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**Working Paper**

## Irregular Migration from Cambodia: Characteristics, Challenges, and Regulatory Approach

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Philippine Institute for Development Studies  
*Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas*

## Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach

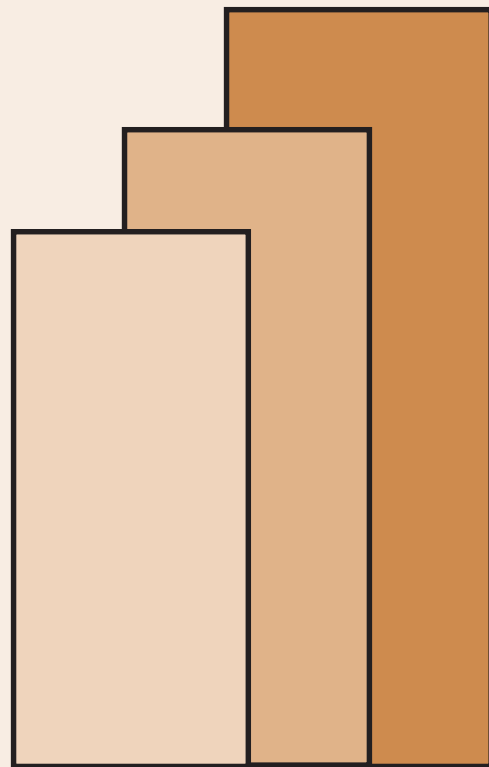
*Vutha Hing, Pide Lun, and Dalis Phann*

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## **Irregular Migration from Cambodia**

### Characteristics, Challenges and Regulatory Approach

**Abstract:** The study examines the characteristics, root causes and challenges of irregular migration from Cambodia and then discusses the regulatory approaches and policy options to manage it. It employed mixed approaches, including a survey of 507 households in six high-migration villages, focus group discussions with returned and intending migrant workers and in-depth interviews with government officers, migration experts and local community chiefs. The study found that irregular migration has been the most popular form among Cambodian workers seeking jobs overseas. The causes of irregular migration are many, ranging from chronic poverty, lack of employment and economic hardship in community of origin to restrictive immigration policies in labour-receiving countries and lengthy, complex and expensive legal recruitment. The predominant factor is inability to afford the cost of legal recruitment. Cambodian migrant workers face abusive and exploitative situations, including sexual and physical harassment, debt bondage and threats of denunciation to the authorities, without access to legal protection. Some are also victims of human trafficking. The findings from the Cambodian case study on irregular migration align with international literature suggesting a combination of at least three sets of measures: addressing the causes, strengthening protection and enhancing international cooperation. The first two sets have a lot to do with national sovereignty and development priorities involving community development, improving the regulatory framework to make legal migration more transparent and more widely accessible and enhancing support services of information, consultation and legal protection. The third set of measures involves bilateral, regional and international cooperation. Cooperation between Cambodia and labour-receiving countries on regularisation or making legal migration more accessible can be part of an effective response to irregular migration. In the long run, irregular migration can be solved through a more integrated labour market in the GMS, supported by sub-regional regulations and institutions as well as through an ASEAN Economic Community that sets a legal framework for a free flow of labour.

**Key words:** irregular migration, abuse and exploitation, sending and receiving countries, recruitment agency, malpractice, human trafficking, international cooperation

*FINAL REPORT*

# **Irregular Migration from Cambodia**

## **Characteristics, Challenges and Regulatory Approach**

**HING Vutha, LUN Pide and PHANN Dalis**



**Cambodia Development Resource Institute (CDRI)**  
CDRI – Cambodia's leading independent development policy research institute

**Phnom Penh, May 2011**

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## **Acronyms and Abbreviations**

ASEAN	Association of South East Asian Nations
FGD	Focus Group Discussion
GMS	Greater Mekong Sub-region
ILO	International Labour Organization
IOM	International Organization for Migration
KHR	Khmer Riel
MLVT	Ministry of Labour and Vocational Training
MWRM	Ministry of Water Resource and Meteorology
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNIFEM	United Nations Development Fund for Women
USD	United States Dollar



## Executive Summary

1. The study examines the characteristics, root causes and challenges of irregular migration from Cambodia and then discusses the regulatory approaches and policy options to manage it. It employed mixed approaches, including a survey of 507 households in six high-migration villages, focus group discussions with returned and intending migrant workers and in-depth interviews with government officers, migration experts and local community chiefs.
2. Cross-border labour migration in Cambodia has evolved markedly over the last decade, from refugees during the 1980s and 1990s caused by civil war and political instability to a process that has considerable significance for the national economy and household livelihoods. This recent development makes the country a latecomer in management and administration of labour emigration, with policy and institutional frameworks that are relatively ineffective and weak. Labour migration policy was formulated very recently and remains at a nascent stage, lacking coherence. Regulation has been sporadic and limited, without comprehensive coverage. A lack of clear responsibilities and coordination and shortages of resources and capacity are common in institutions responsible for managing labour migration.
3. Irregular migration, which is defined as illegal movement to work in another country or movement without authorisation to work, has been the most popular form among Cambodian workers seeking jobs abroad. This method is widely regarded as relatively secure, convenient and cheap: there are no waiting time, required documents or complicated recruitment procedures. Informal recruitment can be divided into two categories. The first is short-distance migration along the Cambodian-Thai border. The jobs are usually agricultural, which migrants learn about from pioneer migrant relatives, friends or villagers. These pioneers facilitate job placement and form networks linking the primarily rural households and the destinations in Thailand. The cost of migration ranges from USD3.00 to USD5.50. The second category is long-distance migration to Thailand or Malaysia to work on fishing boats or as construction or factory workers. In most cases, migrants travel in small groups with a broker who escorts them to the workplace. Migrants have to pay a facilitation fee of USD100–200 in advance.
4. The causes of irregular migration are many, ranging from chronic poverty, lack of employment and economic hardship in community of origin to restrictive immigration policies in labour-receiving countries and lengthy, complex and expensive legal recruitment. The predominant factor is inability to afford the cost of legal recruitment. Most irregular migrant families have a lower economic status than regular migrants and live below the poverty line. While legal recruitment is expensive (USD700 to Thailand) and slow, informal recruitment takes only a few days and requires no or few documents.
5. Cambodian irregular migrants are increasing. Some of them face abusive and exploitative situations, including sexual and physical harassment, debt bondage and threats of denunciation to the authorities, without access to legal protection. Some are also victims of human trafficking. According to UNIAP (2010), every year thousands of Cambodians are trafficked to Thailand. Men are often trafficked to work on fishing boats or as construction workers in harsh conditions. Women are trafficked to the entertainment industry, including prostitution.
6. Why do states need policy on irregular migration? International migration, particularly irregular migration, is increasingly a major economic, social, political and security concern for a number of countries in the Asia-Pacific region (Bangkok Declaration). Irregular

migration is a protection problem because many irregular migrants encounter abuse and exploitation with very limited or no social and legal protection. Irregular migration is also a management problem in both sending and receiving countries. Given the nature of migration in which people go to work in a host country without the legal documents required by that country, it is hard to monitor and provide social protection and necessary support services.

7. How should states deal with irregular migration? There is an international consensus that irregular migration needs to be addressed in a holistic and comprehensive manner by looking at its causes, responding to its effects and improving international cooperation.

**i. Address the causes of irregular migration:** Extreme poverty and lack of employment opportunities, high costs of legal migration, malpractice by some private employment agencies and activities of traffickers all push Cambodian workers to migrate irregularly. Interventions that address these push factors would reduce informal migration.

**a. Strengthen the development of communities of origin:** Although there is not yet firm empirical evidence on the relationship between community development and migration, development might diminish migration by helping to overcome the reasons for irregular migration and make migration a free, positive and legal choice. Possible priority measures include increasing agricultural assistance; improvement of rural infrastructure; increasing access to natural resources and community participation in their management; strengthening public services, especially education and health; community skills training; and microfinance services. Development assistance needs to be targeted at communities having a high migration rate.

**b. Open legal migration opportunities:** There is international consensus, as expressed in the 2003 ILO Asia Regional Tripartite Meeting in Bangkok, that easy and transparent legal migration opportunities could be part of an effective response to irregular migration. The most important priorities for Cambodia's legal recruitment are to streamline administrative procedures, speed facilitation and reduce placement costs. In addition to accelerating the issuance of passports and visas, the paper suggests that information on the recruitment process and fees and allowable costs should be publicised.

