to live-in domestic workers. Whether the Act includes domestic workers who do not live in the household with employers is debatable.

The Act binds witnesses of or people suspecting occurrence of domestic violence to report the case. This is an attempt to bring out domestic violence from being a “private” issue to a public and shared social responsibility. The Protection of Domestic Violence Victims Act contains articles which provide for the setting up of a multi-sectoral coordination system that guarantees survivors’ access to support, relief and protection services. The services and relief prescribed by law to survivors include: emergency interventions, such as medical examination and treatment; financial relief; injunctive orders, both pre-litigation and during court proceedings; and provision of care for affected children. In addition, the Act provides for psychological treatment and rehabilitation of perpetrators and temporary protection for victims.

However, full enactment of the law could only happen if and when the victim agrees to press charges. This is one of the major criticisms of the DV Act. Other gaps vis-à-vis international standards are the goal of the Act of “preservation and protection of families” and the fact that sexual violence is not explicitly stated as an act of domestic violence<sup>16</sup>.

In April 2013, the Royal Thai Government launched the One Stop Crisis Center initiative,<sup>17</sup> coordinated by the Ministry of Social Development and Human Security. The One Stop Crisis Center (OSCC) is meant to be a comprehensive, integrated and inter-linked reporting, referral and response system for inter-ministerial support services to women and children subject to trafficking, teenage pregnancy, child labour, violence against women and children, and domestic violence. Migrant workers are covered, although it is generally more difficult for migrant domestic workers to have access to the OSCC due to their isolation of work in a private sphere.

### Trafficking and forced labour<sup>18</sup>

Thailand is a source, destination and transit country for women, men and children subjected to forced labour and sex trafficking from the neighbouring countries. Common forms of human trafficking uncovered in Thailand are sexual exploitation, forced labour or service and begging (Thailand Situation and Progress Report on Prevention and Suppression of Trafficking in Person, Ministry of Social Development and Human Security, 2013). Domestic work forms a significant portion of labour trafficking victims within Thailand, together with fishing and fishing-related industries, low-end garment production, factories and forced street beggars (Thailand Trafficking Report, 2014). In the case of domestic workers, the isolated nature of their work, vaguely defined working hours and conditions, and exclusion from a number of articles of the Labour Protection Act also put them at risks of falling into forced labour.

The Royal Thai Government has demonstrated continual efforts to fight trafficking. On 6 August 2004, the Government declared anti-human trafficking as a national agenda. The Anti-Human Trafficking Operational

<sup>16</sup> The Act describes domestic violence as any conduct performed with the intention to inflict harm on a family member’s physical, mental or health condition, or with the intention that is likely to cause harm to a family member’s physical, mental or health condition, or any use of coercion or unethical dominance which compels a family member to commit, omit or accept any unlawful act, except an act committed through negligence.

<sup>17</sup> The One Stop Crisis Center launched in 2013 builds upon and integrates the existing and functioning One Stop Crisis Center for Women and Children operated by the Ministry of Public Health.

<sup>18</sup> Refer also to chapter 9 on human trafficking.

Center was set up in 2005 under the Ministry of Social Development and Human Security, followed by the establishment of the Provincial Anti-Human Trafficking Operational Centers nationwide. In 2008, Thailand promulgated the Anti-Trafficking in Persons Act, under which two inter-ministerial committees for policy-setting and for coordination were set up, namely the Anti-Trafficking in Persons Committee chaired by the Prime Minister, responsible for setting policies and determining strategies and measures to address the issue of human trafficking, and the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee chaired by the Deputy Prime Minister which has the duties of coordinating and monitoring the performance of all relevant Ministries and government agencies.

In 2009, the Anti-Human Trafficking Division, Royal Thai Police was established, and over 7,000 police officers received training in anti-trafficking from 2009 to 2011. In 2010, the Cabinet adopted the National Policy, Strategies and Measures for the Prevention and Suppression of Human Trafficking, 2011-2016. The Thai strategy in combating human trafficking is based on the 5P's approach; Prosecution and Law Enforcement, protection, prevention, policy and mechanisms to drive the policy, and partnership. The Royal Thai Police subsequently announced the Plan on Children, Women, and Family Protection and Anti-Trafficking in 2012. The One Stop Crisis Center set up in April 2013 targets trafficking as one of its four priorities. In October 2013, Thailand ratified the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

In 2013, Thailand's National Operating Center for Prevention and Suppression of Human Trafficking reported achievements in identifying 674 human trafficking cases<sup>19</sup>, an increase of 428 cases over 2012. Over the year 2013, 483 individuals were prosecuted in a total of 386 cases. The Ministry of Labour was reported to have punished private employment companies by withdrawing licenses of 2 companies, suspending licenses of 4 companies and taking criminal actions against 9 companies. In addition, legal actions were taken against illegal job brokers totaling 155 cases. The Center highlighted that in 2013, the state-operated Government's shelters provided support to 681 trafficked individuals, 376 of whom are from Myanmar, Lao People's Democratic Republic and Cambodia. 128 trafficked victims were supported to work outside the shelter (Thailand Situation and Progress Report on Prevention and Suppression of Trafficking in Persons, 2013).

Remaining gaps are found in interagency coordination, data collection systems, human and financial resources, bureaucracies in justice administration, corruption across borders, awareness and understanding of duty bearers and effective regulation of recruitment and employment agencies. Suspected cases of forced labour accounted for less than one quarter of investigations, despite reports of a high prevalence of labour trafficking in Thailand. The 2008 Anti-Human Trafficking Act mandated issuance of temporary work permits to adult victims of trafficking during legal proceedings. The Government also provides shelters for trafficked victims. However, adult sex trafficking victims are not eligible for work permits. Many undocumented migrants also opt not to be identified as victims, fearing legal consequences in interacting with authorities, or opt not to be classified as trafficked victims and are deported (Thailand TIP Report 2013 and 2014).

The Government is committed to improve the following in 2014: speeding up of legal proceedings, claiming for civil compensation, victim identification, cooperation amongst agencies in the criminal justice system and other related agencies, including with private associations, such as the fisheries association, speeding up of temporary stay allowance for trafficked victims, interpretation services, improvement of labour inspection and labour registration, as well as cooperation with countries of origin and international cooperation (Thailand Situation and Progress Report on Prevention and Suppression of Trafficking in Persons, 2013).

In Thailand, NGOs have significant roles in the identification of potential trafficking victims and forced labour. They work in partnership with Government agencies. Academic and NGO members sit formally as experts

19 Among them, 520 involved sexual exploitation, 80 labour exploitation, and 74 begging.

in the National Anti-Trafficking Committee.

Thailand is currently in Tier 3 of the United States Department of State Trafficking in Persons Report issued in June 2014.

### Freedom of association and the right to collective bargaining

Ability and space to organize are important for self-development of migrant domestic workers and allow a platform for collective decisions, negotiation and advocacy on policies and practices affecting their lives. This space is significant particularly for women who are generally less likely to formally organize and thus are more likely to have fewer experiences in skills of public engagement than men. Forming themselves in groups is allowed, but the positioning of a trade union would bear more weight in negotiations.

Efforts to organize domestic workers have grown in recent years. With support of Home Net Thailand, the ILO and other organizations, a national conference of Thai and non-Thai domestic workers was convened in 2011. The national conference resulted in the establishment of the National Network of Domestic Workers in Thailand, which brought together domestic workers from Thailand and Myanmar. The Network is membership-based and adopted its first statutes and leadership at its Second National Conference in 2013. The fragile status of migrant domestic workers, especially from Myanmar, is of increasing concern to the Network, as migrant domestic workers lack legal protection due to inconsistent and ad-hoc emigration and immigration rules and regulations.

One of the key obstacles to organizing by national and migrant domestic workers as listed by NGO advocates is the uncoordinated leave days amongst members of the group, and their inability to plan leave days in advance.

In accordance with the Labour Relations Act, a group of 10 or more Thai workers in the same factory or industry can form a trade union<sup>20</sup>. Migrant workers can participate in a Thai trade union, but are not allowed to form their own trade union or serve on an executive committee of a Thai-led trade union. In any case, the requirement of trade unions being formed by workers in the same industry makes it impossible for domestic workers to join any such trade union.

### Access to justice

The Labour Protection Act permits all migrant workers to file complaints under labour, criminal and civil laws; they can also file complaints to the labour inspection officers (Section 14). The Act additionally authorizes the court to rule on unfair contracts or work-related rules and regulations, and to determine applicability of only those that are fair to Thai and migrant employees (Article 14/1). These include migrant domestic workers.

In reality, however, it is difficult for migrant domestic workers to access this complaint mechanism due to the isolated nature of their work, lack of awareness and understanding of their rights, insufficient numbers of labour inspection officers, and dependency of migrant domestic workers on their employers. Many migrant domestic workers entered Thailand via an irregular channel and are undocumented, thus reporting abuse or exploitation to public officials increases their risk of being deported. Also, employees are required to leave the country within seven days after termination of contract unless new employment is secured. This puts migrant workers, including migrant domestic workers, in a disadvantaged position, and does not allow them to be able to seek justice in time in Thailand.

<sup>20</sup> According to Article 91 of the Labour Relations Act 1975, the Registrar has a discretion not to register a trade union should the registration of such trade union be found to be against public order. The requester has an option of petition to the Labour Minister, and subsequently to the Labour Court.

## Addressing discrimination

Perceptions and attitude towards migrants and women influence design and implementation of laws, policies and programmes vis-à-vis migrant and women migrant workers.

Discriminatory perceptions towards low-skilled and low-wage migrant workers are not uncommon in Thai society. The general outlook towards migrants is still largely defined within the cognitive framework of national security. A study conducted in Thailand on public attitudes to migrant workers found that 40 per cent of the 541 respondents think that migrant workers make a net contribution to the economy. Approximately 50 per cent feel that national and migrant workers should be treated equally. Around 80 per cent agree completely or to some extent that unauthorized migrants cannot expect to have any rights at work, that migrant workers commit a high number of crimes, and that government policies to admit migrants should be more restrictive (ILO, 2013).

The National Plan for the Advancement of Women, 2012-2016 highlights gender stereotypes and discriminatory attitudes as the root causes of gender inequality in Thailand. The 2007 Constitution guarantees equal rights between men and women and prohibits discrimination on grounds of race and sex, amongst others. However, there is no explicit definition of discrimination in the Constitution or any other law, nor is there an explicit reference to substantive equality and its concept in a national law.

To address this gap and in response to the CEDAW Committee's Concluding Observation, Thailand is in the process of drafting the Gender Equality Bill. There are currently three key drafts of the Gender Equality Bill ready to be reviewed: the Government draft, a draft by women's organizations, and a draft by the Law Reform Commission of Thailand, which was supported by UN Women. Inclusion of all 13 substantive areas under CEDAW as well as of the ensuing legal rights and obligations in the Gender Equality Law would represent a good practice and full compliance with CEDAW (UN Women, 2009).

Thailand has lifted all its reservations to CEDAW substantive areas except the reservation on Article 16 on marriage and family relations, which Thailand intends to lift in the next State report session of the CEDAW Committee.

The National Human Rights Commission of Thailand is also developing compliance indicators for all core international treaties, including CEDAW and MWC, although Thailand has not ratified the MWC. This forthcoming effort is commended.

## Other policy measures

Following are other key policy measures which contribute towards full protection of migrant domestic workers in recent years (UN Women, 2013).

- The nationality verification (NV) process, which allows for regularization of migrant workers (see chapter 2);
- Memoranda of Understanding (MoU) with Cambodia, Lao People's Democratic Republic and Myanmar, which establish regular migration channels and contain agreement to provide a level of protection to migrant workers;
- Provision of interpreters in the areas where a large numbers of migrant workers are hired;
- Coordination with embassies to help migrant workers file cases against abusive employers;
- Production and dissemination of pamphlets on basic rights of migrant workers in origin-country languages;



- Usage of media to provide information on legal issues and places for assistance in case of violations;
- Provision of 24-hour hotline services and provision of legal services;
- Provision of assistance and welfare to migrant workers who have been deceived.

## Conclusion

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From the perspective of the intersectionalities of discrimination against migrant domestic workers in Thailand, almost all of whom are women, despite remaining gaps, positive trends have been observed in the Government's and non-governmental organizations' efforts to increase support and protection.

The most notable progress lies in the greater inclusiveness of the labour law concerning entitlements for domestic work through the issuance of Labour Ministerial Regulation No. 14. There are also policies and programmes which, if effectively implemented, could pave the way for full protection of rights of migrant workers, such as the NV process and other support mechanisms to migrants. Inclusion of domestic workers as family members in the Protection of Domestic Violence Victims Act 2007 is a positive step. Thailand has also announced laws and implemented policies towards empowerment and gender equality overall. Thailand has especially committed to the UN Women COMMIT to end violence against women campaign through promotion of gender equality, promulgation and amendment of laws, capacity building, response and prevention.

Remaining gaps to be addressed relate to the rights in the Labour Protection Act not applicable to domestic workers, effective implementation of laws, and access to justice and redress. Taking into account the limited and up-to-date information and knowledge on migrant domestic workers, efforts could be made to develop programmes specifically to address the needs and rights of migrant domestic workers from a gender and human rights perspective, considering the intersectionalities of their vulnerabilities.

## Policy Recommendations

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- Accede the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ratify the ILO Convention Concerning Decent Work for Domestic Workers, No. 189.
- Ratify the Freedom of Association and Collective Bargaining Conventions to ensure access of migrant domestic workers to representative unions.
- Promulgate the Gender Equality Act that addresses substantive equality, direct and indirect discrimination, and embodies the CEDAW principles.
- Enhance gender sensitivity in Thai society in general. Develop and implement gender-sensitive policies aiming to improve social status of women and to end gender biases and gendered labour segregation.
- Increase awareness of migrant domestic workers, employers, recruitment agencies, public officials, the media and the public at large on the rights of migrant domestic workers, State obligations and benefits that migrant workers and migrant domestic workers bring to the Thai society.
- Increase protection of domestic work through including domestic workers in all entitlements under the Labour Protection Act and other laws. Review good practices both internationally and regionally to overcome existing limitations, such as determination of working period and overtime.

- Develop a system to register documented and undocumented national and migrant domestic workers, as well as a system of incentives for employers and migrant domestic workers to register.
- Encourage more and in-depth research on migrant domestic workers.
- Develop and institutionalize training and capacity building of social and justice stakeholders on gender sensitivities, human rights and related international treaties, including those involved in the implementation of the Anti-trafficking in Persons Act and the Protection of Domestic Violence Victims Act.
- Promote the rights of migrant workers to organize through consideration of amendment of laws prohibiting migrants' trade unions; support organization of domestic workers, especially of migrant domestic workers.
- Regulate recruitment and employment agencies to ensure protection of rights of women migrant workers and domestic workers.
- Ensure accessibility of protection officers to the workplace of migrant domestic workers.
- Put in place easily accessible dispute resolution mechanisms to ensure access to justice and protection.
- Consider amending related laws to allow a period where migrants can change employer without losing their legal work status.
- Ensure that travel and identification documents of migrant domestic workers are not confiscated by private entities or individuals.
- Support and work in partnership with non-governmental agencies in the promotion and protection of rights of migrant domestic workers.
- Ensure opportunities and access to training, skills-building and self-development by migrant domestic workers.
- Develop programmes specifically to address needs and rights of migrant domestic workers from gender and human rights perspectives, taking into account the intersectionalities of their vulnerabilities.

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Over the course of the past two decades, there has been a substantial shift in migration patterns towards increased intraregional labour migration flows within the Greater Mekong Subregion (GMS). As an economic hub for the GMS, Thailand has also become the major receiving country for migrants. Structural differences in population demographics and economic development between Thailand and its neighbouring countries have encouraged workers to migrate from Cambodia, Lao People's Democratic Republic and Myanmar to fill gaps in the labour market.

Policy efforts have been made to establish channels for regular labour migration to Thailand to manage these movements. However, the bilateral agreements and regularization regimes enacted have yet to wholly fulfil their objectives of instituting a safe, legal and orderly labour migration process. A significant remaining gap is the policy and implementation of complaint mechanisms, which currently leaves migrant workers without adequate means to seek redress for rights violations during recruitment and employment. The intrinsic vulnerability of working outside of their country of origin is further exacerbated by the absence of fair, efficient, and accessible channels to resolve grievances and act as a deterrent against abuses.

To ameliorate this protection deficit, the International Labour Organization (ILO) and the Ministry of Labour are collaborating to strengthen the system for receiving and resolving complaints—including the compensation process for complainants and punitive actions taken against offenders. To substantiate the changes needed, an analysis of the legal framework and the existing complaint mechanisms (in relation to international standards) has been conducted by the ILO's Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project). The results of the analysis were used to distill good practices and develop recommendations for improving the mechanisms available to migrant workers for settlement of grievances related to recruitment, labour rights, and social security violations.

## International standards for migrant worker complaint mechanisms

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### Recruitment complaints

Although private employment agencies were generally looked upon unfavourably and banned in many countries during much of the twentieth century due to their potential for abuse and exploitation of workers, the changes in labour markets that have occurred over the past several decades led to a reassessment of the potential for private employment agencies to make a positive contribution (Hansen, 2006). This new perspective on the function and regulation of employment agencies was established in international law under the ILO's Private Employment Agencies Convention, 1997 (No. 181).

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Convention No. 181 was developed to improve the efficiency of labour markets by providing guidance on how private agencies can contribute towards greater matching of the supply and demand of labour, and by establishing programmes for partnership with public organizations to assist unemployed workers in re-entering the labour market. The Convention also provides for the regulation of private employment agencies to ensure fair practices and help prevent human trafficking and other forms of exploitation. Its articles specifically include recruitment of migrant workers within their scope, and recommend that additional bilateral agreements be concluded to prevent abuses and fraudulent practices for workers recruited in one country for work in another. Ratification of the Convention, however, has been limited so far to 28 countries globally. As of 2013, Japan and Fiji are the only ILO Member States in Asia and the Pacific to ratify the Convention. Thailand has yet to indicate any plans to accede.

Article 10 of the Convention establishes the basis in international law for enacting recruitment complaint mechanisms:

*“The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.”*

Through complaint mechanisms, jobseekers who have been exploited or deceived during the recruitment process have the opportunity to access justice and seek remedy. The ILO stresses that “complaint mechanisms should be based on a differentiated approach, allowing for settlement among the different parties before choosing adjudication” (ILO, 2007:48). This allows for alternative channels for the resolution of complaints rather than immediately proceeding to formal adjudication in court. The Organization for Security and Co-operation in Europe–International Organization for Migration–ILO Handbook on Establishing Effective Labour Migration Policies provides a model of a three-tiered system for the handling of complaints:

**Table 8.1: Recommendations for a three-tiered complaint mechanism**

<p><b>Tier 1: Private employment agencies</b></p> <p>In the event of abusive employment conditions abroad, the migrant should first contact the employment agency that hired him or her. The employment agency should then attempt to settle the dispute between employee and employer amicably and by voluntary agreement.</p>
<p><b>Tier 2: Responsible state authority</b></p> <p>If tier 1 fails, then the appropriate institutions should provide impartial and effective third-party assistance through conciliation, arbitration, and mediation. Institutions should get in touch with their counterparts in the country of employment. Should the complaint be proven, the responsible authority should revoke or suspend the licenses or satisfy claims for refunding.</p>
<p><b>Tier 3: Adjudication</b></p> <p>Though prolonged and costly, this is the best way to deal with serious abuses of human rights in the recruitment process, including human trafficking. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment come within the jurisdiction of the courts.</p>

Source: Baruah and Cholewinski, 2006.

Although some countries require jobseekers to file complaints in labour courts, this has in many cases led to an overly expensive, prolonged and excessively legalistic adjudication process. It has been found that

setting up an administrative grievance procedure to supplement adjudication in labour courts may provide a more effective system for handling of recruitment complaints. This can allow for greater accessibility to justice for workers wanting to file a complaint against a private employment agency as well as more timely resolution of complaint cases (ILO, 2007).

If sufficient evidence of malpractice is found during the investigation of complaints, warnings, administrative, or penal sanctions should be imposed against offenders in addition to requiring compensation payments (Baruah and Cholewinski, 2006). Without the establishment and enforcement of an apportioned system of penalties for private employment agencies that violate the laws that govern their operations, legislation enacted to regulate worker recruitment is largely ineffective at deterring misconduct and abuse. The type of sanctions applied should be based upon the form of the infraction as well as whether it is a first or repeat offence (ILO, 2007).

### Labour rights complaints

Several ILO and United Nations (UN) conventions are relevant to the establishment of complaint mechanisms for labour rights violations against migrant workers, including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143), and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families.

However, Thailand has yet to ratify any of the three migrant worker treaties. The relatively small number of ratifications for these instruments globally, together with ineffectual implementation in some countries, has encouraged the development of alternative approaches to providing mechanisms for redress to protect the labour rights of migrant workers. A key ILO instrument for encouraging Member States to make such mechanisms more widely available has been the non-binding Multilateral Framework on Labour Migration, which provides a comprehensive set of rights-based guidelines and principles developed through tripartite global consensus. Within Principle 10 of the Framework, the guidelines state that national laws and regulations should include the following provisions for protecting migrant worker rights:

**Table 8.2: ILO Multilateral Framework guidelines on complaint mechanisms**

10.5	providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;
10.6	providing for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;
10.7	providing effective sanctions and penalties for all those responsible for violating migrant workers' rights;
10.8	providing information to migrant workers on their rights and assisting them with defending their rights;
10.9	providing information to employers' and workers' organizations concerning the rights of migrant workers;
10.10	providing interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary;
10.11	offering legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration.