**c. Regulate recruitment agencies:** At the moment, Sub-decree 57 is the primary instrument. It lacks comprehensive coverage and clarity, especially regarding fees, training and workplace monitoring, supervision, compliance and penalties. Recruitment and placement need to be regulated through the licensing system, in which the responsibilities of agencies, conditions for recruitment, penalties for violation and performance guarantees should be clearly defined. The regulations should provide for cancellation of licences in case of malpractice and for criminal proceedings against serious offenders.

**d. Combat human trafficking:** Preventing trafficking would help reduce irregular migration and protect migrants from slavery and severe exploitation. This research does not attempt to elaborate policy to combat trafficking, but its prevention can be aided by the following measures: being active in regional initiatives and working more closely with major destinations; strengthening law enforcement and the capacity of officers; and intensifying advocacy and awareness raising.

**ii. Protection and well-being of migrant workers:** Migrant workers can be better protected through intensifying educational campaigns and expanding support services.

**a. Intensify education and awareness raising:** Many migrants, especially irregular ones, are unaware of the practical, legal, social and economic consequences of moving to another country. Better information means better protection, and we therefore recommend intensified education and awareness raising before departure. Information can be disseminated through a combination of measures:

- National and provincial migration resource centres to register prospective migrant workers and provide information. The centres should be focal points to disseminate information and a place that migrants can telephone or visit for counselling. The information can be disseminated via booklets, posters, counselling, tours, mass media, meetings, workshops and seminars.
- Educational campaigns targeting communities with a high rate of irregular migration need to be strengthened. Given the inadequate resources of district and provincial labour offices, community-based NGOs and village or commune chiefs, monks and schoolteachers can play a vital role in providing information to migrants.

**b. Expand support services:** There has been limited support for the protection and empowerment of migrant workers, particularly irregular migrants. Posting labour attachés in Thailand and Malaysia is one way to strengthen support. Their functions should include developing a strong working relationship with the host country on labour issues; monitoring the treatment of migrant workers; providing legal assistance against contract violations, abuse or exploitation; providing advice on problems with contracts or employment; and ensuring that irregular migrants are protected and facilitated in repatriation.

**iii. Strengthen international cooperation:** Migration is inherently a multilateral issue that requires concerted efforts to address it. Irregular migration can best be addressed in bilateral and regional frameworks complementing national policy.

**a. Strengthen bilateral cooperation:** Cooperation between sending and receiving countries proves effective in addressing irregular migration. This paper argues that Cambodia should work more collaboratively with Thailand and Malaysia on both streamlining legal recruitment procedure and regularisation programmes for irregular Cambodian workers.

**b. Toward an integrated Greater Mekong Subregion labour market:** Cross-border labour movement across the GMS has been dynamic, yet there is no subregional regulatory or institutional framework to facilitate it. This paper recommends the integration of labour markets in the GMS. The initial step to achieve this is to include labour migration in the GMS-wide development agenda and then create an expert forum to explore the feasibility and provide recommendations to leaders.

**c. ASEAN economic integration and free movement of labour:** Although migration and mobility should be among the priority issues in ASEAN, there has been little discussion of labour mobility or migration in meetings of labour ministers. ASEAN should adopt the ASEAN Framework Instrument as a legally binding document.

ASEAN should also work toward a free flow of labour within the region and treat migration as a key development agenda by facilitating the free circulation of skilled and unskilled labour.

# 1. INTRODUCTION

## 1.1 Background

“...International migration, particularly irregular migration, has increasingly become a major economic, social, political and security concern for a number of countries in the Asia-Pacific region.” (The Bangkok Declaration on Irregular Migration)

Irregular migration is one of the most complex, sensitive and intractable issues affecting global and national governance of labour migration (IOM 2010b). It is a management problem for sending and receiving countries because journeys are often made outside the regulatory framework of both countries, making them difficult to record and monitor. Irregular migration is also a protection problem. Their illegal status puts irregular migrants at the gravest risk of abuse and exploitation by employers, often without access to legal protection. Several studies into the living and working conditions of irregular migrants have shown a high incidence of exploitation, commonly through deception about wages, type of work and legal status, withheld wages, retained passports or identity documents, physical confinement, substandard working conditions and threats of denunciation to the authorities. The seriousness of the problem has attracted policy debate and international initiatives to address irregular migration. The Bangkok Declaration on Irregular Migration adopted by states in the Asia-Pacific region, the establishment of several international consultative forums on migration<sup>1</sup> and advocacy and inputs of specialised agencies such as the International Labour Organisation and International Organisation for Migration (IOM) in national and international policy making are among the major responses.

In Cambodia, most migration is irregular. Besides the predominant causes which include chronic poverty and economic hardship, issues in legal method of migration itself that make migrants opt for irregular means. The imbalance between labour demand in the host country and quotas given, high initial costs as well as the malpractice of legal recruitment are all recorded. Irregular migration in most cases is facilitated by pioneer migrants or brokers, and the process is much simpler and cheaper than formal recruitment. Cambodian irregular migrant are not exempt from abuse and exploitation; in the worst cases they are victims of human trafficking. A United Nations Inter-Agency Project on Human Trafficking (UNIAP) report found that Cambodian men, women and children are trafficked to Thailand, Malaysia, Macao and Taiwan. Men are trafficked for forced labour in agriculture, fishing and construction. Women are trafficked for sexual exploitation and forced labour in factories or as domestic servants.

Widespread migration problems can be partly attributed to a lack of sound policy and regulation. Cambodia is a latecomer in management and administration of labour emigration, its regulatory and institutional frameworks being seen as weak and ineffective. Regulation has been sporadic, limited and lacking comprehensive coverage, especially in the management of the labour migration process, the protection of migrant workers and the reintegration of returned workers. Public institutions are characterised by a lack of clear responsibilities and coordination and a shortage of financial and human resources. Regulatory and institutional weakness is compounded by exclusivity of irregular migration in many national and international legal instruments.

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1 The major informal consultation and cooperation efforts include the Bern Initiative, the UN High-level Dialogue on International Migration and Development, the Global Forum for Migration and Development and the ILO tripartite consultation.

The serious gaps in policy and practice regarding irregular migration are a prime reason for in-depth analytical research on the topic. This research aims to provide a comprehensive migration analysis, with particular emphasis on irregular migration, assessing policies and regulation and suggesting options to better address irregular migration.

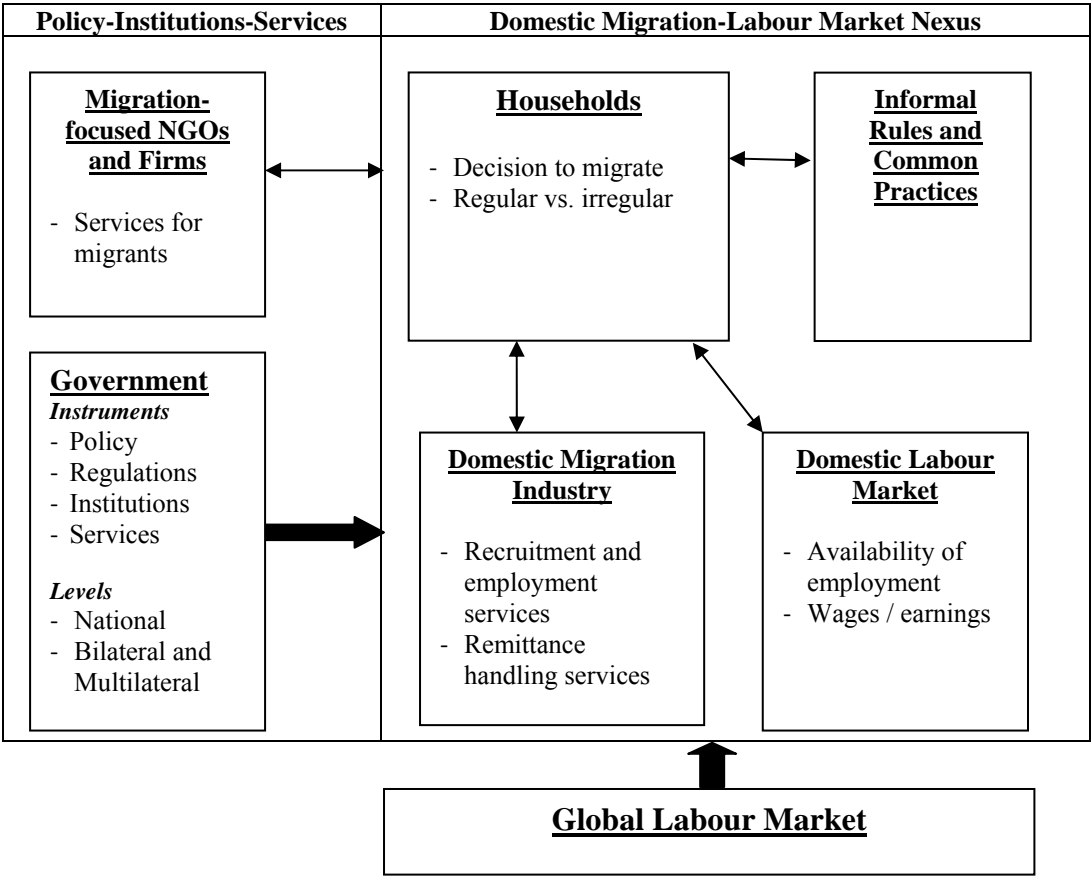
**1.2 Study Objectives**

This study aims to (i) understand the current systems for placing Cambodian migrants abroad; (ii) analyse the migration situation of different streams, focusing on trends, characteristics, and factors affecting household decisions; (iii) assess policies and regulations governing labour migration; and (iv) discuss policy options to address irregular migration.

**1.3 Conceptual Framework**

The conceptual framework of the study is adapted from a general conceptual framework on international migration, remittances and development, proposing (1) policy and institutional arrangements and (2) household decisions as the major elements in labour migration.

**Policy and institutional arrangements:** Sending and receiving countries manage migration through: policies that are translated into regulations implemented by government instrumentalities; and services that allow and facilitate the movement of people appearing in either bilateral or multilateral agreements. As well, private firms offer placement services in response to government policy; and non-government institutions offer services to migrant workers, including information, rescue and counselling.



**Household decisions:** The primary actor is the household that decides to send one or more of its members to work abroad in expectation of remittances. The decision is made in response to the global labour market situation and is influenced by factors including the domestic labour market, household economic status, domestic migration policy and informal rules and common practice. Labour migration decisions can be long term or short term. The decision can also be for legal or illegal entry, the costs and benefits of the options influencing the decision. In legal migration, the benefits need to justify the investment of time and resources in preparation of such migration journey. Illegal migration is much cheaper because skills can be taken as given and the process is simpler. The different decision horizons have important implications for household human capital and the management of migration.

This study focuses on how household decisions to migrate through irregular channels are affected by policy and regulation, the domestic migration industry, domestic labour market and common migration practices.

#### 1.4 Research Methodology

Since the information needed is both qualitative and quantitative, the study employs mixed approaches including a literature review, a household survey and in-depth interviews.

**Literature review:** Migration literature was reviewed early in the research. The initial output from this is an overview of labour migration, factors influencing migration decisions, remittances and socio-economic impacts. The literature review and policy and regulation documents are also inputs to the analysis and assessment of policy and regulation.

**Household survey:** The survey is the main data set for the quantitative analysis of the socio-economic status of migrant households and their migration decisions. The survey was conducted by CDRI in late 2007 for “Costs and benefits of cross-border labour migration in the GMS: Cambodia case study”. It interviewed 526 households from six villages with a high incidence of migration. Table 1 provides the characteristics of the study villages. Face-to-face interviews with heads of households used a questionnaire to capture information on demography, socio-economic characteristics, assets, income, expenditure, costs and benefits of migration and remittances.

**Focus group discussions:** To complement the household survey, focus group discussions (FGDs) were conducted in the six villages with returned migrants and with heads of household with members working abroad. Focus groups contained six to eight informants discussing issues including causes of migration, knowledge about migration, the migration process, costs and financing and working conditions. Four FGDs were conducted in each village, facilitated by trained enumerators.

**Table 1: Characteristics of Studied Villages**

Village	No. of households	Estimated % of migrating households	Destination
1. Srama Meas (Battambang province)	330	>30	Malaysia
2. Krasang (Battambang province)	250	>30	Thailand
3. Kork Thnong (Banteay Meanchey province)	105	>70	Thailand
4. Rumduol (Banteay Meanchey province)	280	>50	Thailand
5. Siem Peay (Kompong Thom province)	185	>40	Thailand
6. Khnay (Prey Veng province)	110	>50	Thailand

Source: Chan (2009)

**In-depth interviews:** The study included in-depth interviews with officials from sub-national administration (village, commune, and district level), senior officials from the Ministry and Provincial Department of Labour and Vocational Training (MLVT), technical experts from the ILO, IOM, UNIAP and United Nations Development Fund for Women (UNIFEM), the chairperson of the Association of Cambodian Recruitment Agencies and representatives of private recruitment companies to obtain their assessment of Cambodia’s policy and regulatory framework, labour migration management and policy options to address irregular migration. The study also interviewed village chiefs and directors of provincial labour departments.

FGDs and In-depth interviews were conducted during late 2010 and early 2011.

## **1.5 Structure of the Report**

Section 2 examines the profile of Cambodian irregular migration, focusing on definition, situation and socio-economic characteristics. Section 3 looks at causes of irregular migration, while Section 4 discusses issues and challenges. Section 5 examines policy, law and institutions governing migration in Cambodia; Section 6 discusses the regulatory approach to irregular migration, and Section 7 draws conclusions.

## **2. PROFILE OF CAMBODIAN IRREGULAR MIGRATION**

### **2.1 Cambodia’s International Labour Migration in Brief**

Over the last decade, Cambodian labour emigration has evolved markedly in mode, scale, scope and policy intervention. During the 1980s and 1990s, labour migration was mostly refugees or displaced people staying temporarily in Thailand due to civil war or political instability. Cross-border movement for seasonal agricultural work was also seen.

The new labour emigration that has emerged since 2000 is characterised by rapid expansion of migrants to multiple destinations. During 1998–2009, according to the MLVT, 45,656 Cambodians were officially sent to work abroad—most of them to Malaysia and Thailand as domestic or factory workers (see detailed statistics in the appendix). The shift was largely driven by a policy of promoting labour exports and enhanced migration governance through bilateral agreements and deepening regional cooperation.

The economic impact increased along with the number of migrants. Remittances increased from USD12 million or 0.34 per cent of gross domestic product in 1996 to USD325 million or 3.4 per cent in 2008 (World Bank 2011). Remittances are spent by migrants’ families for food, debt repayment, health care, agricultural inputs and durable household assets, making it possible to move out of poverty (Chan 2009, Maltoni 2006b, FitzGerald *et al.* 2007).

There has also been a substantial increase of people working overseas without authorisation or required documents. This irregular movement has received great attention from both the government and international organisations.

### **2.2 Irregular Migration: Definition and Situation**

Irregular migration can be summarily defined as illegal movement to work in a country or movement without authorisation to work. It includes the case of persons migrating legally but later losing their legal status (due, for instance, to overstaying) (UN General Assembly; Brennan 1984; Global Commission on International Migration 2005; LeVoy & Geddie 2010; Lee 2005). The term “irregular” is used interchangeably with “undocumented”, “unauthorised”,



“unofficial”, “informal” or “clandestine”. Most Cambodian irregular migrants travel without sufficient legal documents.

Informal recruitment has been the most popular form of cross-border movement among Cambodian workers seeking jobs abroad. This takes place outside the regulation of the sending, transit and receiving countries. Informal recruitment can be divided into two categories. The first is short-distance migration along the Cambodian-Thai border. The jobs are usually agricultural, which migrants learn about from pioneer migrant relatives, friends or villagers. These pioneers facilitate job placement and form networks linking the primarily rural households and the destinations in Thailand. Migrant workers from Krasang village, Battambang province, for example, travel to the Bavel border gate by taxi and then cross into Thailand using a border pass. Employers then come to take them to their farms. This practice is widely regarded by migrants as relatively secure, convenient and cheap: there is no waiting time, no required documents and no complicated recruitment procedures. For those who buy a one-week border pass called *Bat*, the initial cost of migration ranges from USD3.00 to USD5.50—taxi USD2.50 to USD5.00 and border pass USD0.50. Migrants need to renew the pass every week at the border. Alternatively, they can purchase a one-year pass for USD19.