Source: ILO, 2006.

While ILO Member States are not obligated to follow these guidelines, in the absence of a more accepted international treaty governing cross-border labour migration, the Multilateral Framework represents the broadest consensus on detailed standards for providing complaint mechanisms to migrant workers.

Reflecting many of these same principles, the Association of Southeast Asian Nations (ASEAN) adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers during the twelfth ASEAN Summit in January 2007. Although not specifically requiring the establishment of complaint mechanisms for labour rights abuses, two of the obligations for receiving countries within the Declaration do call for facilitating access to justice and legal remedies for migrant workers in cases of discrimination, exploitation, and abuse.

### Social security complaints

The principal ILO convention establishing the international standards for provision of social security benefits is the Social Security (Minimum Standards) Convention, 1952 (No. 102)<sup>3</sup>. Within the Convention, Article 70 obligates ratifying states to ensure the rights of beneficiaries to file complaints and appeals:

*“Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.”*

More recent guidelines for provision of social security complaint mechanisms have been set by the Social Protection Floors Recommendation, 2012 (No. 202). The aim of the Recommendation is the establishment of national social protection floors, extending social security both vertically (providing more comprehensive services and benefits) and horizontally (extending coverage to a greater number) to cover all groups (ILO, 2012). In supporting these objectives, administration of complaint mechanisms plays an important role in ensuring access to benefits and compliance with national social security laws. Article 7 of the Social Protection Floors Recommendation advises that:

*“Basic social security guarantees should be established by law. National laws and regulations should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks.”*

In some countries, poor enforcement of compliance in the sectors of the labour market in which migrants are employed leaves a large proportion uncovered by social security schemes (Tamagno, 2008). As both a preventative measure and a means for facilitating access to justice, there is a need to provide strong and effective mechanisms for resolving grievances related to these failures to provide benefits.

## Good practices for migrant worker complaint mechanisms

### Philippines (sending country good practices)

The Philippines’ employment-driven emigration policies facilitate the temporary labour migration of nationals while providing strong mechanisms for worker protection—with the goal of harnessing the impact

<sup>3</sup> Although Thailand has not acceded to Convention No. 102, it has ratified the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). The ILO’s Committee of Experts on the Application of Conventions and Recommendations has adopted several observations in recent years which are critical of Thailand’s implementation of the articles of Convention No. 19 in relation to provision of workmen’s compensation benefits to migrant workers.

of remittances for national development (ILO, 2006). Particularly in regulating its sizeable recruitment industry, the innovative approaches developed in the Philippines have come to be widely recognized as providing models of good practice for sending countries.

The Philippines Overseas Employment Administration (POEA) has oversight of the labour emigration process and issues licenses to qualifying Philippines-based private employment agencies. The broad orientation of the POEA licensing policy can be characterized as “difficult to enter, easy to remove.”

Licensed private employment agencies are required to enter into legally enforceable work contracts with workers seeking employment abroad. The POEA regulates these agreements by requiring an initial approval, monitoring for malpractice, and prosecuting violators (ILO, 2006). To prevent corruption in the regulation of migrant worker recruitment, all government employees who work on migration-related issues are prohibited from personal involvement with private employment agencies.

The responsibility for settling compensation claims cases was transferred to the National Labour Relations Commission (NLRC) to expedite the process and to allow the POEA to focus on its core mandate of promoting employment, regulating employment agencies, and protecting the welfare of overseas workers. The NLRC is a quasi-judicial body connected institutionally to the Department of Labor and Employment (DOLE). The Commission has been given the authority to hear and resolve disputes involving employer–employee relations (including claims against private employment agencies) and to determine compensation in cases of breach of contract. The NLRC is tasked with providing an accessible and impartial medium for resolving worker grievances that avoids the cost, duration and formality of adjudication in a court. Labour arbiters are stationed throughout the country to hear claims and determine their validity (Mughal and Padilla, 2005).

The regulation of recruitment for Filipino migrant workers while abroad is administered by the Philippines Overseas Labour Offices (POLOs), which are part of the DOLE and are located in embassies in countries of destination. The POLOs are staffed with labour attachés and welfare officers who assist workers with filing complaints while at overseas worksites. They are also entitled to file a complaint with the NLRC to seek redress upon returning to the Philippines. The complaints are issued against both the employer and the private employment agency; therefore, the agency can be held solely responsible for the violation of employment contracts by foreign employers under the joint and solidary liability principle (Mughal and Padilla, 2005).

### **Singapore (receiving country good practices)**

Among receiving countries in Asia, Singapore has produced noteworthy results in providing accessible complaint mechanisms for migrant workers to seek remedy for labour rights violations. Founded upon extensive awareness-raising efforts, the Ministry of Manpower (MOM) receives 7,000 phone calls and 2,500 emails per month from national and foreign workers enquiring about employment-related concerns. Approximately 600 “statutory employment claims” are processed each month (e.g. non-payment of basic wages or overtime rates, unauthorised deductions from salary, etc.). Due to their heightened vulnerability, a special hotline has also been set up for foreign domestic workers in need of assistance (Chuan-Jin, 2012).

The Government has demonstrated substantial commitment to educating workers about their labour rights through providing orientation courses, public education posters and handbooks. In addition, public service announcements are made through the media reminding employers of their legal obligations for treatment of migrant workers and that exploitation will not be tolerated (Humanitarian Organisation for Migration Economics and Transient Workers Count Too, 2010).

When grievances are received from migrants, efforts are made to first resolve them amicably through

mediation. More than 90 per cent are settled satisfactorily within a one-month period through this approach, avoiding the need for adjudication in labour courts (UNIFEM, 2006). Should the complainant wish to pursue the case in court, they are charged a fee of only USD 2.40, ensuring that migrant workers have fair access to seek redress through legal channels (Humanitarian Organisation for Migration Economics and Transient Workers Count Too, 2010).

Based upon worker complaints and labour inspections, prosecutions for failing to pay workers promptly, deploying them illegally to multiple work sites, providing sub-standard accommodation, receiving kickbacks, ignoring occupational safety and health regulations and other violations have been regularly carried out by authorities (Humanitarian Organisation for Migration Economics and Transient Workers Count Too, 2010). For violations related to inadequate housing for migrant workers, MOM issues warnings or fines (up to approximately USD 4,000), or assists with criminal prosecution of employers. Since 2005, over 7,600 employers have been sanctioned for violations, and over 50,000 foreign workers have been relocated to more adequate housing facilities (Chuan-Jin, 2012).

Despite these achievements, concerns remain about retaliation by employers for grievances filed by migrant workers. According to the NGO Transient Workers Count Too, “Employers may fire and repatriate the worker if they find out who complained.” As their permission to stay in Singapore is linked to the work permit provided by their employer, migrant workers are forced leave the country when their permit is cancelled. NGOs have advocated for government-run shelters to be established in order to protect migrant workers during the complaint process but these have yet to be set up (Loh, 2012).

## Thailand’s legal framework for migrant worker complaint mechanisms

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### Recruitment

The primary legislation for protecting migrant workers during the recruitment process is the Recruitment and Job-Seekers Protection Act 1985 and the attendant ministerial regulations of the Ministry of Labour. By regulating the involvement of private employment agencies in the recruitment of workers and providing legal protections to jobseekers, the law allows licensed agencies to offer employment services for outbound Thai migrant workers. The Ministry of Labour’s Department of Employment (DOE) is the agency mandated to enforce the Act.

However, a major policy gap has emerged due to the Act being drafted before large-scale in-migration had begun to take place in Thailand. There are no specific provisions related to the protection of foreign jobseekers during recruitment or regulating the operations of Thai private employment agencies providing services under the MOU process. A corollary has been that no clear procedures or institutional frameworks have been established to provide protections, including mechanisms to file grievances, during the recruitment process for inbound migrant workers. Therefore, many labour officials interpret the law as only applying to Thai workers going overseas.

To assist with clarifying this legal ambiguity, the Department of Employment sought the opinion of the Council of State about whether the acts of businesses providing services to facilitate the entry and placement of migrant workers with Thai employers are covered by the provisions of the Recruitment and Job-Seekers Protection Act. In response, the Council issued a letter in February 2013 stating that the act of recruitment defined under the law is not limited only to Thai jobseekers but instead includes any person seeking employment. Furthermore, the Council took the position that the provisions within Chapter II of



the law, which stipulate the requirements for licensing, operation, and reporting of domestic employment agencies, are enforceable for agencies recruiting migrant workers under the MOU agreements. Whether this legal opinion will stand up in a court of law remains untested.

Even for recruitment services provided to Thai migrant workers, where enforcement is clearly mandated, the Act's provisions have become somewhat outdated to effectively regulating private employment agencies. Both licensed and unlicensed private employment agencies and brokers continue to adapt their techniques for avoiding accountability in recruitment misconduct, far outpacing the rate of legislative amendments. For example, many licensed agencies now make use of unlicensed "sub-agents" or brokers who are not formally in their employ when recruiting in local villages. This allows licensed agencies to circumvent the regulations governing their operations by using the sub-agents as proxies. In so doing, they can distance themselves from legal responsibility for the illicit practices applied. This and other limitations contained within the provisions of the Act, as well as inadequate enforcement, have allowed for frequent offences and infractions to take place.

In the rare cases in which penalties against offenders have been enforced, the most commonly imposed sanction has been a temporary license suspension of 30-120 days, or a probationary period for the offender. Between 2004 and 2010, only six private employment agencies actually had their licenses permanently revoked for recruitment-related offences – despite evidence of widespread malpractice within the industry (Chantavanich et al., 2010:103; DOE, 2011). Because out-of-court settlements that provide inequitable compensation have become the norm, and further punitive measures applied for unlawful practices a rarity, a deeply rooted culture of impunity has developed within segments of the Thai recruitment industry.

## Labour Protection

The Labour Protection Act 1998 provides both nationals and migrant workers in Thailand – including irregular migrants – with the right to register complaints related to a broad range of offenses. The Ministry of Labour's Department of Labour Protection and Welfare has been delegated with responsibility for enforcement of the Act, including accepting complaints regarding:

1. Working hours, rest hours, holidays, and leave
2. Wages, payment schedules, overtime pay, holiday pay, and severance pay
3. Disciplinary actions and termination of employment
4. Occupational safety and health
5. Discriminatory treatment
6. Sexual harassment and physical threats
7. Job duties for pregnant women
8. Labour of women and children

Under Chapter 12 of the Act, complaints for violations or non-compliance are to be lodged with the Labour Inspector for the locality. The Inspector is required to investigate the facts of the complaint and issue an order within 60 days of receipt. If the enquiry finds that a transgression has been committed, and the offender agrees to pay compensation, the Inspector can present the case to the Director-General or the Governor for settlement. If any of the parties involved are not satisfied with the order issued, they can bring the case to the labour court within 30 days. Alternatively, complaints can be also be resolved through adjudication in the labour court from their initiation. Within Chapter 16, the Act stipulates the penalties to be applied for violating its provisions, including fines of THB 2,000-200,000, prison sentences of one month to one year, or both.

It should also be noted that the Occupational Safety, Health and Environment Act 2011 was recently promulgated, updating and expanding the inspection mandate of the Department of Labour Protection and Welfare. Under section 36 of the Act, Safety Inspectors are granted the authority to inspect workplaces during working hours or when an incident is reported—including in response to employee complaints. Penalties for non-compliance with the Act include fines of up to THB 50,000-800,000, prison sentences of three months to two years, or both. In addition, the Act prohibits termination of an employee or the restructuring of their work duties due to registering a complaint or providing evidence to a safety inspector or the court.

In practice, however, many migrant workers are not able to exercise their right to seek redress for violations by employers. Lack of understanding among migrant workers about their rights under the law, as well as the basic constraints posed by language barriers, fears about accessing government services, and retaliation by employers, means that utilization remains very slight in relation to the prevalence of labour rights abuses known to be occurring. For example, although a hotline number has been established to provide consultations and receive complaints anonymously from workers and employers (1546), the Department of Labour Protection and Welfare reported that none of the approximately 200 calls they receive per day are from migrants from Myanmar, Lao People's Democratic Republic, or Cambodia. As of late 2013, the hotline does not have any staff that speak Myanmar or Cambodian to assist with handling of such calls in any case.

Studies have shown that only a small number of migrant workers attempt to file grievances for labour rights violations through any channel, and that most of those who do complain are unwilling to go to the responsible authorities. The findings of a survey of over 400 migrants carried out in four provinces of Thailand found that the vast majority of respondents (89%) had never filed a complaint for a rights violation and that only one-third would consider contacting authorities if their wages were withheld (Rajabhat Suan Dusit University, 2011). Triangulation against official data in Samut Sakhon province, among the largest seafood processing industrial areas in Thailand and known to employ hundreds of thousands of migrant workers, bears out these findings; a total of just 70 migrant workers filed complaints with the provincial labour authorities during 2013.

Similar results were obtained by a survey of nearly 600 workers in Thailand's fishing sector, with the vast majority (95%) stating they had never lodged a complaint about a rights violation, and most reporting that they were unlikely to seek assistance from a government official if they were to do so (93%) (Chantavanich et al., 2013). Importantly, it has yet to be made clear by the Ministry of Labour how the provisions of the Occupational Safety, Health and Environment Act apply to employment on Thai fishing vessels—a markedly hazardous sector for both Thais and migrants. Consequently, little has been done in practical terms to support the right of fishers to seek redress for unsafe working conditions.

Among irregular migrants, fears about filing grievances with labour authorities appear to be even more intense, with near complete avoidance of official channels. During a qualitative assessment conducted by the ILO in Bangkok, Samut Sakhon, and Samut Prakan provinces, authorities with the Department of Labour Protection and Welfare confirmed that they never receive any complaints from irregular migrant workers, either directly or through the hotline service provided.

Instead of using official mechanisms, the small number of migrants that do seek assistance in resolving their grievances tend to make use of the services of NGOs for mediation – with the informal settlements reached limited in terms of legal enforceability and no penalties applied to curb the potential for future abuses by the offenders.

## Social Security

The Social Security Act 1990 states that employees who are 15-60 years of age shall be insured under the law, providing benefits for injury or illness, maternity, disability, death<sup>4</sup>, children, old-age, and unemployment. The Social Security Office of the Ministry of Labour is the institution responsible for enforcing the provisions of the Act.

For employers who do not fulfil their obligations to register their employees, either an officer or the worker themselves can file a complaint. The Act provides for both filing of grievances and sanction of employers who fail to register their employees within the time prescribed; making them liable to imprisonment for a term not exceeding six months, to a fine not exceeding THB 20,000, or both.

Despite the existence of this clause within the Act, generalized lack of enforcement for migrant workers has rendered it effectively toothless. Although it has been stipulated that registration is compulsory for regular migrants, as it is for Thai workers, violators are customarily neither identified nor sanctioned, leading to widespread non-compliance.

This is particularly the case for small enterprises and sub-contracting firms hiring migrants, who often simply ignore their responsibility to submit information about their employees to the Social Security Office because of their assuredness that they will not be held accountable. Even when such companies are ordered by the Office to pay a compensation claim to migrants, they may attempt to evade their financial responsibilities by relocating their operations or intentionally delaying the process through appeals so that migrants are forced to return home before payment is made.

Non-compliance by employers typically goes unchallenged by migrants because they are unaware of their rights to social security in Thailand, and may have little experience with making use of such benefits in general—coming from sending countries that lack extensive social security systems. Importantly, many do not understand that their employers are obligated to register them for benefits, and so do not file complaints with the Social Security Office when they fail to do so. In other cases, migrant workers may be willing accomplices in order to avoid paying their share of the required contributions to the Social Security Fund.

In addition, as with the other Ministry of Labour departments, interpreters are generally not provided at Social Security Offices to facilitate access. Those migrants that do visit the Office are often accompanied by their employer or a Thai human resource officer. Therefore, it can be construed that it is difficult for migrants to assert their rights to social security without the cooperation of their employer (or support from an NGO or trade union), and that pursuing remedy with authorities for violations represents a daunting challenge.

It should also be noted that a considerable structural exclusion to social security eligibility has been made for migrant workers employed in the informal sector—who are not entitled to benefits regardless of their legal status. This exemption includes several major sectors of migrant employment, encompassing tens of thousands of regular migrants working in fishing, agriculture, forestry, animal husbandry, domestic work, and other businesses.

4 In case of injury, illness, disability or death that is unrelated to performing work duties (covered by the Workmen's Compensation Act instead).

## Migrant access to complaint mechanisms

Although regular migrant workers are theoretically covered by the same protections as nationals under Thai labour laws, at local levels, there are no systematically accessible channels for them to file complaints with labour authorities. Overall, while there has been some increased willingness to cooperate with civil society organizations in providing interpretive services, insufficient effort appears to have been made by government officials to establish an institutional mandate, develop standard operating procedures or conduct awareness-raising activities to make the official mechanisms widely available to migrants.

Likewise, the measures taken to address the language barrier between officers and migrants at labour offices have yet to prove effective for a number of reasons:

1. While interpreters have been hired in certain locations, policy restrictions preventing foreigners from being employed in these positions continue to pose a substantial obstacle. The qualifications and training of these interpreters to provide support services to migrants beyond basic translation are limited, and they are not sufficiently utilized for outreach activities to build trust with migrant communities.
2. Although some offices have translated the complaint forms into migrant languages to better assist migrants, the official form submitted must still be completed in Thai.
3. When labour inspections are warranted to investigate a complaint by migrant workers, the investigating officers often make use of an interpreter provided by the employer, which calls into question the impartiality of the account provided.

In addition to the communication challenges, there are time constraints faced by migrants attempting to lodge complaints, as government offices in many locations are only open between 8.00 am to 4.00 pm on Monday to Friday. The vast majority of migrants are working and unable to go to seek assistance during these hours.

Because access to the government mechanisms remains quite limited, migrant workers often have little choice but to make use of informal channels of assistance in an attempt to resolve their grievances, as described below.

### Complaints via Thai private employment agencies

Migrant workers recruited through the MOU process typically lodge complaints through their Thai employment agency. This is the initial channel used for resolving grievances because they believe the agency can negotiate most effectively and expediently with their employer. However, making a complaint through this channel would of course preclude the possibility of the grievance being related to the practices of the Thai employment agency itself, and does usually not provide a genuinely neutral arbiter for resolving disputes. As these agencies have very clear conflicts of interest in such cases, they generally seek to resolve them as quickly and quietly as possible. The documented involvement of some of these agencies in deceptive and exploitative recruitment practices themselves also calls into serious question their ability to act as a fair intermediary in resolving migrant workers' grievances.

### Complaints via diplomatic channels

Lodging a complaint with their country's diplomatic missions in Thailand is another means by which migrant workers can lodge grievances, either at their embassy in Bangkok or at other consulates. A study by the Asian Research Center for Migration found that this channel is primarily used by regular migrant workers

recruited via the MOU process, although in theory, migrant workers of any legal status could make use of it. The main limitation on its effectiveness as a means for resolving grievances is that the diplomatic officers or labour attachés<sup>5</sup> receiving the complaints have little relevant authority over such disputes, as well as in some cases limited knowledge of the resources available. As a result, they tend to simply refer the cases to the Thai labour authorities or even directly to the private employment agency involved for settlement (Vungsiriphisal et al., 2010).

## Complaints via NGOs

Filing complaints through NGOs is a channel increasingly used by migrant workers in communities where support programs have been established. Information about making a complaint through these organizations is often shared simply through word of mouth by fellow migrant workers or via outreach activities. In many cases, NGOs that have programming targeted to migrants have either formal legal assistance programs or at least some experience in negotiating with employers or other parties to resolve such conflicts.

In spite of their good intentions, however, unless such cases are ultimately filed within the Thai legal system, NGO staff members have no authority to conduct binding negotiations with private employment agencies or employers on these matters. As a consequence, they are often consigned to providing basic assistance in the form of mediation, interpretation, or information services for resolving disputes. In addition, because of this informality, the assistance provided for settling complaints has generally focused on obtaining compensation for victims and has not extended to pursuing sanction of the offending parties.

It should also be noted that NGO programs are much more limited or non-existent in some provinces, and often tend to target their services more towards workers from Myanmar due to their higher numbers and greater difficulty in assimilating than other migrants—particularly in comparison to those from Lao People’s Democratic Republic.

## Conclusion

Establishing effective policies to protect migrant workers from exploitation and abuse has proven to be a complex and intractable challenge in many countries. Even in states such as the Philippines, with its long history of managing large-scale labour migration, the amendment of laws and regulations to apply stiffer penalties in response to complaints have not always conclusively resulted in reduced incidence of misconduct. Nevertheless, while well-designed complaint policies have not been found to entirely prevent the continued occurrence of recruitment and labour rights violations, or non-compliance with social security laws, they have been successful in contributing towards an environment of order and regulation for labour migration in several Asian countries.

Research and analysis on the channels available for migrants to file grievances in Thailand reveals that the existing mechanisms have been largely ineffective for regulating recruitment and employment practices. At local level, there are no systematically accessible official channels through which migrant workers can register complaints about common forms of abuse or non-compliance. Although some legal specialists and government authorities have contended that the complaint mechanisms available to Thai workers should be interpreted as applying equally to migrant workers, there are barriers in access to justice in practice that render such an opinion largely hypothetical in nature. Unclear institutional mandates, lack of standard operating procedures, inadequate awareness-raising activities, and ineffective interpretation services all place considerable restrictions on the ability of migrants to assert their right to seek redress.

5 Although Myanmar has recently placed labour attachés at its Embassy in Bangkok, the Governments of Cambodia and the Lao People’s Democratic Republic have yet to do so as of late 2013.