The second category is long-distance migration to Thailand or Malaysia to work on fishing boats or as construction or factory workers. In most cases, migrants travel in small groups with a broker who escorts them to the workplace in Thailand. The basic services offered by brokers include transportation to the border and securing a work permit and a job in the destination country. Migrants have to pay the facilitation fee of USD100–200 in advance. In some cases, migrants travel in a small group with assistance from pioneers who know the work situation and have good relationships with employers.

Thailand is the main destination of irregular migration from Cambodia. The IOM has said that there could be 180,000 Cambodians unofficially working in Thailand, mainly from Prey Veng, Svay Rieng, Kompong Cham, Banteay Meanchey, Battambang and Pursat provinces. The Ministry of Labour of Thailand (in Paitoonpong & Sukarujji, forthcoming) estimates around 120,000 informal Cambodian migrants—comparable to informal migrants from Laos but far fewer than from Myanmar. According to the same source (Table 2), the largest numbers of irregular Cambodian migrants in Thailand are engaged in agriculture (42 per cent) and construction (26 per cent).

**Table 2: Irregular Migrants in Thailand by Industry, 2009**

Industry	Number of Workers			
	Cambodia	Laos	Myanmar	Total
Fisheries	14,969	1,800	39,809	56,578
Fisheries-related	6,020	1,180	129,773	136,973
Farming and livestock	24,085	18,035	179,583	221,703
Farming and livestock-related	7,077	4,469	62,611	74,157
Construction	32,465	12,635	175,136	220,236
Mining/quarrying	61	35	1,747	1,843
Wholesale and retail	4,778	7,565	30,471	42,814
Food and beverage (salespersons)	4,483	13,074	36,668	54,225
Housemaid	6,578	21,267	101,945	129,790
Others	24,245	30,794	321,024	376,063
<b>Total</b>	<b>124,761</b>	<b>110,854</b>	<b>1,078,767</b>	<b>1,314,382</b>

Source: Paitoonpong & Sukarujji (forthcoming)

Malaysia is the destination of the second largest number of undocumented Cambodian migrants, many of whom are from the Cham ethnic group. The most common route is to fly to Malaysia as a tourist and then seek a job without a work permit. The second way is to travel to Thailand and then cross into Malaysia. Most of the unauthorised migrants to Malaysia seek jobs in construction and manufacturing.

### 2.3 Socio-Economic Characteristics of Cambodian Irregular Migrants

We discuss the socio-economic characteristics of irregular migrants to compare them to non-migrants and to determine the factors that drive informal movement. We utilise both quantitative data from the 2007 migrant survey and qualitative data from follow-up FGDs and semi-structured interviews conducted in late 2010 and early 2011. We classify respondents as regular, irregular and non-migrant.

As shown in Table 3, more than half of the households in the sample have migrant family members, a large majority of them irregular. Females account for about a third of migrants. The large number of irregular migrants in the sample confirms the claim of migrants and local authorities that most migrants prefer the informal channel. It is important to note that the number of legal migrants in the survey sample is so small; hence the subsequent results are interpreted in light of this limitation.

**Table 3: Households and Their Migrant Members**

	Regular	%	Irregular	%	Non-Migrant	%	Total
Households	16	3	293	56	217	41	526
Migrants	19	4	494	96	-	-	513
Females	6	3	171	97	-	-	177

Source: Chan (2009)

The survey data reveal that a large proportion of irregular workers are employed in Thailand and along the Thai-Cambodian border. Those who travel deep into Thailand mostly engage in construction and agriculture (including fishing), whereas those along the border work on farms. Regular migrants, none of them stationed near the border, work in factories or on construction sites. Regular and irregular migrant workers in Malaysia have jobs in construction or manufacturing or as maids (Tables 4 and 5).

FGDs and interviews report that most irregular migrants' jobs are unskilled or low-skilled. Their jobs are not wanted by local workers, who view them as of low status and unpleasant. In many cases their tasks require virtually no skills at all. For instance, in construction, the work is simply mixing and placing concrete or placing bricks. In agriculture, they watch the farm, spray pesticides and pick crops. However, those who work on rubber plantations are able to acquire skills such as latex extraction and preservation or planting techniques.

**Table 4: Migrants to Main Destinations, by Type and Gender**

Destination	Irregular				Regular			
	Male		Female		Male		Female	
	N	%	N	%	N	%	N	%
Inside Thailand	173	53.5	76	44.4	12	92.3	2	33.3
Along Thai border	120	37.1	70	40.9	0	0	0	0
Malaysia	30	9.2	25	14.6	1	7.6	4	66.6
Total	323	100	171	100	13	100	6	100

Source: Authors' calculations based on survey data 2007

**Table 5: Migrants by Type of Job and Destination**

<b>Irregular</b>	Construction	Agriculture*	Housework	Factory	Other	Total
Inside Thailand	104	89	22	12	22	249
Along Thai border	1	189	0	0	0	190
Malaysia	16	7	3	23	6	55
Total	121	218	25	35	28	494
<b>Regular</b>						
Inside Thailand	12	0	0	2	0	14
Malaysia	0	0	3	2	0	5
Total	12	0	3	4	0	19

\* Including fishing

Source: Authors' calculations based on survey data 2007

As shown in Table 6, both regular and irregular migrants are predominantly in their late twenties. Their average household size is comparable to that of non-migrants. The difference in education between regular and irregular migrants is significant.

**Table 6: Social Characteristics of Migrants and Non-Migrants**

<b>Migration type</b>	<b>Regular</b>	<b>Irregular</b>	<b>Non-Migrant</b>
Average household size	5.0	5.6	4.8
Number of dependants*	1.6	2.2	2.1
Average age of individual migrants	28.6	27.8	-
Average years of schooling of migrants	6.8	4.3	-

\* Household members who are less than 15 or over 54 year-old

Source: Authors' calculations based on survey data 2007

From the survey it was observed that households of irregular migrants had a lower economic status than regular migrants and non-migrants. Based on the availability and reliability of data, we chose consumption and value of assets as proxies for well-being. Table 7 provides a more detailed breakdown of the two variables for each household type. Irregular migrants spent 19 per cent less on food than non-migrants, but just slightly more than regular migrants; the latter difference is not statistically significant. Non-food consumption of irregular migrants was around 40 per cent less than that of regular migrants and 13 per cent less than that of non-migrants. Overall consumption of irregular migrants was 17 per cent less than that of non-migrants. The value of assets of irregular migrant households was about half that of regular migrants (in both 2002 and 2007).

**Table 7: Sample Means of Daily Consumption and Value of Asset Holding**

		<b>Mean</b>			<b>T-Value<sup>†</sup></b>		
		Regular (a)	Irregular (b)	Non-Migrant (c)	(b)-(a)	(b)-(c)	(a)-(c)
<b>Consumption</b> (riels/capita)	Food	1142.0 (478.5)	1168.6 (450.1)	1391.8 (469.4)	0.2	-5.3***	-2.0**
	Non-food	1223.0 (752.46)	877.2 (578.8)	990.4 (668.2)	-2.2**	-1.9*	1.2
	Overall	2515 (1155)	2249 (1241)	2641 (1367)	-0.8	-3.3***	-0.3
<b>Asset</b> (000' riels/capita) <sup>‡</sup>	2002	818.9 (727.2)	371.2 (517.3)	433.9 (562.5)	-3.3***	-1.2	2.5**
	2007	1,265.9 (670.6)	665.5 (765.9)	721.1 (737.7)	-3.1***	-0.8	2.8***

Note: Standard deviation in parentheses. <sup>†</sup> Two-sample t-test of different means with equal variance;

<sup>‡</sup> Excluding land and house; \* Significant at 10% level; \*\* Significant at 5% level; \*\*\* Significant at 1% level. Source: Authors' calculations based on survey data 2007

### 3. CAUSES OF IRREGULAR MIGRATION

Reasons for irregular migration are mixed. Of the various theoretical models of the movement of people between countries, institutional theory provides perhaps the best explanation of illegal migration, in which pull rather than push is the motive. This institutional proposition relies on the imbalance between the number of people seeking jobs in the host country and the limited work permits given by that country (Massey *et al.* 1993). This disparity allows those in need of labour to turn to a large underground labour market. In Italy, for example, only around 30 per cent of the requested foreign workers were granted places in 2006, inducing the inflows of illegal migrants (IOM 2008).