In addition to the legal and institutional constraints, migrant workers are extremely reluctant to pursue remedy for abuses due to fears of discrimination from authorities and retaliation by recruitment agencies and employers. In general, migrants view their continued residence and employment in Thailand as dependent upon keeping a low profile and maintaining deferential relationships with those in positions of power. Only in cases in which their well-being is clearly threatened are some workers willing to consider making a complaint. However, even in those dire circumstances, they typically have to file their complaints through informal channels.

In spite of these significant remaining challenges, it should be acknowledged that some of the basic elements for establishing a functioning system for receiving complaints from migrant workers are gradually being put into place in Thailand. Important examples of good practices for replication or expansion include: (1) The Department of Labour Protection and Welfare has communicated the principle that its officers must provide equality of treatment to migrant workers regardless of their legal status; (2) labour authorities in some provinces have become increasingly willing to call upon and work with NGOs when interpretation services are needed to provide services to migrants; (3) the Social Security Office has conducted awareness-raising trainings directly on the factory floor in some locations, which are beginning to reach migrant workers; and (4) the hotline numbers setup by labour authorities could provide an accessible means for migrant workers to file complaints anonymously – particularly for women, statistics show – if the existing barriers can be reduced.

For Thailand to make further progress on regularizing labour migration, and ensure the availability of decent work opportunities for migrants, a vital element must be establishing substantive protections within the legal framework, strengthening enforcement by authorities, and ensuring compliance by employers and recruiters. As part of this process, developing fair and accessible complaint mechanisms is a critical tool for challenging the impunity of offenders to exploit and defraud migrant workers.

While accounting for the contextual specificities of the abuses faced by migrants in Thailand, as well as the capacity of the Thai Government to implement the policy effectively and systematically, the complaint mechanisms established should be based upon the international labour standards and good practices described previously within this chapter. The practical guidelines for the institution of complaint mechanisms within the Guide to Private Employment Agencies, the Handbook on Establishing Effective Labour Migration Policies, and the ILO multilateral framework on labour migration also provide essential insights and lessons learned that can be used to strengthen Thailand's regulation of the labour migration process.

## Recommendations for policy development

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- Consider ratifying the Private Employment Agencies Convention, 1997 (No. 181), the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No.143), and the Social Security (Minimum Standards) Convention, 1952 (No. 102), which will assist with establishing international standards for protection of migrant workers, including their rights to register complaints.
- The Recruitment and Job-Seekers Protection Act should be amended to include provisions explicitly mandating its enforcement for protection of inbound migrant workers. As part of this amendment, it should be stipulated that the mechanism to address grievances during recruitment must be made equally available to foreign migrant workers, and the institution responsible for administering the mechanism on their behalf clearly designated.



- There is a need to clarify the services permitted, as well the policies and procedures for regulation, of Thai private employment agencies and their sending country counterparts who recruit inbound migrant workers under the MOUs on Employment Cooperation. The MOU process has crystallized an ongoing market for such services but no regulatory framework has been put in place to monitor and supervise their operations. If private employment agencies providing recruitment services to migrant workers are permitted to continue to do business, they should be required to follow the same licensing, operating, and reporting procedures as those recruiting Thai workers for employment.
- To provide guidance for local authorities, employers and workers on how the Occupational Health, Safety and Environment Act applies to the fishing sector, secondary legislation should be enacted to support the right of fishers to seek redress for unsafe working conditions in this particularly hazardous sector.
- Bilateral cooperation should be enhanced between the competent authorities in sending and receiving countries to establish channels that will allow migrants to file grievances and receive compensation after returning home.

## Recommendations for strengthening implementation

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- Standard operating procedures for handling grievances received from migrant workers should be developed and distributed to all provincial Department of Employment, Department of Labour Protection and Welfare, and Social Security Offices; as well as NGOs and trade unions that provide assistance to migrant workers. Specific guidance should be provided on assisting vulnerable groups, including women and children migrants, irregular migrants, and others.
- Measures should be put in place to protect complainants and claimants against retaliation for their actions to encourage more migrants to denounce abuses and assert their rights (ensuring confidentiality whenever possible, prohibiting retaliatory dismissal, providing greater flexibility in transfer of work permits, and sheltering irregular migrants from deportation). Reprisals for registering a complaint or filing a claim should be classified as a violation of law, with meaningful sanctions imposed and equitable compensation provided.
- Outreach campaigns by labour authorities on how to file complaints should be expanded and must clearly communicate the message that irregular migrants have the right to register complaints as well. Campaigns specifically targeting women migrants should also be carried out, particularly for domestic workers and others not working in formal sector work places who may have reduced access to the traditional mediums used to communicate labour protection messages.
- Impartial administrative procedures for settling grievances should be provided within official complaint channels to avoid the necessity of adjudication in court for less severe and compoundable offenses. Instituting a tiered system — including the options of mediation or arbitration by a genuinely independent authority — will provide a differentiated approach for resolution of complaints, allowing for greater accessibility to justice for workers as well as more timely settlement of cases.
- Increased enforcement is needed to ensure compliance with the Social Security Act, the Recruitment and Job-Seekers Protection Act, and the Labour Protection Act. Evasion of responsibility by employers who do not register or do not continue to make contributions for their workers, as well as exploitation and abuse of migrants during recruitment or employment, should be punished with

finances and penal sanctions severe enough to act as an effective deterrent. Conversely, measures should also be developed to provide incentives for good practice by recruiters and employers, such as reduced fees or administrative requirements.

- Interpreters working with labour authorities should be regularly available, competent and have clear and appropriate job descriptions (including outreach in migrant communities and staffing of hotlines). Restrictions on hiring foreign interpreters should be removed, and adequate training provided, to ensure delivery of high-quality services. Outreach materials and official forms for registering grievances should be provided in migrant languages.
- Labour officials, recruitment agencies, and employers should receive training on the rights of migrant workers to file complaints under Thai laws (including access for irregular migrants), jurisdiction of authorities and sanctions to be applied for common violations and forms of non-compliance, and Thailand's international obligations to provide equality of treatment to migrants for accident compensation.
- Orientation training should be delivered to migrants during the pre-departure phase to provide them with information on the procedures for filing complaints. The Department of Employment should also provide this information to migrants after arrival in Thailand as part of the registration process.
- All sending country diplomatic missions in Thailand should be staffed with trained labour attachés (including female officers) who are capable of providing practical advice and assistance to their nationals for resolving grievances.
- Regular meetings should be held with labour authorities, employer and worker representatives, labour attachés and civil society organizations to improve coordination and collaboration on activities, monitor progress, and use data gathered on complaints to inform targeting of labour inspections, severity of sanctions, locations for outreach campaigns, and other interventions.
- Referral mechanisms between labour authorities, labour attachés, and other social service providers should be established to improve access for registering complaints and ensure that migrants receive comprehensive and appropriate assistance.

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ล้างความ  
เข้าใจกับ saphansiang  
แรงงานข้ามชาติ

NON Discrimination  
To Migrant workers





## Background

Thailand sees significant patterns of human trafficking as a destination and source country, as well as a country of transit, for men, women, boys and girls subjected to forced labour and sexual exploitation. According to government statistics, the majority of trafficked persons identified in recent years in Thailand have been Thai nationals, with Cambodian, Lao, and Myanmar victims forming the large majority of others identified (Thailand, 2014; table 9.1). In 2013, for example, of 1,020 victims officially identified, 657 were Thai nationals (Thailand, 2013). While accurate estimates of the prevalence of trafficking into and out of the country are complicated by a range of factors, it is recognized that trafficking largely occurs within the flows of migrant labour in the country, and the number of formally identified victims may represent only a fraction of those who are not identified. Non-government responders and international organizations have found significant trends of trafficking for labour exploitation into different Thai industries, particularly fisheries, which are not represented among the formally identified victims.

**Table 9.1: Thailand, number of formally identified victims of trafficking, 2008-2012**

Year	2009	2010	2011	2012	2013
Formally identified victims	530	509	279	592*	1,020

Sources: Thailand, Ministry of Social Development and Human Security, "Situation and Progress Report on Prevention and Suppression of Trafficking in Persons in Thailand", Bangkok, 2010, 2011, 2012, 2013.

\*The 2012 report indicated that there were 623 victims identified, however the report released in 2013 revised this number.

Substantial developments in anti-trafficking policies and structures have demonstrated an intention to address the patterns that have developed, yet there is recognition that the implementation has not been as effective. 2013 saw a focus on demonstrating action, and alongside the increase in the number of identified victims, there has also been an increase in convictions of traffickers, as shown in table 9.2.

**Table 9.2: Trafficking convictions in Thailand**

Year	2009	2010	2011	2012	2013
Number of offenders convicted	40	46	55	49	225

Source: Thailand, Ministry of Social Development and Human Security, "Situation and Progress Report on Prevention and Suppression of Trafficking in Persons in Thailand", Bangkok, 2013.

The increased attention to prosecution also came in part from a recognition of the limited success of cases in the criminal justice process, as noted in the "Situation and Progress Report on Prevention and Suppression of Trafficking in Persons in Thailand" in 2012:

<sup>1</sup> With support from UN-ACT Thailand Country Office.

*“The Royal Thai Police has charged 305 cases as human trafficking offenders, of which 279 cases were under police investigation, 27 cases were under the consideration of the Office of the Attorney General with 2 cases were pending under the Court prosecution, and 4 cases with a total of 10 offenders were convicted by the Court” (Thailand 2012 p.5).*

Efforts to combat trafficking for labour exploitation through enhanced monitoring of high-risk workplaces have been implemented, but there have been limitations to their effectiveness, with few cases identified. Reports of corruption associated with human trafficking have also received significant attention in recent years and although the government has reported some action to address this, these have been nominal.

## Developments in Trafficking Patterns

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Official figures from 2013 reveal that there are an increasing number of formally identified victims who had been trafficked into sexual exploitation, increasingly Thai nationals and also increasingly underage. As elsewhere, this may more accurately be said to reflect the approach to understanding and identifying victims of trafficking, however. A study from the International Labour Organization (2012) estimates that there are almost 21 million victims of forced labour globally, many of whom have been trafficked; however, only a small percentage of them are ever formally identified. Thailand is a key destination of migrant workers in the region, with a growing economy and increasing demand for workers. Thus, the Government’s National Plan and Policy (2011-2016) also highlights the difficulty in identifying victims of trafficking among migrant workers owing to their vulnerability to exploitation. Despite the large number of migrant workers in the country and significant demand for labour, there is not a longer-term national plan or policy for migrant workers.

Trafficking into the fisheries industry has been highlighted in recent years as a particularly vulnerable industry, both onshore and offshore. Undocumented migrants constitute a large part of the workforce on fishing boats and the employment conditions are rarely monitored, particularly on long-haul boats. Recent research with those working on fishing boats in Thailand found that 16.9 per cent met the ILO definition of forced labour, the majority of whom were from Myanmar. The majority of the fishers surveyed for this study, approximately 82 per cent, were working on short-haul boats where exploitative conditions are thought to be less prevalent and severe, therefore this may under-represent the proportion of forced labour in the industry (ILO and ARCM, 2013).

The movement of Rohingya fleeing Rakhine State, Myanmar, in recent years has resulted in a flow of migrants arriving by sea into Southern Thailand attempting to reach Malaysia, who are particularly vulnerable to exploitation and extortion. Concerns increased in 2013 due to larger and more systematic smuggling from Rakhine state and information coming to light of exploitative and organized brokering, and withholding of migrants in camps, essentially being held for ransom with threats of violence and forced labour. Rights advocates and media reports have indicated that there is human trafficking amongst this group, however the Thai government has defined the pattern as smuggling, highlighting the ambiguity when extortion and abuse are used by brokers with significant control over such vulnerable populations, as well as the political sensitivity.

## Recognized Patterns

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### Thailand as a source country

According to official statistics, in 2012, trafficking of Thai nationals was primarily for sexual exploitation in destinations across the world, including: Bahrain, Brunei, China, Denmark, Indonesia, India, Japan, Malaysia, Saudi Arabia, and Switzerland. Victims normally travel to the country of destination by plane using a tourist visa and/or fake passports, while in the case of Malaysia, most victims are trafficked by land. Thai workers will be transported via bus to Songkhla province where they will be taken across the border by car and head for Kuala Lumpur and Johor Bahru (Thailand, MSDHS, 2009, 2010, 2011 and 2012).

Patterns of domestic trafficking have also been seen in both labour and sexual exploitation. Women and children from north and northeastern provinces are trafficked for sexual exploitation to major cities and tourist destinations, including of ethnic minorities and stateless persons. There have also been instances of Thai males migrating for work to Bangkok from the northeast, then trafficked to coastal provinces for forced labour on fishing boats (Mirror Foundation 2011).

### Thailand as a transit country

Thailand is a transit country for victims from China, Myanmar, Pakistan, Democratic People's Republic of Korea, and Viet Nam destined for such third countries such as Indonesia, Malaysia, the Republic of Korea, Russian Federation, Singapore, the United States and countries in Western Europe (United States, Department of State, 2012).

### Thailand as a destination country

Thailand is a destination of trafficked persons from neighbouring countries of Myanmar, Cambodia and Lao People's Democratic Republic, into fisheries and related industries, factories, construction and agriculture, as well as sexual exploitation. Cambodian and Myanmar children are also found in forced begging, while Lao and Myanmar migrants are also trafficked into domestic work. Trafficking cases often come to light in provinces around Bangkok, on the coast and other industrial centers.

Trafficking from neighbouring countries follows similar routes as those of migrants. From Cambodia this may be by foot through the border in Pong Ron district, Chantaburi; by foot or vehicle through the checkpoint in Ta Praya sub-district, Srakaew; Baan Kao Din checkpoint in Klong Had sub-district, Srakaew; Rong Kluea market in Aranya Prathet district, Srakaew; or by boat opposite Baan Klong Tak in Klong Yai sub-district, Trat.

Trafficking routes from Lao People's Democratic Republic to Thailand are through the Thai-Lao border in Chong Mek sub-district, Kong Jiam district, Ubon Ratchathani; by boat through Chiang Kong district in Chiang Rai and Pon Paeng district in Nong Khai; or by car through Nong Khai and Mukdahan provinces.

Trafficking routes from Myanmar to Thailand are on foot across the Thai-Myanmar border in Kanchanaburi, Tak, and Chiang Rai provinces; by boat through Mae Ra Mad district in Tak province and Ka Por district in Ranong province; and by foot or vehicle through Mae Sot district in Tak province and Mae Sai district in Chiang Rai province (Thailand, MSDHS, 2011).

## Key Anti-Trafficking Stakeholders

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### Government Ministries and offices responsible for anti-trafficking efforts in Thailand

**Ministry of Social Development and Human Security (MSDHS):** Lead Government agency for anti-trafficking coordination in Thailand and also for victim protection.

**Ministry of Labour (MoL):** Formulate and enforce recruitment and labour protection legislation, including inspection of work places for cases of forced and child labour and investigating abuses by recruitment agencies.

**Ministry of Foreign Affairs (MFA), Department of Consular Affairs, Thai embassies and diplomatic missions abroad:** Responsible for providing assistance and support to Thai people who have been trafficked abroad.

**Ministry of Tourism and Sports (MoTS):** Lead Government agency on countering sexual exploitation in the tourism industry.

**Department of Special Investigation (DSI) under the Ministry of Justice (MOJ):** Responsible for investigation of human trafficking cases and pursuing those deemed as “special cases”.

**Ministry of Education (MoE):** Responsible for anti-human trafficking advocacy, awareness-raising campaigns and preventative measures.

**Royal Thai Police:** Responsible for law enforcement and bringing offenders to justice.

**The Office of the Attorney General:** An independent Government agency responsible for prosecuting human trafficking cases.

**Royal Thai Navy:** Conducting inspections of fishing boats to identify forced labour and child labour.

**Key Committees:** There are two key national committees tasked with addressing human trafficking under the Anti-Trafficking in Persons Act B.E. 2551 (2008). The two committees govern and oversee Thailand’s overall counter-trafficking response. The Anti-Trafficking in Persons Committee (ATP Committee) is chaired by the Prime Minister and composed of Ministers from Defense, Tourism and Sports, MSDHS, Interior, Justice and Labour, as well as experts appointed by the Prime Minister. Its role is to recommend policies and strategies to implement anti-trafficking interventions under the ATIP Act effectively, as well as establishing the rules and regulations for funding such work. The Second Committee on Coordinating and Monitoring of Anti-Trafficking in Persons Performance (CMP Committee) is chaired by the Deputy Prime Minister, is responsible for implementation and monitoring of the anti-trafficking efforts, and is composed of multidisciplinary agencies primarily at the permanent secretary level.<sup>2</sup>

Three sub-committees were established under the ATP Committee focusing on different areas of response:

- Human Trafficking Data Collection and Classification Subcommittee;
- Assistance Program for Workers in the Fisheries Industry Subcommittee; and
- Monitoring the National Anti-Trafficking Action Plan Subcommittee.

United Nations agencies and international organizations, with a mandate to work against human trafficking, support projects in Thailand with government and social partners, including NGOs, trade unions and employer organisations. A number of NGOs are also working on the issue together with the Government,

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<sup>2</sup> The Anti-Trafficking in Persons Act B.E. 2551 (2008).

in various networks, and addressing different aspects of the problem, from awareness-raising through to more active engagement in identifying cases and supporting responses.

### Private sector

It has become increasingly recognized that the private sector has an important role in addressing human trafficking where it occurs within businesses and their supply chains. The fisheries industry, both onshore and offshore, has become involved in efforts to combat human trafficking, as the incidence of trafficking into the industry has become of concern nationally and internationally. The employer associations principally involved are the Thai Frozen Foods Association (involved in activities of onshore employers) and the National Fisheries Association of Thailand (offshore industry), and have been working primarily with the ILO on self-regulation initiatives.

## Relevant international instruments

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The primary international instrument to address human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000). Thailand ratified the Protocol in 2013.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulates that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”, and was ratified by Thailand in 2000.<sup>3</sup>

The Convention on the Rights of the Child (CRC) states that Governments should take all measures to ensure that children are not abducted, sold or trafficked, and ensure that children are protected from other forms of exploitation, child labour, and sexual exploitation. This was ratified in Thailand in 1992.

Further, the ILO Convention on Forced Labour (No. 29) and Abolition of Forced Labour (No. 105) obligate all Member States to take action to suppress all forms of forced or compulsory labour.<sup>4</sup> Further, Thailand has ratified the Convention on the Worst Forms of Child Labour (No. 182), which also includes addressing the trafficking of children.

## Legislation in Thailand

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### Legal definition of Human Trafficking

The Anti-Trafficking in Persons Act B.E. 2551 came into force in June 2008. It criminalizes trafficking in persons broadly corresponding to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, as:

1. The act of procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person;
2. By means of threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control;
3. For the purpose of exploitation.

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<sup>3</sup> United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>4</sup> <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>.

Where trafficking involves children (a person under the age of 18), the second element of the offence (the means) is not relevant, in line with international standards.

The law defines exploitation as follows: seeking benefits from prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.

The aspect of "forced labour or service" is further detailed as "compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist"<sup>5</sup>.

### Legal and policy framework related to human trafficking

Beyond the Anti-Trafficking in Persons Act B.E. 2551 (2008), there are other laws in Thailand which relate to human trafficking offences and provide for the protection of rights. These include:

- Constitution of Thailand B.E. 2550 (2007) <sup>6</sup>
- Penal Code Amendment Act (No. 14) (1997)
- Criminal Procedure Code Amendment Act (No. 20) B.E. 2542 (1999)
- Labour Protection Act (1998)
- Labour Protection Act (1998), Ministerial Regulation No. 10
- Alien Workers Act B.E. 2551 (2008)
- Recruitment and Job-Seeker Protection Act (1985)
- Child Protection Act B.E. 2546 (2003)
- Measures in Prevention and Suppression of Trafficking in Women and Children Act (1997)
- Prevention and Suppression of Prostitution Act (1996)
- Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act B.E. 2544 (2001)
- Witness Protection Act B.E. 2546 (2003)
- Anti-Money Laundering Act B.E. 2542 (1999)
- Immigration Act (1979)

### Relevant policies and agreements

The key policies, agreements, and instruments related to anti-trafficking in Thailand include the following.

Anti-Trafficking Memoranda of Understanding (MOUs) have been agreed with:

- The Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (31 May 2003);

<sup>5</sup> The Anti-Trafficking in Persons Act B.E. 2551 (2008), Thailand.

<sup>6</sup> Currently, the Constitution of Thailand B.E. 2550 was replaced by the Constitution of Thailand (Interim) B.E. 2557 (2014).



- The Government of the Lao People’s Democratic Republic on Cooperation to Combat Trafficking in Persons, Especially Women and Children (13 July 2005);
- The Socialist Republic of Viet Nam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (24 March 2008);
- The Government of the Union of Myanmar on Cooperation To Combat Trafficking in Persons, Especially Women and Children (24 April 2009).

The National Policy on Strategies and Measures to Prevent and Suppress Trafficking in Persons (2011 – 2016) is supported by a broader policy framework that has been developed over the past decade, including national level policies on Common Operational Guidelines for Government Agencies Engaged in Addressing Trafficking in Children and Women (2003), the MOU on Operations Between State Agencies and Non-Governmental Organizations Engaged in Addressing Trafficking in Children and Women (2003), and Operational Guidelines for Non-Governmental Organizations Engaged in Addressing Trafficking in Children and Women (2003).

There are regional anti-trafficking MOUs covering different provinces in the country detailing the roles and responsibilities of different stakeholders in anti-trafficking operations. These are entitled Memorandum of Understanding on Operational Procedures for Concerned Agencies in Combating Human Trafficking, and cover: 8 Eastern Provinces (29 May 2006); 19 Northeastern Provinces (3 July 2006); 6 Southwestern Provinces (10 January 2007); 8 Southeastern Provinces (23 March 2007); 17 Northern Provinces (8 May 2007); 9 Lower Central Provinces (7 May 2008); and 8 Upper Central Provinces (25 July 2008). An Operational Guideline on the Prevention and Suppression of Trafficking for Labour Purposes, and Assistance and Protection for Trafficked Persons was also introduced in April 2008.

The Anti-Trafficking in Persons Act B.E. 2551 (2008) establishes the penalties shown in table 9.3.

**Table 9.3: Main Offences and penalties under the Anti-Trafficking in Persons Act**

Offences (Chapter 6, Section 52)	Penalty or penalty ranges under law
Trafficking in persons	Imprisonment of 4-10 years and a fine of THB 80,000-200,000
Trafficking in persons committed against a child whose age exceeds 15 years but not yet reaching 18 years	Imprisonment for 6–12 years and a fine of THB 120,000–240,000
Trafficking in persons committed against a child not over 15 years of age	Imprisonment for 8-15 years and a fine of THB 160,000-300,000

## Anti-Trafficking Efforts

### Protection

#### *Policies and procedures for victim identification<sup>7</sup>*

After authorities are alerted to potential cases of human trafficking, including through rescue operations, procedures indicate that initial victim screening is conducted by police either on-site or at a secure location.

<sup>7</sup> Multi-Disciplinary Teams (MDTs) Operational Guideline (2011), jointly developed by Japan International Cooperation Agency (JICA) and the Bureau of Anti-Trafficking in Women and Children (BATWC) of the Ministry of Social Development and Human Security (MSDHS) under the “Project on Strengthening of MDTs for the Protection of Trafficked Persons”.

Those screened who show signs of physical abuse, torture, trauma or fear are removed from the site, as well as those who respond positively when asked whether they have been tricked or deceived into coming to work in the establishment.

Further victim identification is conducted within 24 hours of initial screening at a secure and appropriate location away from the site. The victim identification process is led by investigative officers and involves several members of the multidisciplinary team, including officials from the Ministry of Social Development and Human Security. The responsible investigative officer will consider the evidence collected and the opinions of members of the multidisciplinary team who participated in the operation, to determine whether a person is a victim of trafficking. If there are conflicting opinions in identifying a trafficked person, the head investigative officer of the responsible police unit will submit a query to the Provincial Operation Center on Prevention and Suppression of Human Trafficking (POCHT) under the MSDHS to consider and make recommendations.

The “Scope and Elements of Identification of Trafficked Persons” pamphlet has been implemented since 2009 by the Office of Anti-Trafficking in Persons Committee, as an official tool for victim screening and interviews.<sup>8</sup> This follows the format of identifying each aspect of an act, a means and a purpose, as defined under the Anti-Trafficking in Persons Act.

### *Policies and procedures for shelters and interim care<sup>9</sup>*

For Thai victims who were trafficked abroad, Thai Embassies will conduct the initial screening before supporting those identified to return to Thailand. The International Organization for Migration (IOM) also assists in the repatriation of Thai trafficking victims; with 26 Thai victims assisted by IOM to return home in 2011 (Thailand, MSDHS, 2011). The Department of Social Development and Welfare (DSDW) under MSDHS coordinates with the police and local NGOs for the reception of the Thai victims. Investigative officers conduct interviews on their return with each returnee about their trafficking experience to determine what initial assistance is most appropriate at this stage. In some cases, investigative officers will disagree with the initial screening conducted by the Thai Embassies. There were 46 Thai trafficking victims identified by Thai Embassies in 2011; however, after the police had conducted the screening, only 20 people were reportedly identified as trafficking victims. Temporary accommodation is provided in Governmental relief shelters with protective services until all required coordination at national level is completed and victims are sent back home (UNIAP, et al., 2012). According to official statistics, Thai nationals identified as having been trafficked overseas are mostly trafficked to the United Arab Emirates and Malaysia, and most of them are women trafficked for the purpose of sexual exploitation (Thailand, MSDHS, 2010 and 2011).

Foreign migrants identified as victims of trafficking, and who consent to stay in shelters, are referred to the nearest of nine Government-run shelters where their physical and mental health is assessed and they are provided with interim care. The victims are offered medical, legal, psychosocial, vocational and recreational services as they wait to go through the Court process. The public prosecutor responsible for the case may support the trafficked person to provide testimony prior to trafficking charges being filed with the Court, according to Section 31 of the Anti-Trafficking in Persons Act B.E. 2551 (2008), to expedite the process for the victim to return home. In addition, victims are allowed to stay in Thailand temporarily and to work, in accordance with section 37 of the same Act. Ministerial Regulations of the Ministry of Interior and the Ministry of Labour were passed in February 2011 and February 2012, respectively, outlining the necessary

<sup>8</sup> Anti-Human Trafficking Division (AHTD), Royal Thai Police (RTP).

<sup>9</sup> Multi-Disciplinary Teams (MDTs) Operational Guideline (2011), jointly developed by JICA and the Bureau of Anti-Trafficking in Women and Children (BATWC, MSDHS), under the “Project on Strengthening of MDTs for the Protection of Trafficked Persons”.

procedures to allow victims of trafficking to stay temporarily and work in the Kingdom of Thailand legally. However, these policies are as yet to be implemented systematically and greater application of these would benefit victims identified in Thailand.

There are nine shelters for victims of trafficking in Thailand run by the Ministry of Social Development and Human Security (MSDHS), and they are located throughout the country (table 9.4).

**Table 9.4: Shelters for victims of trafficking in Thailand**

Name of shelter	Location
Kredtrakarn Protection and Occupational Development Center	Nonthaburi Province
Nari Sawat Protection and Occupational Development Center	Nakhon Ratchasima Province
Songkwae Protection and Occupational Development Center	Pitsanulok Province
Southern Region Protection and Occupational Development Center	Surat Thani Province
Pathumthani Protection and Occupational Development Center for Men	Pathumthani Province
Songkhla Protection and Occupational Development Center for Men	Songkhla Province
Chiang Rai Protection and Occupational Development Center for Men	Chiang Rai Province
Ranong Protection and Occupational Development Center for Men	Ranong Province
The Pakkred Reception Home for Boys	Nonthaburi Province

Source: Ministry of Social Development and Human Security (MSDHS).

### *Recovery and reintegration services*

The repatriation and reintegration of foreign victims of trafficking in Thailand is carried out in close cooperation with the source countries through government-to-government mechanisms. Standard Operating Procedures (SOPs) have been developed with both the Lao People's Democratic Republic and Myanmar on the repatriation and reintegration of trafficked persons, with quarterly case management meetings conducted to facilitate the processing of cases.

The Bureau of Anti-Trafficking in Women and Children (BATWC) works with provincial Governmental agencies, the private sector and NGOs to support the reintegration of Thai trafficked persons who accept the assistance offered. This comprises needs assessments with the victims and their families, and considers the economic conditions of the wider community. Returnees may receive support through shelter programmes for between two to six months, which aim to provide psychosocial support and skills training, or through community support mechanisms. Once such courses have been completed, BATWC and provincial Governmental agencies coordinate with counterparts at district and village levels to monitor the success of re-integration, over three months to one year (UNIAP et al., 2012).

## **Prosecution**

### *Specialist units for investigation and prosecution*

There are three specialist units for investigating and prosecuting human trafficking cases in Thailand.

- (1) The Anti-Trafficking in Persons Division (ATIPD) is a specialized law enforcement unit that was established in 2006 within the Royal Thai Police (RTP). It was originally called the Children, Juveniles and Women Division (CWD) until it changed its name to ATIPD when the Anti-Trafficking in Persons

Act. B.E. 2551 was enacted in June 2008. ATIPD is one of the two Government agencies that have the authority to investigate human trafficking cases and bring the perpetrators to justice.

- (2) The Department of Special Investigation (DSI), under the Ministry of Justice (MOJ), is another specialist law enforcement unit that is responsible for investigating human trafficking cases. DSI initially focused on cases that were deemed to be “special cases” but an amendment to the DSI law expanded its mandate to allow DSI to investigate trafficking cases without transfer to the police.
- (3) The Office of the Attorney General (OAG) is responsible for prosecuting human trafficking cases, primarily through its International Affairs Department. The Department also seeks to establish international legal cooperation with concerned countries, particularly those in the Greater Mekong Sub-region, in order to facilitate the prosecution of cross-border human trafficking cases.

The Department of Special Investigation (DSI) has proactively pursued cross-border trafficking cases through cooperation with its Myanmar counterpart in the Myanmar Police Force (MPF). Since 2009, DSI has engaged in a series of cross-border cooperation meetings with the MPF, developing informal cooperation in the investigation and law enforcement against human trafficking. These meetings have provided an environment in which both parties are able to discuss specific case details – including the exchange of evidence such as photos, victim statements and surveillance information – share information, discuss specific operational issues, develop action steps and follow up on actions previously identified between meetings (UNIAP, 2010). There has also been broader engagement of law enforcement and criminal justice practitioners between Thailand and Myanmar at bilateral meetings in 2013, in efforts to determine how the response could be made more effective.

## Prevention

### *Key awareness-raising and vulnerability-reduction programmes*

As a source country, Thailand conducts pre-departure training for Thai workers migrating to work abroad. This training is organized by the Ministry of Labour, the Ministry of Foreign Affairs and non-governmental organizations. Thai embassies and consulates abroad, e.g. in Hong Kong Special Administrative Region, Italy, Malaysia and Singapore, also try to raise awareness about human trafficking among Thais living in their respective regions and countries.

Human trafficking awareness-raising materials have been developed in a range of formats, including for example in cartoon booklets translated into Chinese, Khmer, Lao, Myanmar, Thai and Vietnamese languages, by MSDHS, disseminated in migrant communities over 2012 and 2013. The ILO has also produced the ‘Travel Smart, Work Smart’ publication in Khmer, Lao, and Myanmar languages, to raise awareness among migrant workers of their rights and to reduce vulnerability to exploitation. The MTV EXIT campaign has sought to raise awareness with materials in Thai and other languages in the region, supported by a behaviour change communications approach.

Capacity building is provided to raise understanding of human trafficking amongst relevant government officials, for example, the Ministry of Labour conducted a series of training courses to raise awareness amongst labour inspectors of the patterns and indicators of trafficking for labour exploitation.

## Special focus on the fisheries

Recognizing the particular vulnerabilities to trafficking in the fisheries industry and in view of the cases that have been brought to light, specific interventions have been brought into effect to address the conditions in the industry. There has been agreement on opening Labour Coordination Centers for workers in the fisheries industry, to reduce the role of brokers in recruiting fishers, and provide workers with information, training and support services, as well as access to formal work arrangements with employment contracts. It is anticipated that there will be a revision of policies to provide for greater protection of workers on fishing boats, and greater monitoring and inspection of vessels is also planned. Together with the ILO, industry and Government partners have also developed and agreed on a “Good Labour Practices” initiative for both the on-shore fisheries and the off-shore industry (Thailand, 2013).

## Current challenges and gaps in policy

Despite the significant level of policy development to address human trafficking in Thailand, there are serious challenges in implementation and the actual impacts of anti-trafficking efforts on the lives of victims. Research conducted by civil society and international organizations has found that migrant workers, both documented and undocumented, experience varying degrees of exploitation and extortion, and many victims of trafficking are not officially identified (IOM, 2010; Human Rights Watch, 2010). The broader context of the protection of vulnerable persons and workers will need to be addressed as well as fundamental issues with the rule of law as it applies to vulnerable and exploited migrant populations. These issues were summarized by the United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, after a visit to Thailand in 2011, in which she stated:

*“The implementation of policy and legal framework on human trafficking and law enforcement are weak and fragmented, resulting in a huge gap between de jure and de facto....victims of trafficking are not properly identified, leading to wanton arrest, detention and deportation around the country...there is also an issue of capacity gap or unwillingness to identify victims of trafficking and to make necessary referrals, including providing information that will protect their human rights. Corruption especially among low-cadre law enforcement officers at provincial and local levels is deeply rooted. Corruption, coupled with the infamous brokerage system, has diluted the efficacy of Government policies and programmes to combat human trafficking” (United Nations General Assembly, 2012).*

Efforts have been made in recent years to reduce the length of time foreign victims remain in Government shelters, which has been recognized as an issue, particularly when pursuing criminal justice. Pre-trial deposition has been used in some cases to speed up the process for victims also serving as witnesses; however, this has not as yet been systematized (Gallagher and Pearson, 2008). The same may be noted of employment for those who remain in the shelter while supporting the criminal justice process, and of other support to assist victim witnesses, such as compensation. The long process that is involved in the prosecution leads some victims to decline to pursue cases, while in others prosecutors decide that the evidence collected is not sufficient to pursue the prosecution. Therefore, despite the mechanisms established and level of effort at the policy level and a marginal increase in arrests and prosecutions in recent years, the criminal justice response remains limited. Again, as noted by the United Nations Special Rapporteur, “the rate of prosecution of trafficking cases remains low, which contributes to impunity of traffickers engaging in illicit and clandestine operations” (United Nations General Assembly, 2012).

## Recommendations

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There have been various recommendations proposed for an improved response to human trafficking in Thailand, in specific areas of policy and practice, in the criminal justice response and support to victims. From the analysis above and the recommendations proposed by other analyses referenced throughout this review, it is suggested to:

- Implement broad and proactive procedures for identifying forced labour in industries with significant numbers of vulnerable workers, with trained officials and interpreters.
- Promote informal cooperation with other countries for the identification and protection of victims and the apprehension of suspects.
- Target efforts to address forced labour on fishing boats, reducing vulnerabilities and implement remedies.
- Implement a long-term plan for the regularisation of migrant workers to meet the needs of industry, while providing corresponding labour protections.
- Strengthen anti-trafficking law enforcement capacity to undertake high-quality, ethical and proactive investigations.
- Strengthen the capacity of the judiciary to support effective prosecutions in coordination with investigators, and with the ability to expedite trafficking cases.
- Increase the focus of prosecution efforts on brokers and employers of forced labour.
- Increase anti-corruption efforts specifically related to trafficking and migrant labour, with criminal justice and suppression strategies.
- Ensure trafficked persons are provided the individually tailored services they need for their recovery and (re)integration, irrespective of whether they support criminal justice processes or stay in shelters.
- Systematize good practices that have been demonstrated under the ATIP legislation, such as the use of pre-trial depositions to allow victims to return home, fair compensation, and access to employment for those victims choosing to stay in shelters.



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## Background

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### Migrants are an integral part of Thailand's economy, and the majority are from Myanmar

Thailand's total migrant workforce of 3 million constitutes approximately 7 per cent of the country's total working population. According to the Thailand Ministry of Labour statistics on registered migrant workers, a clear majority or 76 per cent of the migrant workforce is from Myanmar (IOM, 2013). Applying this percentage to the estimate of registered and unregistered migrant workers, around 2.3 million Myanmar migrants may be working in Thailand today. While their contribution to the gross domestic product (GDP) of Thailand is estimated at only about one per cent, some industries are heavily dependent on migrant workers (Huguet and Chamrathirong, 2011). For example, in the fisheries sector, approximately 75 per cent of the total labour force is composed of migrant workers and the sector would be unable to maintain its current level of production without them (Chokesanguan, 2011). Any disruption of the fisheries sector would have further implications for other industrial sectors, such as seafood processing, storage, transportation and trade, impacting related communities and businesses as well as domestic and international consumers. Similarly, 80 per cent of the workforce in the construction sector are said to be migrant workers and the changes in their migration patterns could directly affect housing costs, which would subsequently affect other costs. As such, the economic and social implications of changing migration patterns go well beyond GDP.

In a report released in September 2012, the Office of the National Economic and Social Development Board said the labour shortage is expected to worsen in the near future. For example, in 2015, there will be 39.36 million Thai workers against the 43.26 million required, resulting in a shortfall of 3.9 million, according to the report. Ten years later, the gap is expected to grow to 5.36 million. These gaps will need to be filled by migrant workers or they will affect the planned economic development targets.

### Myanmar is changing and so will the migration patterns of Myanmar nationals

Myanmar has been undergoing a historic multi-faceted transformation over the past three years. Some of the major changes on the political front include the reinstallation of the legislative system, official recognition and parliamentary participation of the opposition National League for Democracy (NLD), release of political prisoners, ceasefires and peace negotiations with ethnic minority groups, and ending of media censorship and restrictions on the Internet.

Large volumes of financial and technical assistance have been provided to Myanmar to support the reform process, while most of the economic sanctions imposed on Myanmar have been lifted by now, enabling foreign direct investment (FDI) from these countries to flow into Myanmar. The Myanmar Government also

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1 This chapter is based on the study "Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their impact on Thailand", conducted jointly by the International Organization for Migration, Country Mission in Thailand, and the Asian Research Center for Migration, Chulalongkorn University. The full report is available at [http://th.iom.int/index.php/migration-resources/migration-research/Assessing-Potential-Changes-in-the-Migration-Patterns-of-Myanmar-Migrants-and-Their-Impacts-on-Thailand-\(English-Language\)/](http://th.iom.int/index.php/migration-resources/migration-research/Assessing-Potential-Changes-in-the-Migration-Patterns-of-Myanmar-Migrants-and-Their-Impacts-on-Thailand-(English-Language)/).

took some measures to facilitate the smoother flow of FDI, including the currency exchange system reform, and the introduction of the new foreign investment law which includes a five-year tax holiday for certain types of investment. According to the Ministry of National Planning and Economic Development, Myanmar has already approved FDI projects worth more than USD 2.1 billion between January and September 2013,<sup>2</sup> while the McKinsey Global Institute has identified the potential for Myanmar to attract USD 100 billion in FDI by 2030 (McKinsey Global Institute, 2013). In addition, Myanmar could “seize the moment” through the process of establishing the ASEAN Economic Community by 2015 (Umezaki, 2012).

Despite facing a number of challenges, the outlook for Myanmar’s economic development is quite positive for all the reasons explained above. The International Monetary Fund (IMF) and McKinsey have estimated that Myanmar’s GDP could grow at around 8 per cent per annum, quadrupling the economy to over USD 200 billion. They have also forecast that more than ten million non-agricultural jobs will be created by 2030, six million of those in manufacturing (McKinsey Global Institute, 2013). These forecasts suggest that in the future, Myanmar workers will have growing options to seek employment within their own country. There are a number of countries that have been transformed from net labour-sending to net labour-receiving countries through economic development, including Thailand and the Republic of Korea. If Myanmar’s economic development continues at the pace currently projected, Myanmar nationals’ migration patterns will inevitably and significantly change.

## Objectives of the study

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Under these economic and social contexts in Thailand and Myanmar, this chapter aims to provide an evidence-based understanding of the evolving migration patterns of Myanmar migrants and the ways the changes will affect them, their employers and other stakeholders, and finally, the two countries involved. It is based on the first comprehensive assessment conducted in Thailand to produce a broad understanding of the characteristics of Myanmar migrants in the country, as well as of the whole cycle of migration and the conditions of migrant workers before their decision to migrate, during the migration process and, in the case of return, after migration.<sup>3</sup>

This assessment aimed to examine the potential changes in migration patterns of Myanmar migrants in Thailand before large-scale return starts to take place. Furthermore, it looks at the scenario beyond the macro-level, to understand how the timing and the reasons for return may vary within the migrant population, which could affect different parts of the employment sectors of Thailand in different ways. The assessment aims to foster a better understanding of the changes including: a) migrants’ willingness to return to Myanmar; b) to what extent their decision has been influenced by the recent changes in Myanmar; c) the tipping points for different groups of migrants to return to Myanmar; d) which locations and industries will be most affected by changing migration patterns; and e) ways for the Thai Government, businesses and society to better prepare for the return of the migrant labour force.

<sup>2</sup> [https://www.mnped.gov.mm/html\\_file/foreign\\_trade/s30MA0201.htm](https://www.mnped.gov.mm/html_file/foreign_trade/s30MA0201.htm).

<sup>3</sup> The assessment was jointly conducted by the IOM Country Mission in Thailand and Asian Research Center for Migration, Chulalongkorn University. Data collection was done in partnership with civil society organizations including the Foundation for Rural Youth, National Catholic Commission on Migration, Thai Allied Committee with Desegregated Burma Foundation, Human Rights and Development Foundation, World Vision Thailand, and American Refugee Committee, and the Masters of Arts of International Development Studies (MAIDS) program students from Chulalongkorn University. It was funded by the IOM Development Fund, with support from the Ministry of Foreign Affairs of Thailand.

## Characteristics of the surveyed migrants

### Demographic characteristics and background of the surveyed migrants

Nearly all of the 5,027 migrants who participated in the survey were 18–60 years of age (98.0%). The gender division of the surveyed migrants was equal, with females comprising 48.2 per cent and males 51.6 per cent of the sample. However, there were more female than male migrants in the young age category of 15–24 years. While the surveyed migrants came from all states and regions of Myanmar, the majority of them (76.5%) came from one of five states and regions bordering Thailand – namely, Mon State, Shan State, Thanintharyi Region, Kayin State and Kayah State. The Bamar were the largest ethnic group among the surveyed migrants, representing 43.5 per cent of the total number, followed by the Shan (18.3%), the Mon (15.1%), the Kayin (12.5%) and other groups (10.6%), which include the Kayar, the Rakhine, the Kachin, and the Chin.