Among other factors that will be described later, we argue that this institutional issue is partly to blame for the huge flow of Cambodian informal migrants, especially to Thailand. The mismatch between labour demand and supply encouraged employers to recruit labourers from other countries. The black market then established networks to deliver workers in return for fees. This method endures partly because of lacklustre law enforcement against employers who hire illegal workers.

The imbalance is evident in the subsequent registration of irregular workers in Thailand. Since 1992, due to a labour shortage, several rounds of registration have been carried out allowing for irregular workers, after which they were labelled “irregular but documented”, meaning they are not purely illegal (Paitoonpong & Sukaruji, forthcoming). As of 2009, 124,761 Cambodian informal migrants had been registered (*ibid.*).

Problems in their homeland also push people out. Internal conflicts and political instability are no longer a major concern for Cambodians; economic issues, particularly poverty, are now primary. Table 6’s consumption figures indicate that the migrants are living just below the poverty line. In comparison to 2007’s national poverty line measured by daily consumption of KHR 2,367 (World Bank 2009), the poverty gap of regular and irregular migrants was over KHR 100. Non-migrants were 10 per cent above the line. Around 30 per cent of Cambodians, most in rural area still live below the poverty line (*Ibid.*).

“...the poor sell labour to the rich...there were so many poor while the rich are few. So, they have to find work elsewhere.” (An official in Kampong Thom, 10 March 2011)

“...we can survive because of the work in Thailand. Among 100 villagers, there are 70 working at Thai border.” (Returned Migrants in Battambang, 21 September 2010)

The roots of poverty are many, from poor rural infrastructure to an uneducated workforce; all are the remnants of civil war. However, a striking testimony from the qualitative data is that impoverishment is caused by households whose livelihoods depend on agriculture, particularly rice, lacking irrigation. Most households could cultivate only once a year, and productivity is also low, two to three tonnes per hectare, which is not sufficient to feed the whole family. In some areas, the harvest is less than a tonne per hectare due to natural disasters. Around 70 per cent of arable land in Cambodia is not yet irrigated (MWRM 2009).

“...90 percent of the villagers depend on rice cultivation...most can do once a year ...average yield is only around 800 kg per ha...villagers have 6 months free from farm work...60 per cent of them migrated” (An official in Banteay Meanchey, 16 February 2011)

“I see everything is in good condition in my district except [the lack of sufficient] water” (An official in Prey Veng, 31 January 2011)

“People mostly went to work in Thailand because of flood and drought... they could not produce much rice here.” (An official in Kampong Thom, 10 March 2011)

Households migrate to escape economic distress by seeking waged employment where there are more job opportunities or where the return to skills is higher. Internal migration to urban areas is a choice, but jobs are limited to low-skilled labour-intensive sectors such as construction and garments, while in Siem Reap, the main tourist destination, the demand is mostly for skilled labour in the hospitality industry. For cross-border migration, the nearest destination is Thailand, where established networks and demand for low-skilled workers attract Cambodians. This outflow affects the local labour market and increases wages in the home country.

“Previously, young villagers went to work in Phnom Penh. Since they could not earn much like those going to Thailand, they then stopped [going to Phnom Penh] and followed others to Thailand” (An official in Kampong Thom, 10 March 2011)

“It is difficult to hire people to work [here] unless we pay them a good wage...they have choices.” (An official in Kampong Thom, 10 March 2011)

Why don't people opt for legal migration? Social characteristics other than education provide no inference that such aspects influence their decisions. In other words, those people are not born to be illegal workers; they choose the methods that are available and affordable to them. Chan (2009) argues that the high initial cost of legal migration is a main reason for the preference for illegal movement even though the net benefit from the former is higher. He finds that to secure work legally in Thailand, a worker needs around USD700 (see cost breakdown in the appendix), an amount that most Cambodian rural workers cannot afford. Costs include passport fees, work permits, visas and brokerage fees. Costs are around USD100 or less if they migrate irregularly.

The qualitative data also confirm Chan's argument in that poorer irregular migrants show no interest in seeking jobs through a legal recruitment agency. The concern is not only high costs but also complex procedures and a long wait before being sent (normally three to six months to Thailand, according to Chan). We will discuss the details of this in the next chapter. Illegal migration takes only a few days and requires no or fewer documents.

Time and process are even more important than cost:

“The poor cannot wait two or three months ... they are hungry now and need to fill their stomachs sooner rather than later.” (An official in Battambang, 15 February 2011)

“... two villagers going through the recruitment agencies have been waiting nearly a year since their application was sent to Phnom Penh. They had to go back and forth since the application form was not correctly filled. They have not gone to work in Malaysia yet.” (An official in Banteay Meanchey, 16 February 2011)

“This was due to the reason that...the legal channel demands much money, time, and other administrative papers in which illiterate people like us never understand.” (Returned Migrants in Prey Veng, 02 October 2010)

Moreover, malpractice and unclear rules of legal recruitment agency diminishes people's credibility on the formal channel. There are various complaints about the recruitment firms deceiving migrants, for instance, by not offering them the type of job the firms have promised. Issues of abuse which often happen among domestic maids in Malaysia further deter people from choosing the legal method.

“Recently, there was an issue of a house maid who was raped by her male employer in Malaysia. She was tortured violently everyday by his wife because of jealousy...the victim family asked for compensation...the girl now was hidden from the authority by the recruitment agency... they said to take a good care of the girl and sent her back home after curing.” (An official in Banteay Meanchey, 16 February 2011)

Geographical proximity further fuels the flow of informal migrants (Battistella 2002). Cambodia shares an 803 km land border with Thailand that has many informal entrances. In some places migrants have to walk through forest and sometimes have to stay there overnight. Travelling in the dark avoids the irregular border police patrols. Such a long border makes control difficult.

Established networks also help facilitate the movement of irregular migrants, who often depend on friends or relatives who are working in the host country or who know how to secure them a job. This type of network reduces the costs of job seeking and increases the possibility of employment (Chiuri *et al.* 2005). In Cambodia, irregular movement started a decade ago when a few families migrated and came back with better living conditions, which then attracted more people. Those people established networks to share information and concerns on job prospects and conditions in the host country.

“We would not migrate if we didn’t know anyone in Malaysia. We have friends or relatives who are currently working there.” (A returned migrant in Battambang, 14 February 2011)

“We do not know the way to reach our work location inside Thailand because we were hidden in the truck each journey. That is why Mekhchol [broker] is needed.” (Returned Migrants in Battambang, 21 September 2010)

#### **4. ISSUES AND CHALLENGES OF IRREGULAR MIGRATION**

“The number of migrants in an irregular situation is rising ... some of them face abusive and exploitative situations, including sexual and physical harassment, debt bondage, retention of identity documents, and threats of denunciation to the authorities, without effective access to legal protection.” (ILO, “Resolution concerning a fair deal for migrant workers in the global economy”)

Compared to legal migrants, irregular workers face a higher risk of being exploited and denied fundamental rights such as access to health care and education (IOM 2003). Abuse of irregular workers by employers is well documented, including forced overtime, wage cuts and sexual harassment. Lower than average wages (Shah 2009) and poor working conditions (Stoyanova 2008) are recorded. Irregular migration also involves human trafficking.

Among Cambodian irregular migrants to Thailand, there emerge cases of exploitation, abuse and human trafficking. Naro (2009) compiles case studies of Cambodian migrants mistreated by their employers, some of them having to work long hours for low wages, while others are physically harmed when they refuse to follow instructions. Marshall (2001) provides evidence of Cambodian children trafficked as beggars and flower vendors in Thailand, while female migrants are forced to be sex workers. According to UNIAP (2010), every year thousands of Cambodians are trafficked to Thailand. Men are often trafficked to work on fishing boats or as construction workers. Women are trafficked to the entertainment industry, including prostitution.

Working on a sea fishing boat is the most dangerous and abusive job for male migrants whose majority of them are from Cambodia and Myanmar. Besides being underpaid, the migrants

experience harsh working condition: they face severe physical punishment if they are found to commit a fault, for instance, by just taking rest during working hours; they have to work long hours up to 15 hours a day and in some cases more than that; and there are reported cases of migrants being forced to take drugs so they can stand heavy work (ICSW 2007). Some of the migrants are trafficked and sold without knowing, hence have to work many years to repay the debt (*Ibid*).