Prior to migrating to Thailand, one fifth (21.0%) of the sample were unemployed, while 38.8 per cent were wage labourers in sectors such as agriculture (10.9%), services (6.7%), educational and social work (3.5%) and others (6.2%). The remaining 40.2 per cent of the sample were self-employed, including 32.4 per cent who had their own farms and 7.8 per cent who were merchants.<sup>4</sup>

One third (35.7%) came from urban areas, while 64.3 per cent came from rural areas. Most, 59.8 per cent, respondents said their living conditions in Myanmar were “adequate”, while 15.7 per cent said their conditions were “good” or “quite good” and 23.9 per cent reported their conditions to be “bad” or “very bad”, with no significant differences between genders or areas of origin. Migrants who belonged to the Kayar, the Kachin, the Chin and the Muslim ethnic groups reported more difficult living conditions prior to migration than other ethnic groups.

More than half of the migrants surveyed were married and over 90 per cent of those were living with spouses in Thailand. Among married migrants, 68.6 per cent had at least one child under the age of 15 years. Among migrants with children, 56.8 per cent said that all of their children were in Thailand, 30.9 per cent said all of their children were all in Myanmar and 10.6 per cent reported that some children were in Thailand and some were in Myanmar. In non-border provinces, migrants with children were more likely to have left them behind in Myanmar whereas those in border provinces were less likely to have done so.<sup>5</sup>

Female migrants were more represented than males at the lower educational levels (no education and primary education) as well as the higher educational levels (university and vocational training).

### Migration history of the surveyed migrants

The majority of the migrants had been living in Thailand for less than 10 years (73.2%). The number of migrants staying in Thailand decreases as the period of stay increases.<sup>6</sup>

Around 74.9 per cent of surveyed migrants cited economic reasons, such as earning a higher income or better employment opportunities, as the primary reason for migrating to Thailand. Another 13.4 per cent

4 For differences in education levels, see *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM Bangkok 2013, p. 11: Figure 4.

5 For provincial division, see *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM Bangkok 2013, p. 10: Figure 3.

6 For more details, see *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM Bangkok 2013, p. 15: Figure 10.

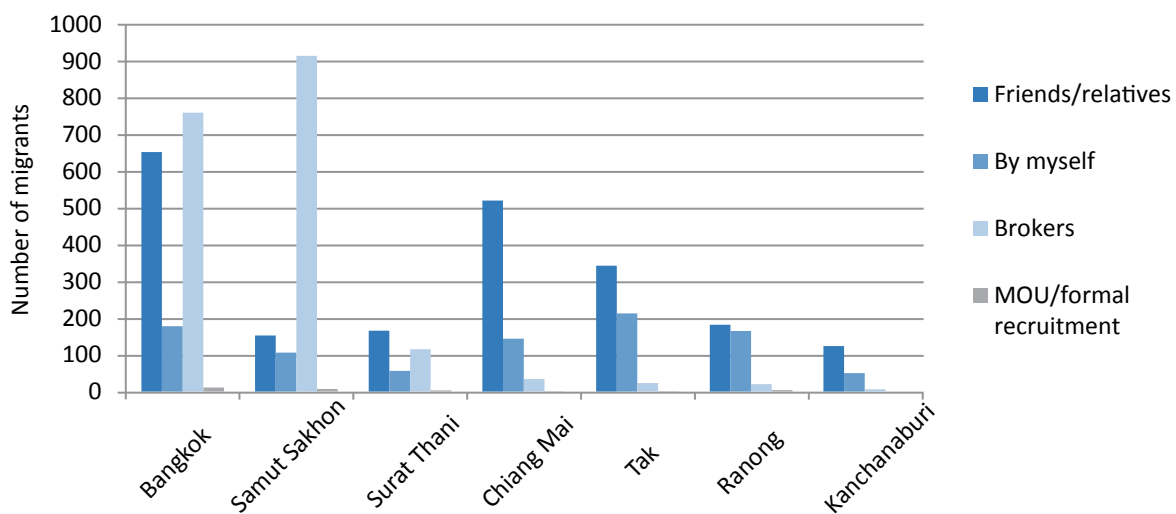
had personal reasons, such as the desire to “follow” family and friends, persuasion by family/friends to migrate, or the desire for personal experience and exposure; 7.0 per cent cited security/safety issues; and 4.6 per cent cited better living conditions and services as the primary reason for coming to Thailand. Disaggregating the data by ethnic group, the Shan (22.6%) had the highest percentage of those citing security/safety issues as the primary reason for migrating, followed by the Kayin (7.2%).

Some 43.3 per cent of the migrants came to Thailand through arrangements made by family and friends, 37.7 per cent through brokers and 18.5 per cent on their own. Only 0.5 per cent of the respondents came to Thailand through the formal recruitment process stipulated in a Memorandum of Understanding (MOU) between Myanmar and Thailand on cooperation in the employment of migrant workers.

Among states/regions of origin, Shan State had the highest percentage of migrants (86.3%) who migrated to Thailand either with the help of family and friends or by themselves. Other than those from Shan State, migrants from border states/regions of Myanmar were more likely to use brokers than those from non-border states/regions.

Among the provinces of current residence in Thailand, the non-border provinces of Samut Sakhon (77.5%), Bangkok (47.4%) and Surat Thani (33.8%) had much higher percentages of respondents who migrated to Thailand with brokers than the border provinces. In the latter, the percentages of migrants who came to Thailand through brokers were only between 3.3 and 5.4 per cent. These trends are shown in Figure 10.1.

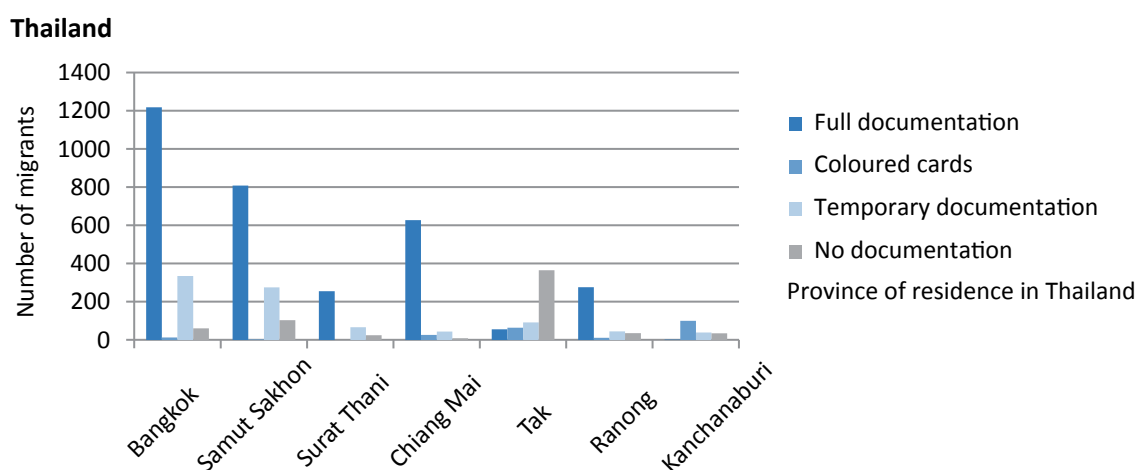
**Figure 10.1: Assistance received in migrating to Thailand, by province of current residence**



Around 64.6 per cent of all the migrants in the sample indicated having full documentation, 18.3 per cent reported having temporary documentation, 12.7 per cent were undocumented, 4.4 per cent had coloured cards,<sup>7</sup> and 0.2 per cent did not respond. Migrants with full documentation were the largest group in many provinces, for example, totaling between 67.8 per cent in Samut Sakhon and 88.5 per cent in Chiang Mai. However, in Tak Province, the majority of respondents were without any documents (63.1%) and in Kanchanaburi coloured cardholders were the largest group (56.1%).

7 “Colour cards” are identity cards of different colours with identification numbers given to members of ethnic minorities more than 12 years of age by the Ministry of Interior’s Department of Provincial Administration, which has implemented this classification system for various groups of ethnic minorities in Thailand since 1992.



**Figure 10.2: Documentation status of the surveyed migrants, by province of current residence in Thailand**

Analysing data by employment sector, agriculture, other labour work, fisheries and construction were found to have lower percentages of documented migrants. On the other hand, higher percentages of documented migrants were found in employment sectors where the workers are concentrated in fixed locations such as factories (fisheries-related, industrial production and sales, and other manufacturing).

### 2.3 Employment conditions in Thailand

The migrants were split almost equally among those who received less than the minimum wage of THB 300 per day, those who received the minimum wage, and those who received more than the minimum wage. Female migrants reported lower levels of income than male migrants. Among the lowest income group, there were nearly twice as many females as males.

There were clear differences in the income levels and working conditions between border provinces and non-border provinces. In three non-border provinces, Bangkok, Samut Sakhon and Surat Thani, 90.1, 84.3 and 93.1 per cent of migrants respectively, received at least the minimum wage. On the other hand, the level of income was generally lower in border provinces, especially in Tak, where 91.5 per cent of migrants received less than the minimum wage and 47.5 per cent received less than half the minimum wage. The breakdown of wages received by province and sector is shown in Figure 10.3.

Significant variation was observed in income levels within the same employment sectors, such as agriculture and fisheries, across different provinces.<sup>8</sup> In some provinces there were wage variations among employment sectors. Such variations were unique to each province and generalization was not possible.

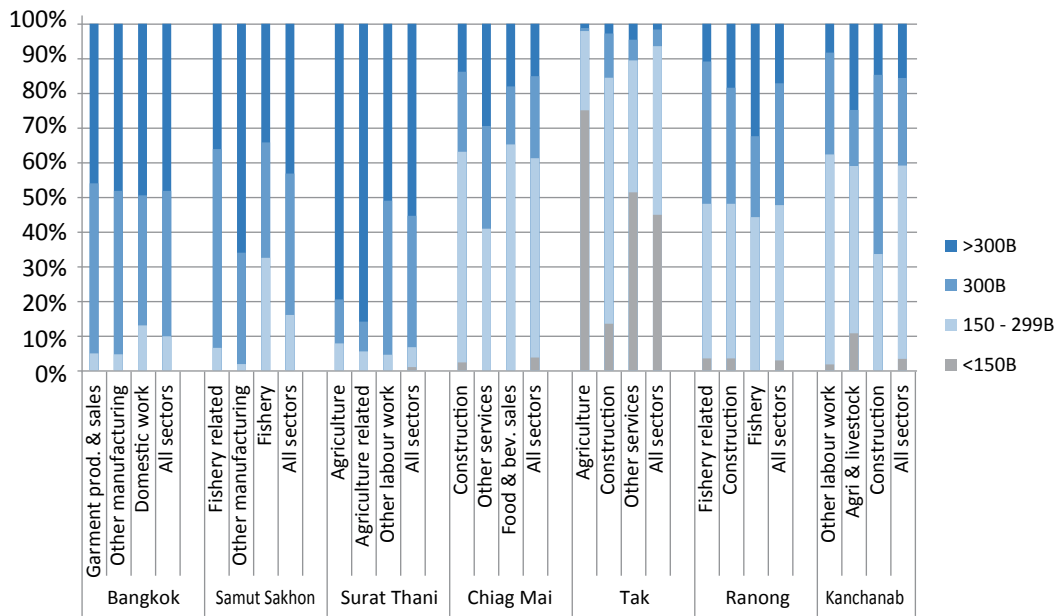
In general, migrants with full or temporary documentation earned higher incomes. Sixty-five per cent of migrants who earned less than half of the minimum wage were without documentation. Furthermore, migrants with coloured cards comprised a higher percentage of those receiving lower salaries.

The clear majority of both female and male migrants rated their working conditions as “adequate” (59.8%) or “good” (32.8%), while only a small minority reported “very good” (3%), “bad” (4.1%) or “very bad” (0.2%) conditions.<sup>9</sup> Thai language skills had a positive relation to the migrants’ work conditions and their satisfaction with their income levels.

<sup>8</sup> For detailed information about different employment sectors and provinces, see *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM Bangkok 2013, p. 17: figure 12.

<sup>9</sup> For variation between employment sectors and provinces, see *Assessing Potential Changes in the Migration Patterns of Myanmar Migrants and their Impacts on Thailand*, IOM Bangkok 2013, p. 19: figure 14.

Figure 10.3: Surveyed migrants' level of income in the three main employment sectors of each province



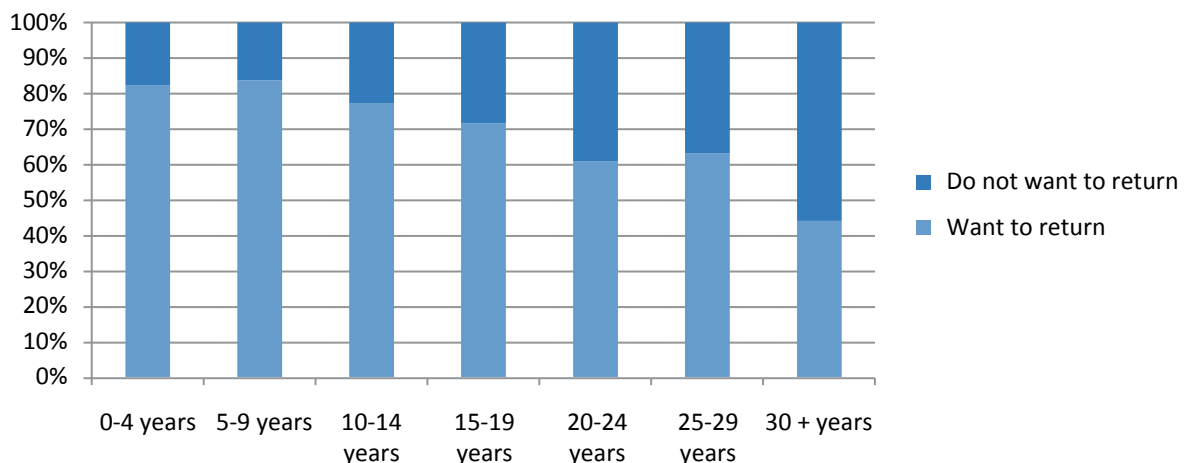
A larger percentage of migrants in the highest income level rated their working conditions as good or very good (44.8%) and, among those, over 60 per cent reported that their income level was sufficient for necessary expenses. Only one in four migrants earning less than the minimum wage gave a good or very good rating of their working conditions, and less than 30 per cent reported that their income was sufficient to cover necessary expenses.

## Likelihood of return migration

### Return prospects of the surveyed migrants

Some 79.9 per cent of the surveyed migrants expressed their willingness to go back to Myanmar in the future, and 20.1 per cent said they wanted to stay in Thailand forever or had no intention to go back to Myanmar at the time of the survey. The percentage of female migrants (79.1%) who expressed their willingness to return was almost the same as that of males (80.5%). Among those who indicated their willingness to return, 82.0 per cent indicated that their decisions had been influenced by the recent political and economic changes in Myanmar. Male migrants were more likely to be influenced by the changes in Myanmar than females (84.2% compared with 79.7%).

The length of stay in Thailand is the major variable that determines whether a migrant will want to return to Myanmar or not. The longer a migrant has stayed in Thailand, the less he or she is willing to go back (only 55.6% of those who have lived in Thailand for more than 20 years want to return). Among migrants who have stayed in Thailand for more than 30 years, only 44.1 per cent indicated that they wanted to return to Myanmar.

**Figure 10.4: Percentage of surveyed migrants who are willing to return, by length of stay in Thailand**

A much lower proportion (43.0%) of migrants who held coloured cards wanted to return, compared with migrants with other documentation statuses. Coloured cards give migrants a formal opportunity of permanent residence, and this option has provided a great incentive for migrants to choose to settle down and integrate in Thailand. Among migrants who do not have the option of permanent residence, those who were better documented were slightly more willing to return. The proportions of migrants wanting to return were 82.5 per cent among those fully documented, 81.1 per cent among those temporarily documented and 77.3 per cent among undocumented migrants. A much lower percentage of surveyed migrants living in Kanchanaburi want to return (27.8%) compared with those in other provinces.

A higher percentage of migrants with all of their children in Myanmar (90.7%) expressed a willingness to return, compared with only 72.8 per cent of migrants with all of their children living in Thailand.

A slightly lower percentage of migrants who came to Thailand because of security/safety reasons (74.9%) want to return, while 81.0 per cent of those who migrated for economic reasons indicated a willingness to return to Myanmar.

There was a weak positive relationship between level of income and willingness to return to Myanmar, with a higher percentage of migrants belonging to the higher income group expressing their wish to return (83.7%), although the relationship was not statistically significant. No significant correlation was observed between a migrant's employment sector (across provinces) and his or her willingness to return.

### Reasons for wanting to go back to Myanmar

The most common reasons for wanting to go back to Myanmar cited by migrants were personal (77.9%). These included the desire to go back to families and friends, having stayed long enough in Thailand, and having saved enough money. Only 11.5 per cent indicated that their main reason for wanting to return was related to changes in Myanmar, including greater security and safety, greater business and employment opportunities, and better infrastructure and services. However, changes pertaining to Myanmar itself were the most cited secondary reasons among the migrants surveyed (43.3%).

Some 10.6 per cent of migrants indicated that their main reason for wanting to return was related to conditions in Thailand, such as feelings of being exploited or discriminated against, not having been able to save money, not liking the life in Thailand, and having troubles with their legal status. Furthermore, more migrants (25.8%) reported conditions in Thailand as their secondary reason for returning than as the primary reason. Thus, for one in every four migrants, unfavourable conditions in Thailand have influenced

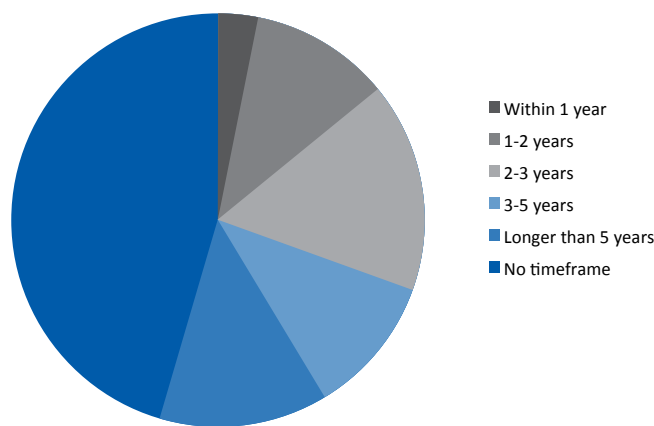
their consideration to return to Myanmar. Among those who cited conditions in Thailand as their primary reason for wanting to return, 50 per cent earned less than the minimum wage.

While gender differences concerning the reasons for wanting to go back were small, the largest gender difference was observed among migrants who cited business and employment opportunities in Myanmar as the primary reason: twice as many male migrants as female migrants cited this reason.

### Planned time frame for return

Of those surveyed migrants who expressed their willingness to return, 54.5 per cent had a clear time frame for their return to Myanmar. Around 30.4 per cent reported that they planned to return within three years, and 24.0 per cent said they would return after three or more years. On the other hand, 45.5 per cent said that while they would want to go back someday, they had not yet thought about the time frame (Figure 10.5). Male migrants had a slightly shorter time frame for return than female migrants.

**Figure 10.5: The time frame for return among surveyed migrants who expressed their willingness to return**



Migrants with temporary documentation or no documentation reported having a shorter time frame for return than those with full documentation or coloured cards. Some 39.3 per cent of migrants without documentation and 33.1 per cent of those with temporary documentation were planning to return within three years, compared with 28.5 per cent of migrants with full documentation and 17.9 per cent of migrants with coloured cards.

Migrants in Samut Sakhon and Tak Provinces seemed to have a clearer time frame for return than migrants in other provinces. Fully 68.2 per cent of migrants in Samut Sakhon and 70.1 per cent of those in Tak were able to indicate a definite time frame for return, compared with only 54.5 per cent of the entire sample. Some 41.5 per cent of the migrants in Samut Sakhon and 38.3 per cent of those in Tak indicated that they would return within three years, compared with 30.3 per cent of the entire sample. Migrant workers in the fisheries and fisheries-related sectors in Samut Sakhon, the agriculture and animal husbandry sector in Tak, and the fisheries sector in Ranong also had shorter time frames for return to Myanmar.

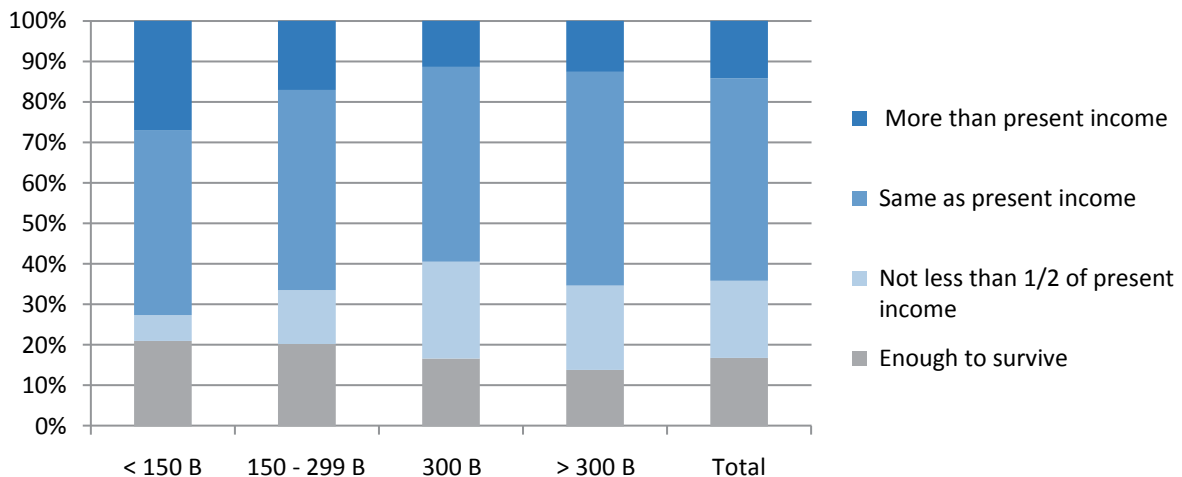
Migrants with the lowest income level are not only more willing than others to return within three years (40.8%), but are also more likely (67.0%) to have decided on a time frame for return.

Migrants who have been staying in Thailand for shorter periods of time are more likely to return to Myanmar sooner. While 54.5 per cent of the total sample had a time frame for return, among migrants who had stayed in Thailand for less than five years, 59.5 per cent had decided on a time frame and 33.9 per cent were ready to return within three years.

## Minimum acceptable income level upon return

Approximately half of the surveyed migrants (49.7%) indicated that the acceptable minimum income in Myanmar would be the same as their current income in Thailand. A total of 63.8 per cent of respondents would require the same as their income in Thailand or more. More migrants (35.8%) would be content with a lower income than present, even if just “enough to survive”, than migrants who would only accept a higher income than they are receiving currently (14.1%). There was no significant difference between genders, migrants of different ethnicities or migrants from different places of origin in Myanmar.

**Figure 10.6: Acceptable minimum wage in Myanmar, by level of income in Thailand**



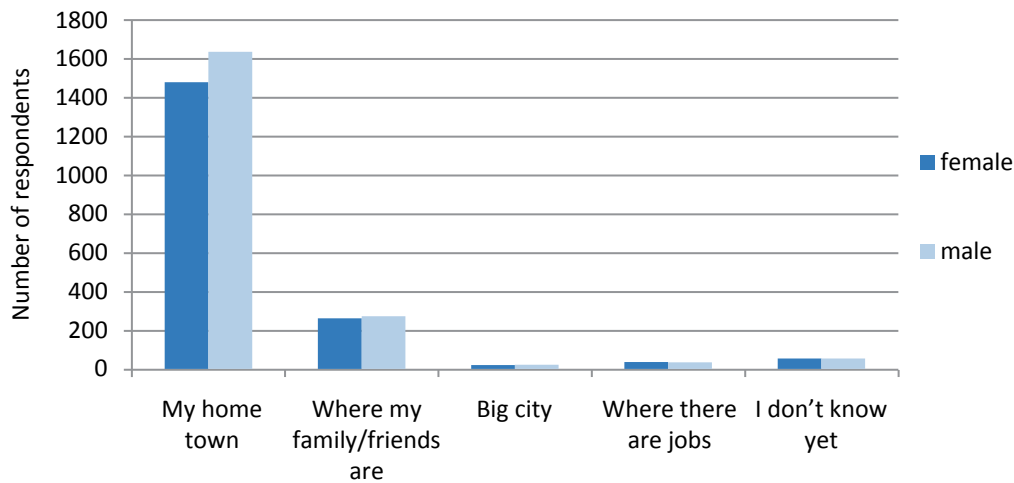
A larger percentage (27.1%) of migrants in the lowest income group, earning less than one half of the minimum wage in Thailand, would require a higher income than what they are receiving in Thailand. Similar results were found with undocumented migrants. The proportion of migrants only willing to accept the same income or more decreased slightly among migrants in the higher income group. Migrants in Bangkok, Surat Thani and Samut Sakhon had the highest minimum acceptable income for their return to Myanmar, and those in Tak had the lowest.

Although for each province a majority of the respondents would accept the same income as they are receiving at present, there still are notable differences among provinces and job sectors. Chiang Mai has a clearly larger portion of migrants who would settle for income which is “enough to survive” in Myanmar, especially in the construction sector. In all provinces apart from Tak, a larger portion of migrants would accept an income lower than what they presently earn rather than demand a higher income when back in Myanmar.

Despite forecasted economic development and job creation in Myanmar, only a small minority of both female and male migrants (2.7%) planned to move specifically to where there are jobs or to the big cities. A clear majority of migrants (91.2%) wanted to return to their hometowns or to reconnect with their family and friends (Figure 10.7).

Migrants from most ethnic groups, especially the Mon and the Shan, mirrored the overall preference of respondents to engage in farming their own land upon return to Myanmar. The Kayin were the only group who preferred starting their own business to farming, and a slightly larger percentage of the Kayin than of other ethnic groups were willing to move to where the jobs are.

Figure 10.7: Surveyed migrants' preferred return destination, by sex



A majority of migrants preferred to engage in four main types of job upon returning to Myanmar: farming their own land (32.7%), opening a business (20.9%), selling food and beverages (19.3%) and engaging in trade and retail (14.3%). Generally, in Thailand migrants hold a wide variety of jobs that do not match their future employment preferences in Myanmar.

## Conclusion

The assessment produced a broad understanding of the characteristics of Myanmar migrants in Thailand and their opinions concerning a possible return to Myanmar during an era of political and economic transformation in that country.

### Summary of findings

Some 79.9 per cent of the migrants in the survey are willing to return to Myanmar someday, and only 20.1 per cent of them are either planning for permanent settlement in Thailand or have no prospects for return at this point in time. It is worth noting that the willingness to return among migrants who came to Thailand due to safety and security reasons is much higher than among displaced persons living in temporary shelters along the Myanmar–Thailand border.<sup>10</sup> Some of the reasons that could explain the stronger willingness to return for migrant workers include: a) lower level of many services and support; b) higher mobility and smaller likelihood of forming a strong community and sense of belonging; c) better control over when and how they want to go back; d) the opportunity to work, save money and have funds to re-establish their lives upon return; and e) no option of resettling to a third country.

Two major factors affecting the decisions of migrants concerning their return include the length of their stay in Thailand and the option for permanent residency in the country. This is particularly the case with migrants who have lived in Thailand for more than 20 years and/or those who have coloured cards. To a lesser extent, migrants with all of their children living in Thailand were less likely to have plans to go back to Myanmar. These three factors are all interrelated and indicate that legal and social integration in Thailand strengthens a migrant's prospects of remaining in the country rather than returning to Myanmar.

<sup>10</sup> According to the Karen Refugees Committee (June 2013), 27 per cent of surveyed refugees (displaced persons) in Tham Hin camp indicated wanting to return if peace was guaranteed. According to UNHCR (September 2013), fewer than 10 per cent of surveyed refugees in Mae La camp preferred to return home to Myanmar one day. The remaining surveyed refugees wanted to stay either in Thailand or to be resettled in a third country.



Slightly higher levels of interest in return were observed among migrants with full documentation status and those receiving higher incomes. Migrants in the latter category are typically in the process of achieving the objective of migrating to Thailand, as they have saved enough money and are better able to plan their next step, i.e., return. However, when it comes to the time frame for return, better-documented and higher-income migrants have a longer or less fixed time frame in mind than those with less secure documentation or lower incomes.

Migrants who have a less secure documentation status and those with lower incomes, on the other hand, are slightly less interested in going back to Myanmar; this probably has to do with the fact that they are not yet at the stage of being able to think about return. However, among the migrants with lower incomes or less secure documentation who expressed their willingness to go back, a greater percentage have clearer and shorter time frames for return than respondents with higher incomes or full documentation.

Such other factors as gender, ethnic group, place of origin, reason for migrating to Thailand, and employment sector seem to have little impact on the willingness of migrants to return or on their time frame for return.

Personal reasons, especially the desire to be back in their hometowns/villages and to be reunited with families and friends, dominate migrants' primary reasons for wanting to return. However, better business and employment opportunities, as well as improved security, safety and services in Myanmar were reported as the second most important reason for nearly half of those who want to return. Unfavourable working or living conditions in Thailand constituted only a minor part of the migrants' motivation for return. However, migrants in the lower income groups or those who reported bad working conditions are more influenced by these unfavourable conditions in Thailand than migrants in the higher income groups.

There is little connection between the jobs the surveyed migrants have in Thailand and the ones they prefer to go back to in Myanmar. Instead, more migrants planning to return prefer to go back to the same jobs they had in Myanmar before they migrated to Thailand. This reflects the realities of the available jobs in their preferred destinations, which, for most respondents, are their hometowns or villages. The fact that a large percentage of migrants indicated that they want to return to their hometowns or villages and that few migrants are willing to move to where the jobs are indicates that the respondents do not want to become migrants again – this time as internal migrants – but would rather settle down where they feel at home and would rather take the jobs that they can find in these locations.

The majority of the surveyed migrants would consider at least their current level of income in Thailand as the minimum acceptable salary when they return to Myanmar; however, such expectations are currently not in line with the prevailing wages in Myanmar. Current income level, which largely depends on job sector and location (i.e. province), causes variation in the actual amount that migrants would accept once they have returned. Migrants in provinces with higher income levels, and thus where more migrants have already managed to make savings, are less inclined to demand their current salary level when they return to Myanmar while migrants in lower income groups would only accept higher incomes than they are currently receiving.

### Future considerations

The data show that presently there are still a lot of uncertainties in terms of how soon and at what speed the changes in the migration patterns of Myanmar migrants will take place and how they will impact Thailand's economy. Nonetheless, there are a number of important issues that have come up for further consideration.

First, the majority of migrants came to Thailand with the objective of earning a satisfactory income, and they regard their stay as a temporary period of economic opportunities, after which they can return home.

Income level and working conditions may influence the timing of the actual return; compared with migrants in lower income groups, those who have satisfactory working conditions and better incomes are more likely to remain uncertain about return and to have a longer-term plan about when they are actually going back to Myanmar. For the majority of these migrants, however, the intention is not to opt for permanent residency in Thailand.

A finding that became clear from this assessment is that fully documented and decently paid migrants have better levels of satisfaction working in Thailand and more positive attitudes towards return, although their planned return time frames are longer. While a future constraint in the supply of migrant workers from Myanmar may prove to be a challenge for Thailand, the recommended strategy is to provide migrants with the opportunity to be documented and to have decent wages and work conditions, to increase their positive migration experiences and their willingness to be employed in Thailand. Taking into consideration the expected increases in the labour demand in both Thailand and Myanmar in the coming years, it is predicted that the job sectors which will be most impacted by their inability to fill their labour needs will be those that currently pay migrants inadequate wages. These include various job sectors in Tak, especially agriculture; various job sectors in other border provinces; and fisheries in Samut Sakhon. Previously, Thai workers in these sectors were replaced by new migrants. In the future, with an increase in the demand for labour in both countries, these sectors could encounter difficulties in finding workers at the level of income they presently offer.

The Thai Government is well aware of the potential decrease in the migrant labour supply from Myanmar, and is looking at formalizing labour importation arrangements with other countries, such as Viet Nam and Bangladesh. However, considering that the industries which will likely be most affected by changes in the migration patterns among Myanmar migrants currently operate under the model of low-wage employment, it is unrealistic to expect that other foreign migrant workers would be willing to come to Thailand through a formal labour migration scheme and accept such wages. Furthermore, with rising production and labour costs in Thailand, the labour-intensive, low-technology manufacturing sector has, in general, lost the comparative advantage it previously held. However, importing workers from other countries may work for some job sectors in mainly non-border provinces, where the level of income is mostly above the minimum wage.

If the Government plans to accept migrant workers from other countries, the system would need to be worked out thoroughly, as this, in essence, would suggest that Thailand is actually entering a new phase of labour importation. In order to attract a constant stream of migrants with a low turnover, both the employers in Thailand and the Thai Government should be tasked to maintain the minimum standards that are promised to migrant workers, as these standards are already quite low, even for labour-receiving markets. Besides, historically Thailand has never formally imported workers in the millions – what is currently dominating the migrant worker management system is an effort to regularize those who came to Thailand through irregular channels, and the recruitment of regular workers through the official channel remains limited (IOM, 2013). The regular recruitment system will thus be revisited and enhanced as Thailand moves away from its dependency on Myanmar migrant workers.

Another option is to follow the route of countries such as Japan and the Republic of Korea which have managed to re-strategize by investing in automation and technology. This option would require a thorough structural change towards higher value-added production by investing in research and development, educational reform and skills development. In theory, with an inclusive growth plan, both Thai and foreign workers would be able to develop the skills required by industries, thus reducing the current skills mismatch in Thailand. However, the question remains as to how feasible these moves will be for the job sectors that

currently underpay migrants, both in terms of the relevance of technology and also from a cost–performance perspective.

For these reasons, it is difficult to think of any other practical options for these employment sectors than raising the levels of income for their migrant workers so that they can retain a sufficient migrant labour force necessary for operating their businesses. How quickly they will be forced to raise the level of wages will depend on the increase in the demand for labour in other parts of Thailand and Myanmar, and how the market wage levels for migrants will increase. These are all important factors that individual business owners, industry associations and the Royal Thai Government must consider in facing and managing the changes that are sure to come.

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# CHAPTER 11 THE ASEAN COMMUNITY AND IMPLICATIONS FOR MIGRATION IN THAILAND<sup>1</sup>

Claudia Natali, Euan Mcdougall, Max Tunon and Sally Barber<sup>2</sup>

In 2015 the ASEAN Community is set to become a reality, with its three pillars – political-security, economic and socio-cultural – each aiming to facilitate various dimensions of regional integration. Two of these pillars, namely the economic and socio-cultural pillars, have explicit provisions related to migration. However, the implications of these provisions for migrants of all skill levels, the economy, the workforce and society in Thailand as well as the region are difficult to predict. This chapter will provide an overview of ASEAN integration, specifically as it relates to migration, and discuss what the realization of the ASEAN Community will mean for the movement of labour and the protection of migrant workers' rights, particularly in relation to Thailand. The chapter will also provide a set of recommendations on how the Royal Thai Government and social partners can best prepare for the onset of the ASEAN Community and maximize the benefits for the Thai workforce, employers and society.

## Background

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The goal of establishing an ASEAN community was agreed upon in 1997 and enshrined in the ASEAN Vision 2020 (ASEAN, 1997), and subsequently elaborated through the Declaration of ASEAN Concord II (Bali Concord II), which explicitly seeks to bring the ASEAN Vision 2020 into reality by setting the goal of building an ASEAN Community by 2020 comprising three pillars, namely the political-security, economic and socio-cultural communities, all of which are envisaged as closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region. With regard to the movement of labour, the ASEAN Economic Community (AEC) proposes to facilitate movement of business persons, skilled labour and talent, while that of the ASEAN Socio-Cultural Community (ASCC) commits to continue existing efforts to promote regional mobility and to protect and promote the rights of migrant workers, including access to social protection (ASEAN, 2003).

At the 12th ASEAN Summit in 2007, in Cebu, the Philippines, ASEAN Member States declared the Acceleration of the Establishment of an ASEAN Community, comprising the aforementioned three pillars, by five years to 2015. Subsequently, the Roadmap for an ASEAN Community 2009-2015 laid out in greater detail the agreed required steps for ASEAN Member States to form the ASEAN Community by 2015, comprising separate blueprints for the Political-Security, Economic and Socio-Cultural Communities (ASEAN, 2009a). All three blueprints contain both direct and indirect reference to migration and the intra-regional movement of labour across borders. The ASEAN Labour Ministers' Work Plan 2010-2015 summarizes below the various labour sector actions in the Community Blueprints:

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1 This chapter was commissioned by IOM Thailand and the ILO Regional Office for Asia and the Pacific.

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Pillar	Action
Economic Community:	<ul style="list-style-type: none"> <li>• Facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labour who are engaged in cross-border trade and investment related activities</li> <li>• Work towards recognition of professional qualifications</li> <li>• Complete negotiations of, develop new, and implement mutual recognition arrangements</li> <li>• Strengthen human resource development and capacity building in the area of services</li> <li>• Develop core competencies and qualifications in priority services occupations</li> <li>• Strengthen active labour market programme capacities in Member States</li> </ul>
Socio-Cultural Community:	<ul style="list-style-type: none"> <li>• Invest in human resource development</li> <li>• Promote decent work</li> <li>• Strengthen entrepreneurship skills for women, youth, elderly and persons with disabilities</li> <li>• Protect and promote of the rights of migrant workers</li> <li>• Foster social safety nets and protect workers from the negative impacts of integration and globalization (including strengthening ASEAN cooperation in protecting female migrant workers)</li> </ul>
Political-Security Community:	<ul style="list-style-type: none"> <li>• Strengthen criminal justice response to trafficking in persons</li> <li>• Protect victims of trafficking</li> </ul>

In 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in Cebu, underpinning the principles for workers' protections under the ASCC blueprint.

This chapter will focus on how the ASEAN Community is moving forward in facilitating the increased mobility of skilled labour while also trying to protect and promote the rights of migrant workers. It will look specifically at the provisions of the Economic and Socio-Cultural pillars of the ASEAN Community, where migration is given the greatest focus, and discuss the key aims and governing structures of each of these pillars with regard to migration. First, an overview of the institutional context of the ASEAN Community will be provided. Secondly, an analysis of what the AEC is and what its realization means for mobility of skilled workers will be conducted. Considerations regarding the protection of low-skilled migrants, as put forward by the ASCC, will follow. The chapter will then present an overview of challenges that Thailand is facing in achieving freer mobility of labour, both highly skilled and low-skilled, in ASEAN. A separate section on Thailand's preparation for the AEC and ASCC is also included, following which a set of recommendations will conclude the chapter.

## ASEAN Community Institutional context

In order to understand the institutional context in which ASEAN is working towards promoting labour mobility while protecting migrant rights, including associated limitations, a brief description of the ASEAN structure is necessary, particularly in regard to issues of migration and labour. Each ASEAN sectoral body is primarily responsible for working towards the relevant objectives of one of the three pillars, including facilitating cross-pillar coordination and collaboration where necessary. The task of facilitating increased mobility of both low-skilled and highly skilled labour is complex and multi-faceted, involving numerous



ASEAN sectoral bodies and many ministries at the national level, as well as non-government stakeholders including professional associations, regulators and employers.

Discussions on the free flow of services, including on the ASEAN Mutual Recognitions Arrangements (MRAs – discussed further in this chapter) are led by the Coordinating Committee on Services (CCS), which reports to the ASEAN Economic Ministers under the Economic Pillar. Immigration and consular affairs issues are discussed by the Thai Immigration Bureau and Department of Consular Affairs (Ministry of Foreign Affairs) under the Political-Security pillar.

Under the Socio-Cultural Pillar, the Ministry of Labour of Thailand participates in discussions regarding labour migration and migrant rights through the Senior Labour Officials Meeting (SLOM), which reports to the ASEAN Labour Ministers. The Department of Employment is taking the lead on the ASEAN Committee on the implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) (discussed in more detail below), while the Department of Skills Development leads on human resources development. Furthermore, the Ministry of Education participates in the ASEAN sectoral body on education – the Senior Officials on Education (SOM-ED), also under the Socio-Cultural Pillar.

The structure of ASEAN, including the various pillars and sectoral bodies with different mandates, poses challenges for effective cross-ministerial coordination both at a national and regional level. As yet, there is no clearly defined cross-sectoral coordination mechanism established on the issue of the free flow of skilled labour in ASEAN, or between the ACMW and the ASEAN Senior Officials Meeting on Transnational Crime (SOM-TC) on the issue of migrant workers and trafficking. Overall, the roles of the different ministries in Thailand, who are party to the various ASEAN sectoral bodies, in promoting increased mobility of skilled labour and protecting the rights of migrant workers have not been clearly established and communicated. As such, discussions under each of the pillars have to a large extent occurred in parallel.

## **The ASEAN Economic Community and the free flow of skilled labour**

The ASEAN Economic Community (AEC) Blueprint covers issues related to the free flow of labour under its provisions for the free flow of services and skilled labour (ASEAN, 2008). Under the objective of facilitating the free flow of skilled labour by 2015, the Blueprint highlights two key actions: 1) “allowing for managed mobility or facilitated entry for the movement of natural persons engaged in trade in goods, services, and investments, according to the prevailing regulations of the receiving country” through facilitating “the issuance of visas and employment passes for ASEAN professionals and skilled labour who are engaged in cross-border trade and investment related activities” and 2) “facilitating the free flow of services (by 2015), by working towards harmonization and standardisation, with a view to facilitate their movement within the region.”

Therefore, it is clear that the free flow of skilled labour, as envisioned by ASEAN, is restricted in its scope, focusing mainly on the movement of natural persons and service providers, with the primary aim of facilitating cross-border trade and investment.

The goals of the ASEAN community in relation to liberalizing trade in services are enshrined in the ASEAN Agreement on Free Trade in Services (AFAS), signed in 1995 by ASEAN Member States. The AFAS was derived from the General Agreement in Trade in Services (GATS) of the World Trade Organization. Clauses on labour mobility, particularly in regard to the movement of Natural Persons (Mode 4 of AFAS/GATS), are included in the AFAS based on the recognition that the provision of many services requires the physical proximity of consumers and service providers.

The definition of “Natural Persons” as covered by Mode 4 of GATS and AFAS includes independent service providers, the self-employed, employees of a foreign company who are sent to fulfil a contract with a host country client (contractual service suppliers) and foreign employees of foreign companies with a commercial presence in the territory of a Member State (intra-corporate transferees) (UN Department of Economic and Social Affairs, 2005). In its broadest definition, Mode 4 also covers foreign individuals employed by domestic service companies, but in practice it has generally not been used to facilitate this type of migration. The movements of natural persons for the purpose of service provision are generally meant to be temporary and exclude entry into the local labour market. Despite neither AFAS nor GATS specifying a threshold to the skill level of persons to be covered by the agreements, the focus has been on highly skilled workers and in particular intra-corporate transferees at the level of directors, managers, supervisors, specialists, experts, advisors and/or business visitors. In line with this objective, the ASEAN Agreement on the Movement of Natural Persons was signed in 2012, and allows temporary movement of skilled workers across companies within ASEAN countries; however, permanent relocation is still not permitted.