“Those who work on fishing boats faced a lot of risks, for instance, natural disaster like storm or being sick on the boat [means] they cannot be sent to hospital in time.” (Returned migrants in Prey Veng, 30 September 2010)

“There were a lot of Cambodian [migrants] died in this type of job, [as a fisherman].” (An official in Kampong Thom, 10 March 2011)

Recent FGDs also mention cases of Cambodian irregular migrants not being paid the agreed wages, which is also common among irregular migrants (Shah 2009). Some were robbed by gangs. Others were arrested due to lack of legal papers. The latter were fined and sent back to Cambodia. Cambodian irregular migrants are marginalised and subject to abuses while unable to access social services because avoiding authorities is the only way to secure their clandestine status.

“I was cheated by a foreman... he did not pay me wages... they threatened to report to the police about my illegal status.” (A returned migrant in Banteay Meanchey province, 04 September 2010)

“I myself was an illegal migrant. I was captured by Thai police...I had to eat the whole lot of water melon for meal time in jail on the day they sent me back home...so miserable.” (An official in Prey Veng, 31 January 2011)

“When they are sick they dare not go to hospital...they buy medicines from their fellow Cambodian migrants. They will find their way home if the illness becomes worse.” (An official in Battambang, 14 February 2011)

Another issue concerns child’s education of migrants. Normally, migrant parents leave their children in the home country if there are people to look after—usually grandparents. But if there is no one, they have to take them along. In the foreign country, they cannot send children to school given their illegal status.

“...they knew it would be bad to take their children a long but what else they can do? If they don’t go how can they earn?” (An official in Kampong Thom, 03 February 2011)

The trip through illegal means is never pleasant. Workers have to travel during the dark and walk across different routes before arriving at the desired work place. There are reported cases of migrants who were abandoned by brokers in the middle of the journey, hence have to find their own way to reach the place or come back home if they are lucky enough to avoid Thai police.

“...forty migrants were deserted by a broker...no jobs provided...the government [then] helped get those migrants back home at the time of the conflict between Cambodia and Thailand.” (An official in Banteay Meanchey, 17 February 2011)

To pay the brokerage fee, most migrants take loans or incur debt to the broker. It will be disastrous if they cannot find work in the host country or are apprehended by police and sent home. They have to pay off the debt by way of, for instance, selling household assets.

“...some workers came back with debt because they could not find work in Malaysia...their family sold farm or even residential land to pay back the debt to the broker.” (Returned migrants in Battambang, 05 October 2010)

Irregular migration has become a hot topic for national policy makers in both sending and receiving countries, because of its many negative consequences (Vutha *et al.* 2011). Rampant irregular movement threatens the country’s sovereignty and gives way to the formation of terrorists, posing risks to state security (Koser 2005; Koslowski 2004). Health problems caused by irregular migration are also noted by MacPherson and Gushulak (2004). Unlike legal migrants, irregular migrants’ health is not examined before departure; hence the potential to spread contagious diseases is a concern.

Many of the potential migrants are informed of the problems that they may encounter. Usually, local leaders who are village or commune chiefs as well as NGOs advise them a lot about the possible risks of illegal migration. Their friends or relatives who are pioneer migrants also have many stories to share with. Despite so, a prospect of high income in the destination country coupled with economic problem in the home country motivate them to move out with irregular channel is the most convenient way of migrating.

In dealing with the issue, both the sending and receiving countries have come up with a variety of measures. Thailand, for example, has initiated legalising irregular migrants by granting them work permits, tightened the border control, penalises employers who hire irregular migrants and deports apprehended migrants. The Cambodian government and development partners are working to raise awareness of safe migration among potential migrants. Well-grounded labour migration policies are also being developed.

#### **Case Study: Imprisonment**

Sarun is a 22 year old son from a poor family residing in Rumdoul village, Phnom Leap commune, Banteay Meanchey province. He decided to leave his homeland to find a job in Thailand after being hopeless in getting job in the village. He had been convinced by his friends and neighbors who used to work in Thailand. Sarun took the plunge without considering the risks he might face.

To go there, Sarun first contacted a broker introduced by his neighbors. He had to pay KHR 300,000 (approximately USD75) to the broker to help him cross the border to the work location. He travelled from his village to Thailand through Boeung Trakoun border gate in Banteay Meanchey province. Sarun could not afford to pay the brokerage fee, but was allowed to settle the debt by salary deduction plus 5 percent interest.

In Bangkok, Sarun found work in a blacksmith workshop where he worked 9 hours a day and got a daily wage of KHR 27,000 (around USD7). After working there for a while, he was caught by Thai police who asked him for a legal work permit (*Bat*) that he did not have. He had been jailed for 7 days before deporting back to Cambodia.

Sarun was very disappointed since the money he had earned was only for paying the brokerage fee and travel costs. His saving is too little to buy a farm land his family wished to.



## 5. POLICY, REGULATION AND INSTITUTIONAL FRAMEWORK

### 5.1 Policy

Cambodian labour migration policy has been formulated recently to promote employment abroad as well as to manage, protect and empower Cambodian migrant workers. The first policy document on labour migration can be found in the Labour Ministry's *Strategic Plan 2009-2013*. The plan sets a goal<sup>2</sup> of promoting employment abroad for the growing labour force by (1) improving the management of overseas employment services through private companies, (2) creating an employment permit system and (3) protecting migrant workers.

The second major policy document is *policy on labour migration for Cambodia*. The policy highlights three challenges: migration governance, protection and empowerment of migrant workers and migration and development. The migration governance challenges concern the development of a sound labour migration policy, a legal framework and management of migration based on international instruments and social dialogue. The protection and empowerment challenges relate to a rights-based approach to preventing and protecting against abusive migration practices, and the application and enforcement of national laws and regulations in accordance with international labour standards and regional instruments. The migration and development challenges concern: mainstreaming labour migration issues within the national development agenda; establishing a system of recognition for skills gained from labour migration; promoting the productive use of migrant worker remittances for community development; providing return and reintegration services; and establishing support links with the diaspora.

Although the policy was formulated through consultations involving public institutions, donor agencies, workers' and employers' organisations, recruitment agencies and non-government organisations taking into account international good practice, it is widely seen as lacking coherence and harmonisation between the country's development plan and migration policy even though the contribution of cross-border labour migration to growth, development and livelihood improvement is broadly acknowledged. The socio-economic development plans for 1995–2000 and 2001–05, the National Strategic Development Plan 2006–10 and the National Strategic Development Update 2009–13, which are Cambodia's only strategic guides for development, neither explicitly nor implicitly articulated action plans for labour migration. Policy harmonisation between migration and other areas is also barely evident although migration falls within the authority of different ministries and institutions. Aside from the MLVT, migration is raised in neither sectoral nor community development plans. Lack of vertical and horizontal policy linkages has contributed to insufficient information exchange, uneven inter-ministerial consultation and lack of joint programmes. There is a big lack of consultation. There has been no regular comprehensive and informed dialogue on migration and development issues. This leads to a situation in which mutual trust and collaborative and complementary efforts are low.

Compounding low policy coherence is the fact that irregular migration is not included in the policy framework. Measures or plans in the policy matrix to address irregular migration are hard to find. Instead, most plans deal with improving the existing regulatory framework, monitoring and supervising recruitment and placement, protecting and empowering migrant

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2 Six priority areas in the plan are: (1) creating jobs; (2) ensuring better working conditions; (3) promoting enforcement of the law on social security; (4) capacity building in technical and vocational skills; (5) gender mainstreaming in labour and vocational training; and (6) strengthening institutions, partnership, work efficiency and accountability.

workers and harnessing labour migration for development. Although recommendations in migration policy interventions are important and necessary in administering and managing migration that, if implemented effectively, eventually indirectly and partly solve issues of irregular migration, irregular migration deserves equal attention from policy agenda.

## 5.2. Legal Framework

Labour migration in Cambodia is governed by a hybrid system containing national regulations, bilateral agreements and international conventions. The primary national control is Sub-decree 57 on the Sending of Khmer Workers to Work Abroad of July 1995. Aiming to formalise cross-border labour emigration by providing the MLVT the authority to permit companies to send Cambodian labourers overseas, the law provides a legal framework for cooperation between the ministry and labour recruitment companies and procedures, including proposals for recruiting workers, deposit requirements, employment contracts and pre-departure training.