### Mutual Recognition Arrangements (MRAs)

Under the objective of facilitating free flow of services, ASEAN is working towards the mutual recognition of professional qualifications with a view to facilitating the movement of skilled professions within the region. Thus far ASEAN member states have completed and signed MRAs for eight priority professions/sectors, namely accountancy, engineering, surveying, architectural, nursing, medical, and dental services, while one sector-wide MRA has also been introduced for tourism, covering 33 professions.

The MRAs generally encompass the following elements/sections: definitions, recognition and eligibility of foreign practitioners; recognition mechanisms which identify the role of the national regulatory authority; mutual exemptions; dispute settlement provisions; and capacity building and technical assistance provisions (ASEAN, 2009b). Criteria for recognition generally cover: education/qualifications (e.g. diplomas recognized by both the host and origin country); registration and licensing (the practitioner has to possess a valid professional registration/practising certificate); certification that the practitioner has not violated any professional or ethical standards; and experience e.g. five years of experience in the country of origin is required for medical practitioners, 10 years for architectural practitioners (ASEAN, 2007). Importantly however, the MRAs leave considerable power in the hands of national authorities by stipulating that workers can only apply for work in another ASEAN Member State (AMS) in accordance with the laws and regulations of the host country (ASEAN, 2006).

The MRAs, despite differences between them, have generally operated as mechanisms for bringing AMS together to discuss professional standards, regulations, ethics and other aspects involved in the practice of a profession. The MRAs for engineers, architects, and medical and dental practitioners provide for the establishment of coordination mechanisms to focus on facilitating the recognition of qualified practitioners in other ASEAN Member States. The MRAs on accountancy and surveying take a different approach by providing the enabling framework of broad principles for further bilateral or multilateral negotiations among ASEAN Member States. The MRAs also acknowledge the need for the roles of existing national bodies and regulatory mechanisms to be adapted to incorporate the necessary steps required for successful implementation of the agreements (ACCDP, 2010).

Despite some confusion associated with the MRAs, and some false hopes that they would automatically lead to increased mobility of skilled labour, there has been slow but significant progress made towards their implementation, and they are expected to be ready for the implementation of the AEC in 2015 (Capanelli, 2013). The MRAs are currently at various stages of development, with those in engineering and

architectural services most advanced (ASEAN, 2012). The lack of multi-stakeholder consensus and buy-in to the process may be one of the reasons for the slow progress, as the early ASEAN negotiations, which created the framework for the MRAs, were top-down, government-led processes, with professional bodies often inadequately involved in the negotiation process (ACCDP, 2010). The buy-in of national professional associations and regulatory bodies has therefore been questionable, and they may not see liberalization, but rather protectionism, as beneficial to their interests and those of their members (Thai-Norwegian Chamber of Commerce, 2013).

The issue of the mutual recognition of qualifications is also being tackled through the development of National Qualifications Frameworks (NQFs) in cases where they do not already exist, and discussing means of referencing these NQFs to a Regional Qualifications Framework. The development of a Regional Qualifications Framework has been taken up through a project of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) in particular, in recognition that the vast majority of intra-regional migration flows are not covered by existing agreements on the free flow of services and skilled labour, and therefore efforts to promote mutual recognition of qualifications should go beyond the MRAs for skilled professionals alone.

In the case of less developed AMS, NQFs and MRAs could shut out even highly skilled workers, who may not have their qualifications recognized due to questions about the quality of education and training institutions in less developed countries. Recognition of qualifications and the right to work in other AMS could be extended to match the demand for vocational workers in many ASEAN countries (Mekong Institute, 2012).

It is important to note that under the AEC the movement of all low-skilled and semi-skilled workers remains in the hands of individual AMS or is regulated through bilateral agreements. ASEAN agreements to facilitate increased labour mobility do not yet extend to categories such as, among others, trades persons, mechanics, welders, manufacturing, agriculture, fishing, construction and domestic workers. In the case of Thailand for example, the ease with which low-skilled workers from neighbouring countries can legally enter Thailand for purposes of work will not be affected by the AEC, as the policies governing the entry and stay of low-skilled workers will remain solely under the purview of the Thai Government, and MOUs with countries of origin.

Secondly, highly skilled workers not covered by existing agreements on natural persons and service providers are also likely to be initially unaffected by the onset of the ASEAN Community. While the ASEAN Economic Community Blueprint initially envisaged the identification and development MRAs “for other professional services by 2012, to be completed by 2015”, in reality efforts are now focused on implementing the eight signed MRAs in order to ensure that professionals in the region derive tangible benefits from the agreements (ASEAN, 2011), rather than extending their efforts to cover other professional services for the time-being.

## **The ASEAN Socio-Cultural Community and protection of migrant workers**

Thailand’s role in implementing and shaping the regional cooperative elements of the ASCC has been substantial. The ASCC Blueprint itself was adopted at the 14th ASEAN Leaders Summit in Cha-am, Thailand, during which time the Royal Thai Government was ASEAN Chair (2009), with Thailand convening the 2nd ASEAN Forum for Migrant Labour (AFML) that same year. The 1st Meeting of the Senior Labour Officials Working Group on Progressive Labour Practices to Enhance Competitiveness of ASEAN (SLOM-WG) was held in 2009 in Bangkok. During this meeting it was agreed to continue the AFML as a regular activity under the ACMW Work Plan.

ASEAN integration, in particular the AEC, cannot stand apart from the imperatives outlined in the ASCC. As ASEAN economies become increasingly interlinked, so do their successes and failures. The risk of ignoring

the ASCC is that the less developed AMS will be left behind (AADCP, 2012). An important component of the blueprint for ASEAN integration is horizontal development across AMS. The migration aspects of the ASCC pillar in particular exist in part to ensure that more developed and less developed AMS are able to work together to ensure that the impacts and benefits of socio-economic development resulting from integration are shared across the region.

Where economic integration means increasing ASEAN's competitiveness as an economic bloc, socio-cultural integration aims to ensure that AMS are able to benefit from, and contribute fully to, ASEAN's productivity. Particularly in its focus on workers' rights and social safety nets, the ASCC pillar exists to acknowledge that integration has potential impacts for low-income countries within ASEAN, and that measures need to be taken to balance those impacts. As such, economic integration is not intended to be a stand-alone process; it is very much complemented by the Socio-Cultural Pillar as part of a vision for a competitive and socially and economically equitable integrated ASEAN region.

Given the potential benefits of labour migration to the ASEAN region, and the significant contributions low-skilled migrant workers currently make to countries of origin and destination, there is a need to develop policies and programmes to protect rights and promote human resources development for all workers across the region, including migrant workers in low-skilled occupations. This is echoed in a mid-term review of progress towards the implementation of the AEC<sup>3</sup>, commissioned by the ASEAN Economic Ministers, which recommends *"... to the Socio-Cultural Community for ASEAN to regionalize the measures that formalize the hiring of unskilled workers. For the receiving countries, formalizing irregular migrants provides an effective way to manage the flow of unskilled workers; this, in effect will help the countries to lessen the possible adverse impact on the welfare of local people/workers. Meanwhile, for the sending countries, the regionalization...could help them negotiate for better terms for employment protection from the receiving countries"* (ERIA, 2012).

The ASCC vision centres on six core characteristics, including promoting social justice and mainstreaming rights for marginalized groups including migrant workers. Under these characteristics are strategic objectives informing specific actions. Article 28 of the Blueprint provides the most significant strategic objective concerning labour migration, ensuring *"fair and comprehensive migration policies and adequate protection for all migrant workers"* with reference to the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (led by the ACMW), and in accordance with the laws, regulations and policies of AMS.

The ASCC lays out an obligation to ensure that not only all AMS benefit from integration, but all individual citizens of AMS as well; this includes issues that are closely tied to social prosperity and opportunities for decent work. Issues affecting migrant workers are therefore affected by broader strategic objectives in the ASCC, including in its focus on livelihoods, and provides support for the protection of workers, including migrant workers, on a number of fronts, in particular investment in human resources; promotion of decent work; strengthening entrepreneurial skills; and the protection and promotion of the rights of migrant workers. Another key strategic objective is social safety nets and protection from the negative impacts of integration and globalization.

Section C.2 of the ASCC includes nine actions towards fair and comprehensive migration policies across the region, which include regional coordination, among others:

- Operationalize ACMW and SLOM to work towards the provisions of the Declaration (i)
- Institutionalize AFML as a forum for discussions on labour migration in ASEAN (ii)

3 Conducted by the Economic Research Institute of ASEAN and East Asia.

- Facilitate data sharing to improve regional migration policies (v)
- Promote capacity building by sharing information and best practices (ix)

and specific actions to protect the rights of migrant workers, which, although still requiring integration and a regional commitment, must be operationalized domestically:

- Promote protections including payment of wages, access to decent work and living conditions, and adequate access to the legal system in receiving states (iii)
- Protect the basic human rights and uphold the dignity of migrant workers in line with international standards, including through consular functions (iv)
- Strengthen policies and procedures in sending states for protection across the migration cycle, including regulation of recruitment and complaints mechanisms to redress malpractices (vi, viii)
- Facilitate access to resources through training, services, and access to justice (vii).

### Frameworks for the protection of migrant workers under ASCC

There are a number of forums and mechanisms that underpin the principles of the ASCC. The primary regional institutional body relevant to low-skilled migrant workers is the ACMW, which is charged with the implementation of the Declaration on the Protection and the Promotion of the Rights of Migrant Workers and the drafting of an Instrument that would give effect to the Declaration. At the 4th Meeting of the ACMW Drafting Team in 2012, the following phased approach was agreed to:

- **Phase 1.** Scope: a. Definition of migrant workers, and distinction between regular and irregular migrant workers; b. Fundamental rights and dignity of regular migrant workers and family members already residing with them without undermining the application by the receiving States of their laws, regulations and policies (Article 3 of the Cebu Declaration); c. Specific rights and obligations of regular migrant workers in the whole migration process, which includes: (i) rights and obligations of sending and receiving States, and (ii) rights of regular migrant workers before, during and after employment.
- **Phase 2.** Scope: Rights of irregular migrant workers subject to Articles 2, 3, 4 of the Cebu Declaration.
- **Phase 3.** Scope: Defining the form of the Instrument (legally binding/non-legally binding or a hybrid).

The ACMW also recommended the establishment of the ASEAN Forum for Migrant Labour (AFML) to provide a platform to develop an integrated approach to addressing the complex needs of the migrant workforce in AMS. The AFML was established to advance the principles contained in the ASEAN Declaration, the objectives of which are closely linked to the ASCC. The Forum brings together key stakeholders including the ILO's tripartite constituents (government, employers and workers' organizations), as well as civil society – which is unique among institutionalized ASEAN activities. It gathers annually to discuss, share experiences and build consensus on protection issues committed to under the Declaration and to advance cooperation in relation to obligations of countries of origin and destination. As with all three pillars, the ASCC privileges national laws over regional agreements so an open line of communication, policy coordination and knowledge-sharing among AMS and social partners, particularly on admission policies and protection strategies, are critical aspects of managing regional migration.

The Initiative for ASEAN Integration (IAI) aims to close the development gap by enhancing cooperation between the more developed and less developed member states, particularly the newer members of ASEAN:

Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam (CLMV). The IAI provides strategic priorities and objectives for streamlining regional approaches to implementing all three pillars, including initiatives under the ASCC pillar to protect and promote the rights of migrant workers. Under Section C.2 of the IAI Work Plan (2009-2015), actions include the provision of advisory services to the CLMV countries for the purpose of developing their capacity to manage overseas employment programmes. The Government of the Philippines has committed to sharing their experience with the CLMV countries in this regard.

These regional mechanisms are linked to obligations under international mechanisms, in particular those that directly relate to labour migration. The non-binding ILO Multilateral Framework on Labour Migration (MFLM) has been used in discussions around ASCC principles in the context of AFML meetings and negotiations around the Agreement, with ASCC's focus on intra-regional policy coordination for effective migration policies, gender-sensitive approaches to migration and work, and the protection and promotion of migrant workers' rights particularly aligned with MFLM.<sup>4</sup>

### Progress towards ASCC Actions on the Rights of Migrant Workers

According to an Institute of Labour Studies Discussion Paper, delays and a lack of clarity in progress towards the ASCC were foreshadowed early in the drafting process of the ASCC, as part of the First Coordinating Conference in 2006, which identified several obstacles including weak or unclear linkages between implementing bodies at national and regional levels, limited involvement of social partners, issues in dissemination of information and a lack of follow up actions – most likely linked to the fact that, at that stage, focal points and responsible ministries had not been clearly identified (De Castro, 2009). The Conference also pointed to the perception of socio-cultural issues as “soft” issues that should be dealt with domestically; although it could be argued that the regional nature of migration, and its links to economic growth and livelihoods, provides a starting point from which to argue that ASCC principles are of tangible concern for the region.

While regional coordination on labour migration issues has increased substantially through the ASCC and its associated forums, progress towards the actions affecting the rights of migrant workers has been mixed. While the drafting of the Instrument has proved a lengthy process, the phased approach appears to have had some success in finding consensus. The response across the region to the first set of actions under C.2 of the ASCC (see above) has been relatively strong in terms of the various appropriate regional forums that have been established.

Moreover, progress towards regional data sharing has been promising, with data collected from most AMS covering the number of migrant workers in the country, disaggregated by sex, age group, sectors of work, and countries of origin and destination. While this database is only in its pilot phase, it shows the beginnings of an important resource for regional policy coordination, resource allocation, and a better understanding of migration flows, but also captures a comparative insight on available protections and policies.

In the area of IAI and support for the CLMV countries, the Government of the Philippines, with ILO assistance, has commenced a capacity building program in the areas of drafting and negotiating bilateral agreements, labour migration data collection, skills certification, and a feasibility study on the establishment of migrant welfare funds in these same countries.

Another critical component of the ASCC blueprint is improved social protection in order to manage the potential negative impacts of integration on vulnerable workers. Regional coordination to integrate – and

<sup>4</sup> For a full list of relevant Conventions see <http://www.ilo.org/migrant/areas/international-standards-on-labour-migration-and-protection-of-migrant-workers-rights/lang--en/index.htm>.



in the case of some AMS to establish – a social safety net would benefit all ASEAN citizens. The social safety net as a central ASCC principle has been formalized as part of the ASEAN Declaration on Strengthening Social Protection, which specifies that migrant workers are entitled to equitable access to social protection (ASEAN, 2013); however, as the Declaration was adopted in September 2013 it has not yet been realized in practice. It remains important to use the various forums under the ASCC, including the ACMW and AFML, to advocate for clearer, evidence-based policies that provide mutual benefits across the region.

The regional workers' and employers' organizations, the ASEAN Trade Union Council (ATUC) and the ASEAN Confederation of Employers (ACE) have each developed three-year work plans to enhance their members' capacities and to develop regional policy positions to engage on labour migration issues. Priorities for ATUC include capacity building for trade union focal points on labour migration, research on effective bilateral trade union cooperation, and support to ratification campaigns on ILO Conventions No.143 (on migrant workers) and No.189 (on domestic workers). The ACE program identifies five priority issues: skills training, matching and mobility; hiring migrant workers – the regulatory environment; forced labour and human trafficking; discrimination at the workplace and managing diversity; and occupational health and safety.

Given that labour migration is, by definition, a regional issue, mechanisms like the AFML provide appropriate forums to identify and discuss priority issues, policies and migration procedures, but the actions and impacts contained within the ASCC are reliant on these discussions and recommendations leading to shifts in domestic policies and practices. The AFML's thematic discussions across its six meetings to date have provided comprehensive recommendations for AMS and social partners – and progress made against these recommendations in each country is being tracked (ILO, 2013a)<sup>5</sup>. These specific issues are discussed in other chapters of this report.

## Challenges and issues faced by Thailand in preparing for the freer mobility of labour within the ASEAN community

### Skilled workers

- *Defining “skilled labour”*

One of the baseline difficulties in facilitating the free movement of “skilled labour” is establishing a clear definition and common understanding of the term “skilled labour”. ASEAN Member States have not collectively explicitly defined skilled labour and although it is clear that the movement of skilled labour is limited to those involved in cross-border trade, services and investment, there is nothing inherent to the ASEAN agreements that specifies the skill levels required to be classed as “skilled labour”. The MRAs represent one part of efforts to define what qualifies as skilled labour within specific professions and sectors.

- *Policy and Legislation*

Overall, Thailand is relatively open with regard to the movement of professionals and skilled workers into the country, which is generally welcomed as part of efforts to promote investment and trade, and upgrading of the Thai economy. In July 2013, there were 92,008 foreigners holding work permits for professional and skilled occupations. The highest proportion by nationality was 13,329 Japanese, while the highest proportion of foreigners from another AMS was 8,929 from the Philippines, while no other AMS were present in the top 10 nationalities (Ministry of Labour, 2013).

5 See Background paper: Progress on the implementation of the recommendations adopted at the 3rd and 4th ASEAN Forum on Migrant Labour [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_219040.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_219040.pdf).

In terms of out-migration, the vast majority of Thai workers overseas are employed in relatively low- and semi-skilled occupations such as construction, agriculture and domestic care. Due to the structure of the Thai economy, it is unlikely that Thailand would take substantial steps to encourage the out-migration of skilled professionals to other AMS, given the strong demand for such skills in Thailand and potential risk of brain drain.

In terms of inbound migration, the challenge for Thailand will be how to best protect and strengthen its labour force while at the same time benefiting from increased labour mobility. Although it is unlikely Thailand will experience a large increase in influxes of foreign workers following the onset of the AEC, it can be expected that intra-regional labour mobility will begin to increase gradually following initiation of the AEC, meaning it is especially important that Thailand (as well as other AMS) is sufficiently prepared to be able to effectively manage this increased mobility and gain tangible benefits from it for its economy and society. Furthermore, migration flows will likely vary by sector; for example the tourism industry is one in which relatively large numbers of skilled workers with good levels of English from other AMS may seek to work in Thailand.

In Thailand, as in many AMS, legislation still exists that creates barriers to the increased mobility of skilled labour including service providers. For example, the Alien Employment Act continues to exclude non-Thais from 39 occupations reserved for Thai nationals, including civil engineering and architectural work (despite these two occupations being covered under the signed MRAs)<sup>6</sup>. Additionally, there are a range of regulations and requirements in place that, in effect, restrict employment in various sectors, including those covered by the MRAs.

For example, nurses who wish to practice nursing on a professional basis in Thailand must pass a licensing examination which requires proficiency in the Thai language (Thailand Nursing and Midwifery Council, 2008). Nursing is a good example of a profession where increased mobility in ASEAN could benefit Thailand. The current nursing shortage among public health facilities in Thailand, which is predicted to worsen as Thailand enters the AEC (Bangkok Post, 2012a), could be at least partly alleviated by allowing nurses from other ASEAN countries such as the Philippines (where there is a surplus of nurses (Matsuno, 2012)) to work in Thailand. However, for such a step to be effectively implemented, it is likely that the regulations and requirements governing licensing and employment of nurses in Thailand would need to be relaxed. For example, Singapore and Malaysia have introduced a separate examination for foreign and/or foreign-trained nurses (ACCDP, 2010).

Immigration regulations are another area in which current regulations could hamper efforts to facilitate increased mobility of skilled labour. The process of applying for permission to stay and work in Thailand is still relatively cumbersome and time-consuming, requiring all foreigners to seek permission to temporarily enter and stay in the country for purposes of employment, before they are able to apply for a work permit<sup>7</sup>. The lack of a “one stop shop” for work visas and work permits and the somewhat rigid and complex processes involved could hinder efforts to promote efficient, well-managed mobility of skilled labour. In order to ensure the regulatory framework keeps pace with efforts to facilitate increased mobility of skilled labour, revisions to both the Immigration Act and the Alien Employment Act would help bring the legislative framework more closely in line with the goals of ASEAN integration.

There is a provision to facilitate the obtaining of visas and employment passes in the AEC Blueprint, but this has not yet translated into modifying visa arrangements and requirements for skilled professionals into a more liberal and common regional framework. While there has been some discussion of liberalizing

6 <http://www.thailandlawonline.com/translations/foreign-employment-working-of-aliens-act>.

7 [http://thailaws.com/law/t\\_laws/tlaw0366.pdf](http://thailaws.com/law/t_laws/tlaw0366.pdf).

visa requirements for ASEAN nationals and the possibility of an ASEAN visa, this has focused primarily on the movement of tourists (The Nation, 2013a). Furthermore, preferential visa treatment is not necessarily oriented towards nationals from other ASEAN countries, but often trading partners and other developed nations.

#### • *Preparation of the workforce*

For the opportunities of the AEC to be realized in the long term, it is imperative that the Thai workforce is equipped with the skills to excel in a regional labour market. In theory at least, Thai workers across the prioritized service sectors will have to compete with workers from other ASEAN countries on an even basis, and so ensuring the skills and knowledge of Thai workers in these sectors are comparable or superior to those of their ASEAN counterparts will help to ensure the Thai workforce, economy and society can reap the benefits of the AEC. Continuing to improve and expand the training opportunities available to workers, both on the part of government and professional associations, would strengthen Thailand's position in this regard.