Sub-decree 57 is widely regarded as outdated and lacking comprehensive coverage. It has no provisions on mandates of organisations responsible for the administration of labour migration or responsibilities and obligations of recruitment agencies. It has no provisions on supervision of placement and training programmes.

Sub-decree 57 is also seen as vague, most provisions being too broad and lacking clarity. For example, Article 10 refers to annual leave but not to the right to be correctly and fully informed, the right to liberty of movement, the right of access to education and health services and the right to participate in cultural life. Article 20 states that any person who violates the provisions will be punished, but there is no mention of penalties. Article 14 says that both the MLVT and recruitment companies are responsible for preparing and conducting pre-departure training. It is not clear whether such training is compulsory. This article should be revised to require that the recruitment company be responsible for organising training according to a standard curriculum to be developed by the MLVT.<sup>3</sup>

Having acknowledged limitations in the legal framework governing recruitment agencies and non-compliance and malpractices committed by some agencies (below standard training, restriction of movement during training periods and fake paperwork for underage workers), the government is revising the sub-decree and guidelines on recruiting, training and sending workers abroad as well as a directive on recruitment agency training centres. The revised sub-decree has been submitted to the Council of Ministers for review and approval. The guideline recommends that agencies make clear the costs borne by workers, arrange training to a standard acceptable to the MLVT and prohibit child labour and restriction of movement. The directive sets standards for agencies' training programmes. Despite the directives on recruitment agency training centres, non-compliance and malpractices still exist, in particular a recent string of serious incidents involving programmes for overseas maids.<sup>4</sup> These incidents clearly indicate loopholes in the regulation of recruitment agencies, lack of oversight by responsible institutions and weakness in law enforcement.

The other national regulations relevant to migration include Prakas No. 108 on Education about HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad, Sub-decree 70

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3 This was proposed by the statement from the Cambodian national consultation on the protection and promotion of the rights of migrant workers submitted to the Task Force of ASEAN Migrant Workers.

4 Several high-profile incidents occurred at a recruitment agency known as T&P: a 35-year-old woman died at the training centre; a 31-year-old woman broke her leg while trying to escape; the firm faked paperwork for an underage girl.

on the Creation of the Manpower Training and Overseas Sending Board, Prakas 012/07 on the Creation of a Labour Migration Task Force and Sub-decree 68/2009 on the cost of passports for migrant workers.

Bilateral memorandums of understanding (MoUs) on sending Cambodian workers abroad also govern labour migration. Although a MoU is not legally binding, many argue that it is a flexible mechanism for bilateral cooperation on cross-border movement (Vasuprasat 2008). Cambodia has signed MoUs with Malaysia, Thailand, the Republic of Korea and Kuwait. By covering procedures for recruitment, protection, repatriation and dispute settlement, MoUs provide a framework for cooperation in managing the flow of migrant workers. Some limitations still exist with this instrument. Recruitment is lengthy and complicated, involving formalities and bureaucracy in both sending and receiving countries. The long placement process contributes to the high cost. As depicted by Chan (2009), the recruitment of Cambodian migrants to work in Thailand under the MoU takes three to six months—one to two months in Thailand and two to four months in Cambodia.

Labour migration is also governed by international conventions. Cambodia is a signatory to a number of international and regional conventions. It has ratified all eight core ILO conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). The country is a signatory to the UN Convention on the Protection of All Migrant Workers and Members of Their Families, one of the most significant on labour migration, and to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted on 13 January 2007. Cambodia is among 18 countries<sup>5</sup> that adopted the Bangkok Declaration on Irregular Migration (the Bangkok Declaration) in 1999. Although the conventions are not legally binding, they are useful in holding signatory countries to their commitments and obligations. But most receiving countries do not sign many important conventions.

### **5.3. Institutional Framework**

Migration falls within the competence of different ministries and institutions, including the MLVT, Ministry of the Interior, Ministry of Foreign Affairs and the Council of Ministers. The MLVT is the core institution responsible for labour migration. The Department of Employment and Manpower of the General Directorate of Labour is the major office managing the sending of Cambodian migrant workers abroad; selecting and licensing employment agencies; monitoring and evaluating recruitment agencies; resolving disputes between migrant workers and domestic employment agencies and between migrant workers and their employers; supporting employment agencies in sending workers abroad; and preventing illegal recruitment. The department has five bureaus, responsible for labour inspections, labour disputes, employment and manpower, child labour and occupational health. The Manpower Training and Overseas Sending Board was added to the structure by Sub-decree 70, dated July 2006. It functions as a public recruitment agency recruiting, training and sending workers to South Korea.

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5 Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Laos, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand and Viet Nam.

Other ministries have limited and specific engagement. The Ministry of the Interior is responsible for providing passports and preventing illegal recruitment and cross-border human trafficking. The Ministry of Foreign Affairs is in charge of distributing all relevant documents and regulations, facilitating legal labour migration and managing and resolving disputes between workers and their employers in receiving countries via Cambodian embassies. The Council of Ministers participates in the Inter-ministerial Working Group for Implementation of the MoU with Thailand. There are two inter-ministerial working groups specifically dealing with migration. The group for implementing the MoU with Thailand was created on 10 January 2005 with members from the MLVT, Foreign Affairs, Interior and Council of Ministers. Its main tasks are verifying the nationality of illegal Cambodian migrant workers and issuing them with a certificate of identity. The Inter-ministerial Taskforce for Migration was created by Prakas 012/07 in January 2007 to develop and implement policy and action plans on labour migration.

Several international and non-government organisations work on migration: IOM, ILO, UNIFEM, UNIAP, Coordinated Action Research on AIDS and Migration Cambodia and Legal Support for Children and Women. They focus on varied areas and beneficiaries. ILO migration programmes focus on labour governance and rights and access to productive employment and decent work; the IOM pays more attention to protection and support services to migrants and their families; UNIAP specifically deals with human trafficking in the Greater Mekong Sub-region. Most international organisations working on migration do so in partnership with the MLVT through financial and technical support of policy formulation, regulatory reform and capacity building. The ILO helped the MLVT finalise policy on labour migration and build capacity to manage orderly labour migration. The IOM has been working with the ministry to revise Sub-decree No.57 and to develop information and education on safe mobility. Local NGOs work more directly and closely with migrants and their communities on advocacy, awareness raising, support and care to migrants and cooperation and networking, rather than on policy and regulation.

Private employment agencies' explicit and implicit responsibilities are: recruiting and placing Cambodian workers abroad; pre-departure training; monitoring workplaces and lodging of workers; ensuring that workers are not being trafficked or sexually exploited; negotiating and settling labour disputes; and arranging the repatriation of workers at the completion of the contract. As of 2010, there were 28 private recruitment companies licensed to recruit, train and send Cambodian workers abroad (see full list in the appendix). Many companies came together to form the Association of Cambodian Recruitment Agencies<sup>6</sup>. The major activities of the association are gathering and disseminating information, coordinating and organising pre-departure training, consulting on national policies and collaborating with the MLVT to write a standard contract.

Like many public institutions, the MLVT is characterised by a lack of resources. It receives only about USD7 million from the annual government budget and has insufficient staff working on the different aspects of migration management (Chan 2009). Provincial departments of labour and vocational training are either absent or insignificant. There are not yet migration resource centres in Phnom Penh or the provinces to provide information and register prospective migrant workers. Pre-migration education and training are not yet institutionalised, making the migration educational campaign uneven. Migrants receive very little information about their rights, the duties and obligations of their employers and labour agents, the worksite

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6 Visit its website at <http://www.acramanpower.org/>

and living conditions, health and safety, the location and telephone number of the Cambodian embassy, or where and how to seek help (Lee 2007a).

Inadequate resources result in the absence of supervision and monitoring of recruitment and placement. There is an urgent need for a functioning monitoring mechanism. Private agencies are profit-driven, and weak monitoring leaves room for opportunistic agencies to ignore rules and standards. There are numerous cases of private recruitment agencies extracting excessive payments from workers, confiscating workers' passports, not providing a standard employment contract and neglecting the welfare and protection of workers (Lee 2007a).

Coordination and information sharing among relevant institutions are weak. This leads to recommendations that the priority should be strengthening the Inter-Ministerial Taskforce for Migration as a consultative body to ensure smooth coordination across ministries. There is no easy way for migrant workers to lodge complaints about abuse or obtain support in cases of violation of labour rights. This lack makes migrants vulnerable vis-à-vis recruitment agencies and employers. Cambodia does not yet have a system that can administer and manage labour migration effectively.