One particular skill set which has been afforded considerable attention is language skills. This focus is backed up by a study carried out by the University of the Thai Chamber of Commerce (UTCC) in 2012, showing that the professional skill levels of Thai workers were comparable to those of their counterparts in Singapore and Malaysia, but the competitiveness of Thai professionals faltered when it came to language skills (The Nation, 2013b), a finding backed up by similar surveys (Bangkok Post, 2012b). Others, meanwhile, have stressed the need to adopt a higher level of cultural tolerance and awareness in preparation for the AEC (The Nation, 2013c), and a greater focus on cross-cultural communication skills and culture-specific knowledge of other ASEAN countries, particularly through integration of such topics into school and university curricula (The Nation, 2012d).

#### • *Labour Market Information*

There is a clear need to improve the quality and scope of information reaching all stakeholders, including workers, employers and the public, regarding the AEC and its likely benefits, risks and opportunities. The shortfalls in information available to workers was highlighted in the UTCC survey, which indicated that most skilled workers in Thailand did not have a clear understanding of the AEC, while an even greater proportion of those surveyed did not see the benefit of it for their further careers, clearly indicating the need for improved communication and information sharing on the issue.

Furthermore, for workers to make informed migration decisions, they also need to be aware of information on labour market conditions in AMS, including supply and demand of labour and job vacancies by sector. In Thailand, there are various sources and types of labour market information available, including employment rates by sector, occupation, status and educational attainment; current and projected data on labour shortages by sector; and average wages by sector (ILO 2013b). However, labour market information by sector is generally grouped in relatively broad categories, such as 'professionals', therefore not directly relating to the ASEAN agreements on the free movement of skilled labour and providing limited information on issues of supply and demand across specific professions such as those covered by the MRAs.

It is therefore recommended that labour market information is compiled and consolidated both at the macro-level – in order to assess overarching labour market signals such as skill levels, labour shortages and occupational structure, particularly in regard to the prioritized service sectors; and at the micro level – including individual databases to match job supply and demand.

## Low-skilled workers

The realization of the AEC in 2015 is unlikely to mark any significant shift in the migration of low-skilled workers from less developed to more developed nations in the region. Given the long land borders and bilateral MOUs with neighbouring countries (with an MOU with Viet Nam under consideration), the minimum wage of THB 300, and a shrinking workforce due to an ageing population, Thailand is likely to remain an attractive destination for low-skilled workers.

The bilateral MOUs with neighbouring countries demonstrate a political willingness to recognize the need for migrant workers in Thailand; however there is still a need to ensure that Thailand's immigration laws and policies are coherent, comprehensive and rights-based. These bilateral agreements are likely to remain in place given the divergence in admission and post-admission policies among AMS. Regional agreements on low-skilled migration can have an effect in terms of the rights of migrant workers, by demonstrating a shared set of goals, highlighting the obligations of countries of origin and destination, and facilitating increased sharing and cooperation to ensure more effective implementation.

Thailand is in a rather unique position as a major country of destination, but also sending a number of low- and semi-skilled workers abroad. As such, Thailand is well-placed to advocate for more comprehensive regional policy solutions to ensure workers who are migrating to fill labour shortages, including in low- and semi-skilled occupations, are able to do so in a safe, orderly and legal manner. The ACMW and AFML provide valuable platforms for this.

### • *Attitudinal factors*

A major challenge in receiving countries, including Thailand, are the negative public attitudes towards low-skilled migration and migrant workers. However, while 89 per cent of respondents in Thailand agreed that "Government policies to admit migrants should be more restrictive", only 18 per cent agreed that "opportunities for skilled workers from ASEAN countries should be reduced".

A survey of attitudes towards migrant workers found that people in Thailand generally have a limited understanding about the need for migrants in certain sectors, the positive contribution that migrant workers make to the economy, and their rights to equal treatment (ILO, 2010). The study found that those who knew migrant workers personally were more likely to hold more positive attitudes or be more knowledgeable about migrants' rights and their contributions.

The importance of public attitudes has been recognized internationally as a critical aspect of protecting migrant workers, as public attitudes not only play a significant role in shaping policy, but also impact on the well-being of migrants. The importance of improving public attitudes towards migrants is recognized in the Declaration, and the 4<sup>th</sup> AFML put forward specific recommendations to promote a positive image of migrant workers in line with their contributions (Tunon and Baruah, 2012).

### • *Data collection, information-sharing and regional cooperation*

The Ministry of Labour in Thailand has been an active participant in the pilot regional labour migration database, but the nature of low-skilled migration in Thailand is such that it is difficult to measure and monitor. Most low-skilled workers migrate to Thailand through irregular channels, and regular migrants can become irregular, and vice-versa. Given this fluidity, regional cooperation to ensure comprehensive and high-quality data collection is crucial to informing policy directions for Thailand and for the region. Increased monitoring and measurement of migration patterns and trends, as part of a comprehensive regional collaboration to ensure safe migration and decent work, are critical to improving and harmonizing regional policies.

## Thailand's preparation for the ASEAN Community

The study conducted by the UTCC, found that Thailand lacks a concrete strategy to prepare for the free flow of skilled labour and to develop opportunities for Thai skilled professionals within the AEC. According to the study, Thailand has made no specific preparations to prepare or develop the careers of professionals working in sectors to be liberalized (The Nation, 2013). The slow and somewhat hesitant approach to promoting increased mobility of skilled labour has been reflected by among other things, the negotiations on MRAs, which have been incremental and leave considerable authority in the hands of national governments. However, progress has been made towards implementation of the MRAs, led largely by the relevant professional associations and regulatory bodies, although the level of progress varies by each MRA. To illustrate preparations taken in Thailand towards implementation of the Engineering MRA, the assessment statement from the Council of Engineers of Thailand provides a good example (Council of Engineers of Thailand, 2012). This includes a breakdown of opportunities for professional development, as stipulated in the MRA – a key means of increasing the competitiveness of Thai workers in a regional labour market.

There has been considerable attention directed towards the need to increase the competitiveness of Thailand's workforce in preparation for 2015, but there remain concerns about the need for more targeted and coherent actions (Thai-Norwegian Chamber of Commerce, 2013). The Ministry of Labour has reported that the capacity of Thai professionals working in the MRA professions will be developed through short-term training courses (Government Public Relations Department, 2013a) but there is no indication yet of the scope or success of such training.

Similarly, upgrading the Thai education system, and ensuring a better match between the qualifications and skills of Thai graduates and workers with the demands of a regional, as well as a national, labour market is a pressing issue. Thailand has developed its National Qualifications Framework (NQF), which brings together the qualifications systems of general secondary education, Technical and Vocational Education and Training (TVET), higher education, and the skills testing and certification carried out through the Ministry of Labour, with the aim of ensuring consistency in both standards and award titles for higher and vocational education. Steps are currently being taken towards the development of an ASEAN-wide Regional Qualifications Framework (RQF) to which the NQFs of all 10 AMS would be referenced. The RQF is currently in the early stages of development and is envisaged to be ready for implementation by 2018 to further facilitate the movement of skilled professionals and students in the region (Government Public Relations Department, 2013b).

The recent establishment of the Thai Professional Qualifications Institute (TPQI) further aims to help strengthen practical competency, knowledge standards and quality assurance systems, standardize professional qualifications in accordance with the NQF, and enhance the competitiveness of the Thai workforce in preparation for the AEC. The TPQI works closely with the private sector with the objective of increasing coherence between demand and supply in the labour market, and communicating such findings with educational institutes accordingly (NESDB 2012).

Wider education reform has been taken on with renewed urgency during 2013, and the Ministry of Education has identified a number of priorities that need to be accomplished in order to prepare students to work and thrive in an international community, and develop Thailand into an international education hub in the ASEAN region. These include: developing language skills in English and other ASEAN languages; enhancing Thai students' knowledge of the ASEAN community; conducting research into the education policies of other AMS, particularly in regard to the sectors/professions covered by the signed MRAs; creating a working group to promote network creation and exchange of information among ASEAN countries; and developing the National Qualifications Framework (NQF) to facilitate greater comparability between Thailand and

other ASEAN member states and educational liberalization in the region (ICEF Monitor, 2013). The need for improved English language communication skills has also been stressed from a range of directions, and in recent years there has been a strong push to improve English language skills through specific programmes for students (The Guardian, 2012) and government officials (Government Public Relations Department, 2013c).

Much of Thailand's response to the ASCC has focused on human resources development, including programmes run through the Ministry of Labour and Department of Skills Development.

The National Economic and Social Development Board of Thailand (NESDB) recognizes the need to attract foreign workers, but this has been translated into few strategies. This is indicative of the attitudes towards migrant workers and speaks to the importance of putting into action the ASCC principles of not only legislating for the rights of migrants, but promoting these rights as well. The NESDB stresses that inbound migration should not come at the cost of security and prosperity within Thailand, but in noting the need to attract migrant workers, it also recognizes the significant contribution that migrant workers make to the Thai economy, and to ASEAN society as a whole.

In its plan for 2012-2016, NESDB has noted the importance of building an ASEAN identity and using education to improve livelihoods and skills development in Thailand (Government Public Relations Department, 2010). Increased in-flows of low-skilled workers will benefit Thailand if long-term strategies to improve wages and human resources development are put into place – the risk is that the benefits of integration will flow to investors and bypass low-skilled workers, so it is paramount to prepare the workforce for integration.

## Conclusions and Recommendations

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Most AMS, including Thailand, have been reluctant to take bold steps forward in liberalizing labour market policies, due to both limited analysis and projections of how they can best grasp the opportunities offered by the freer flow of labour, and an uncertainty regarding whether they are likely to derive concrete gains. Progress towards increased intraregional mobility of labour has therefore been incremental, and has generally failed to meet initial expectations, such as those envisaged in the AEC and ASCC Blueprints.

However, the free flow of skilled labour under the AEC offers ASEAN the opportunity to move gradually towards an alternative and more equitable regional labour migration regime in which the managed mobility of workers plays a key role in ensuring the developmental gains of migration can be spread widely and equally across all AMS. This could in the future conceivably extend to low-skilled migrants as well as highly skilled professionals, a move which would offer substantially greater benefits to the less developed economies in the region.

Regional efforts to embed the AEC and ASCC principles in national policies and practices would enhance the economic and socio-cultural aspects of integration by ensuring more equitable growth. Coordinated regional policies that put into action the principles of the ASCC to improve wages and conditions for all workers, and improve and increase access to social protection including education and health care, would enhance both the cohesiveness and the productivity of the region. While these changes may only happen slowly and incrementally, the mechanisms and regional forums established to realize the ASCC could be mobilized further to translate ASCC principles into concrete policies that address rights issues for all workers across the region in a coordinated way.

A comprehensive and coherent migration policy, which takes into account intra-regional movement of workers of all skill levels, should form a key component of Thailand's strategy in preparation for the ASEAN Community but remains missing at the current time. It is therefore recommended that in preparation for the ASEAN Community the Royal Thai Government should take the following steps.



- Conduct in-depth research into the labour market situation in Thailand across the priority sectors to be liberalized, including forecasts of the future situation and requirements, with a view to developing an evidence-based and holistic labour market development strategy.
- Communicate the modalities and opportunities offered by the free flow of skilled labour among key stakeholders, including employers, professional associations, and the public.
- Conduct a review of legislative, regulatory and other barriers to mobility particularly across sectors in which Thailand could benefit from increased mobility, and consider proposing amendments to legal or regulatory frameworks as necessary to allow for increased mobility to meet labour market needs.
- Develop a coherent and forward-looking human resource development strategy taking into account the needs of both a national and regional labour market. Key elements of such a strategy could include the increased promotion of vocational education to meet labour market needs; increased information sharing and advice to students to promote awareness of the needs of the national and regional labour markets; strengthened and more targeted training, both on the part of government and professional associations; and promoting continued reform of the Thai education system to ensure more highly skilled graduates and trainees entering the workforce.
- Consider promoting extension of the ASEAN agreements on labour mobility to include certain categories of low- and semi-skilled workers, such as domestic and construction workers, which would benefit the less-developed ASEAN countries and recognize the continuous need for these categories of workers in Thailand.
- Promote greater ASEAN integration, using the ASCC and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and associated mechanisms including AFML, ACMW, SLOM and IAI, to introduce transparent and coherent policies and agreements across ASEAN to support the right to safe migration and decent work for all ASEAN citizens.
- Use these forums to share data, information and knowledge, and to promote the successes of Thai policies and practices, including bilateral MOUs and health and education policies, and relevant policies from other countries for possible replication in Thailand.
- Formulate a comprehensive labour migration policy that accounts for both inbound and outbound migration, in consultation with workers' and employers' organizations.
- Consider ratification of relevant international mechanisms including international labour standards relevant to the ASCC principles, particularly but not limited to those that pertain to migrant workers.<sup>8</sup>
- Promote sharing of information and knowledge among (a) professional associations and regulators involved in negotiations on the MRAs, in order to identify common lessons and good practices across sectors that could form models for liberalization in other sectors; and (b) the various ministries involved in facilitating the free flow of skilled labour in order to ensure a holistic and coherent national strategy in moving towards this goal under the AEC.
- Engage with communities in countries of origin and destination to recognize the contribution of migrant workers to growth and development in the ASEAN region.

8 <http://www.ilo.org/migrant/areas/international-standards-on-labour-migration-and-protection-of-migrant-workers-rights/lang--en/index.htm>

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The Royal Thai Government has achieved several significant advances in migration policies and programmes over the past decade which have demonstrated varying degrees of success. Implementation of the Memoranda of Understanding (MOUs) on cooperation in labour migration, signed with three neighbouring countries, has provided a legal channel for low-skilled workers from those countries to enter Thailand with travel documents and obtain work permits. The process of nationality verification (NV) allowed migrant workers who were already employed in Thailand to obtain identity documents from their country of origin and to regularize their Thai immigration status. Migrant workers who have completed either the MOU or NV process have access, in principle, to social protection through either the Social Security System or the Migrant Health Insurance System. Provincial Employment Offices have in place complaints mechanisms that migrant workers may use, and the Thai Labour Protection Act does not discriminate between Thais and migrant workers.

The recent opening of One Stop Service Centres (OSCCs) nationwide between June and October 2014 represents a renewed opportunity for the Royal Thai Government to regularize the low-skilled migrant workforce in the country and systematize the migration management system, including ensuring greater protection of the rights of migrant workers and their dependents. In a period of several months over 1.5 million migrants and their dependents have been registered at the OSCCs; however at the current time it is too soon to evaluate the longer-term success of this initiative.

More than 100,000 displaced persons from Myanmar have been resettled from shelters along the Myanmar-Thailand border to third countries.

Thailand enacted the *Anti-Trafficking in Persons Act B.E. 2551 (2008)*, modeled on the international Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), and Thailand ratified the Protocol in 2013.

In spite of these significant achievements in the recent past, each policy advance has been accompanied by drawbacks. The 139,000 migrant workers who held work permits in 2013 as a result of entering through the MOU process represented only about one in seven of the one million registered migrant workers in Thailand at the time, and the number of unregistered migrant workers probably exceeded the number registered.

The administrative complexity, cost and time required to go through the MOU recruitment process act as disincentives for both workers and employers. Because the cost of MOU recruitment is high, in many cases employers pay in advance and recover the amount from the workers through deductions from their wages over several months. During that period, in order to prevent the workers from leaving, employers generally hold their travel document and work permit. As a consequence, many workers perceive being tied to one employer as a disadvantage of the MOU system. If the monthly deductions are too large, workers are tempted to leave their employer and find irregular employment.

The NV process regularized the immigration status of more than 1.3 million migrant workers from three neighbouring countries but, after several extensions, was closed effective August 2013. In June 2014,

however, the Ministry of Labour again announced that the NV process would re-open. Because of the cost and time involved in pursuing the NV process, unless the process can be simplified, many migrant workers in an irregular status will probably decide to continue to work in Thailand without registering. To ensure that migrant workers and their dependents have the opportunity to enjoy fully regularized status in Thailand, it is essential that a more effective and streamlined NV process is enacted along with effective regulation and enforcement of employers, brokers or other persons who act in violation of the law.

The three MOUs on cooperation in labour migration stipulate that migrants can work in Thailand for a maximum of four years and then must return home for a period of three years before they can re-apply to work in Thailand. Large numbers of workers have reached the four-year limit of employment. Cabinet Resolutions and Ministerial Regulations have eliminated the minimum duration of stay in the country of origin but workers are still required to leave their job and return home, even if for a day. Employers are reluctant to lose a significant number of their most experienced workers and the workers often prefer to stay so many have not left as required. A Cabinet Resolution in March 2014 granted a 180-day extension to workers who have completed four years of employment but their longer-term status has not yet been resolved.

The termination of the NV system and the expiration of the four-year limit on employment have created a pool of migrant workers in Thailand with an indeterminate registration status. This pool of readily available workers may act as a disincentive for employers to recruit workers via the MOU process. The system of sub-contracting employment in Thailand aids employers who prefer to obtain migrant workers quickly and cheaply rather than via the MOUs. By obtaining workers from a private employment agency, the employer avoids legal responsibility for their wages and social protection coverage. If the private employment agency does not obtain work permits for the workers or take responsibility for their social protection, the system of sub-contracting promotes irregular labour migration.

The shift in policy to enrol migrant workers in the Social Security Fund (SSF) has had the perverse effect of reducing the number of workers with health-care coverage. Previously, in order to apply for a work permit, a migrant worker needed to have a health check-up and be enrolled in a Government health-care system. During the NV process, however, many migrants obtained their health check-up and a work permit without getting enrolled in the SSF. Besides that, workers in such job sectors as agriculture, fishing and domestic work are not covered by the SSF. When workers are enrolled in the SSF, both they and their employer need to make monthly contributions or their accounts become inactive. The Ministry of Public Health has made health coverage available to migrant workers otherwise without it and is to provide a health insurance card at an annual cost of THB 2,100 but challenges in access to health insurance among both the regular and irregular migrant population remain.

The programme to resettle displaced persons from Myanmar to third countries applied only to those persons who were registered in shelters in Thailand by 2005. Essentially all of those persons who wished to be resettled have been or are in the process. Nonetheless, more than 120,000 registered and unregistered displaced persons remain in camps along the Myanmar-Thailand border and conditions in Myanmar are not yet conducive to their return.

In spite of an increase in legal and administrative attention given by the Royal Thai Government to the issue of human trafficking in recent years, the number of victims of trafficking officially identified, and the numbers of prosecutions and convictions for trafficking have remained relatively low, although increased significantly in 2013.

In the context of the current challenges evident in migration policy described above, some broad approaches to policy may be suggested, as follows:

1. Migration policy in Thailand should evolve with the changing economic, social and political context in South-East Asia. It should be based on the broader employment and economic growth strategies, reflecting the actual needs of the labour market. In particular, policy needs to take into account changes that will result from the formation of the ASEAN Economic Community at the end of 2015. While international migration taking place under the auspices of the AEC will initially be limited to the movement of selected professionals, it may be expected that ASEAN will gradually expand opportunities for persons in other professions and skill levels to move among the ten Member States. Development strategies in Thailand should better prepare Thai workers to take advantage of this more flexible but also more competitive labour market. At the same time, Thailand policies on immigration, employment and residence will need to be brought in line with a freer movement of workers and their families within the ASEAN region.
2. Another change in the regional context that has implications for migration in Thailand is the rapid economic development occurring in the two countries that are the major sources of low-skilled labour – Cambodia and Myanmar. As these countries build their physical infrastructure and industrialize, they will offer job opportunities to more of their low- and semi-skilled workers, thus reducing the incentive for those workers to seek employment in Thailand. There is also the possibility that some of the migrant workers in Thailand will opt to return home because of the better employment prospects.
3. Developing a comprehensive policy concerning international migration would help the Royal Thai Government to continue the significant progress achieved over the past few years while addressing the drawbacks cited above. Such a comprehensive policy should provide a guide for the medium to long-term and be developed in consultation with representatives of all stakeholders. Migration policy in Thailand should be based on a recognition of the major contribution to development made by migrants and give less emphasis than currently to national security. Migration processes should be streamlined to become more efficient and less bureaucratically complex.
4. Migration policies need to better take into account the needs of employers and migrants, and offer incentives to use the MOU process or to become registered. Policies should also strengthen the social protection available to migrant workers and ensure the enforcement of labour rights and standards. In this regard, social protection mechanisms should be expanded to cover migrant workers in the informal sector including in domestic work, agriculture, and the fishing industry. Sanctions should be enforced against employers who do not register or contribute to the Social Security and Workmen's Compensation Funds on behalf of their workers. Further, standard operating procedures for handling grievances received from migrant workers should be developed and distributed to all Provincial Employment Offices and Social Security Offices, and outreach campaigns should be developed on how to file complaints, targeting especially vulnerable migrants, including women workers. As Thailand adopted Ministerial Regulation No. 14 in 2012 covering the rights of domestic workers, it should also consider signing the ILO Convention concerning Domestic Workers, No. 189 (2011).
5. Migration policies should also recognize that many migrants are living in Thailand with their families. The many barriers to accessing education by migrant children need to be lowered. More effective policies are also required to ensure that the dependents of migrants, including their children, have access to health care.
6. The existence of camps for displaced persons along the Myanmar-Thailand border has become a protracted refugee situation, although not formally recognized as such by the Royal Thai Government.

The potential to apply each of the possible durable solutions of repatriation, resettlement and local integration needs to be pursued more strongly.

7. Policies concerning human trafficking should be more victim-centred. Such an approach would give much greater choice to persons identified as victims. They should have the option of staying in a shelter and receiving counselling and rehabilitation, of being able to work outside of the shelter, of being able to testify in advance in criminal cases, and of immediate return if they wish.

Detailed recommendations for advancing migration policies and programmes are provided in the chapters in this report, particularly those on labour migration policy; social protection; migrant health, including reproductive health; trafficking in persons; preparations for the ASEAN Community; and complaints mechanisms for migrant workers.