## **6. REGULATORY APPROACH TO IRREGULAR MIGRATION**

The analysis has suggested that while some migrants have improved their livelihoods, many have not or have even become worse off. The latter encounter abuse and exploitation and have very limited or no social and legal protection. Widespread migration problems pose a major protection challenge for the country of origin. There are serious policy and practice gaps in preventing irregular migration in the first place and in protecting the rights of irregular migrants. Irregular migration also affects the governance of labour migration in both sending and receiving countries. There is an international consensus that irregular migration needs to be addressed in a holistic and comprehensive manner by looking at its causes, responding to its effects and improving international cooperation.

### **6.1. Address the Causes of Irregular Migration**

Extreme poverty and lack of employment opportunities, high costs of legal migration, rigid regulations of host nations, porous borders, malpractice by some private employment agencies and activities of traffickers all push Cambodian workers to migrate irregularly. Interventions that address these push factors would reduce informal migration.

- **Strengthening the development of communities of origin:** The preceding analysis indicates that households choose migration to escape extreme poverty, unproductive farming and scarce natural resources. We agree with the Bangkok Declaration that the causes of irregular migration are closely related to development, and efforts should be made to achieve sustained economic growth and development. Although there is not yet firm empirical evidence on the relationship between community development and migration, development might diminish migration by helping to overcome the reasons migrants undertake irregular migration and make migration a free, positive and legal choice.

Most rural communities in Cambodia are characterised by poor physical infrastructure and irrigation, lack of agricultural support services and limited access to common natural resources. Strategies are needed to overcome community economic constraints and increase opportunities, especially for the disadvantaged. Possible priority measures include increasing agricultural assistance; improvement of rural infrastructure; increasing access to natural resources and community participation in management; strengthening public service

delivery, especially education and health; community skills training; and microfinance services. Development assistance needs to be targeted at communities having a high migration rate.

- **Open legal migration opportunities:** Migration to work abroad through legal channels is complex, lengthy and expensive. With few options available for regular migration, irregular migration has become the only affordable channel for most Cambodian migrant workers. There is international consensus, as expressed in the 2003 ILO Asia Regional Tripartite Meeting in Bangkok, that easy and transparent legal migration opportunities could be part of an effective response to irregular migration. While the country can always negotiate bilateral agreements with labour-receiving countries for larger quotas and improved cooperation, the most important priorities for Cambodia's legal recruitment are to streamline administrative procedures, speed facilitation services and reduce placement costs.

The process of recruiting Cambodian migrants to work in Thailand is lengthy. According to recruitment agencies interviewed, issuing passports, visas and paperwork by the responsible authorities consumes about half of this time.<sup>7</sup> This delay reflects the lack of helpfulness and support services for migration. While little can be done to eliminate formalities, a lot can be done to reduce unreasonable delays. For example, the Department of Statistics and Passports should strictly follow Sub-decree 195 on passports for migrant workers by issuing passports within 20 days. The Ministry of the Interior should also consider creating passport offices in provinces with high migration, i.e. Battambang, Banteay Meanchey and Prey Veng. These provincial offices should handle passports only for potential migrant workers; this would considerably reduce time and costs of issuing passports. The time to issue a working visa should be halved.

Like Chan (2009), who made the bold suggestion to cut recruitment costs from USD700 to USD300, this paper urges the responsible institutions especially MVTL to track actual costs and make its best effort to reduce them further. The breakdown of the cost of sending workers to Thailand suggests that a significant amount (approximately USD220 or 31 per cent of the total) falls within "other expenses", which are not known. This makes it easy for opportunist officers or agencies to demand high fees. The information on the recruitment process and fees as well as costs allowable under the law and place a limit on fees that agencies can charge should be publicised.

- **Regulating private employment agencies:** Repeated serious incidents of non-compliance and malpractice suggest an urgent need for strong regulation of recruitment agencies. At the moment, Sub-decree 57 is the primary instrument. It lacks comprehensive coverage and clarity, especially regarding fees, training and workplace monitoring, supervision, compliance and penalties. Recruitment and placement need to be regulated through the licensing system, in which the responsibilities of agencies, conditions for recruitment, and penalties for violation and performance guarantees should be clearly defined. The regulations should provide for cancellation of licences in case of malpractice and for criminal proceedings against serious offenders. Good regulations are not meaningful if not enforced. They need to be accompanied by active monitoring to ensure maximum compliance. Monitoring should include:

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<sup>7</sup> Issuing of passports takes from 20 days to one month; issuing a work visa takes about 1 month; paperwork from Foreign Affairs takes about two weeks.

- obtaining reports by agencies on job placement and employment status of those deployed;
  - periodic visits or inspections by state agencies or their representatives;
  - information identifying recruitment agencies or foreign employers blacklisted for violations of the law or abuses;
  - efficient and competent review of migrant workers' employment contracts prior to signing and enforcement during their employment.
- **Combating human trafficking:** A UNIAP report on human trafficking in Cambodia reports that men, women and children are trafficked for sexual and labour exploitation in Thailand, Malaysia, Macao and Taiwan. Preventing trafficking would minimise child work and forced labour. It can also help reduce irregular migration and protect migrants from slavery and severe exploitation. This research does not attempt to elaborate policy to combat trafficking, but its prevention can be aided by the following measures:
    - Strengthening legal and policy framework to address trafficking;
    - being active in regional initiatives, e.g. the Coordinated Mekong Ministerial Initiative Against Trafficking, and working more closely with major destination countries like Thailand and Malaysia;
    - more collaboration within the country with UN agencies, NGOs and employers;
    - strengthening law enforcement and the capacity of officers;
    - building a knowledge base through good data, accurate information and research on human trafficking;
    - intensifying advocacy and awareness raising.

## 6.2. Protection and Well-Being of Migrant Workers

- **Intensifying education and awareness raising:** Many migrants, especially irregular ones, are unaware of the practical, legal, social and economic consequences of moving to another country. They are not well informed about employment and life abroad, customs and traditions, labour and human rights or laws of the destination country. Better information means better protection, and we therefore recommend intensified education and awareness raising before departure. Adequate preparation for the conditions of work abroad and information about their rights will be conducive to a better experience for migrant workers. Information can be disseminated through a combination of measures:
  - National and provincial migration resource centres to register prospective migrant workers and provide information. The centres should be focal points to disseminate information and a place migrants can telephone or visit for counselling. The information can be disseminated via booklets, posters, counselling, tours, mass media, meetings, workshops and seminars. Good examples of pre-departure education include Tajikistan's Information Resource Centre for Migrant Workers, which provides information on employment conditions, travel and documentation requirements, registration, rights, maps and contacts, risks of trafficking and smuggling and health risks.

- Educational campaigns targeting communities with a high rate of irregular migration need to be strengthened. The education should pay more attention to safe migration and the hazards and consequences of irregular migration, in particular the risk of trafficking for sexual and labour exploitation. Given the inadequate resources of district and provincial labour offices, community-based NGOs and village or commune chiefs, monks and schoolteachers can play a vital role in providing information to migrants. The MVLTA should work with international organisations to mobilise support for NGOs providing community-based education and information on migration.
- **Expanding Support Services:** There has been limited provision of support for the protection and empowerment of migrant workers, particularly irregular migrants. Posting labour attachés in countries where there are large numbers of Cambodian migrant workers is one way to strengthen support services. Their functions should include developing a strong working relationship with the host country on labour issues; monitoring the treatment of migrant workers; providing legal assistance against contract violations, abuse or exploitation; providing advice on problems with contracts or employment; and ensuring that irregular migrants are protected and facilitated in repatriation. Labour attachés should be posted in Thailand and Malaysia, where most Cambodian migrants work, especially irregular migrants. Attachés should possess some basic knowledge and skills including understanding of international legal instruments, treaties and agreements; knowledge of the host country's labour demand and supply; and knowledge of labour policies and laws in both countries.

### 6.3. Strengthening International Cooperation

Migration is inherently a multilateral issue, making international dialogue and cooperation essential for orderly and regulated labour migration (ILO 2010). The Bangkok Declaration also recognises irregular migration as a regional issue and that addressing it requires concerted efforts based on equality, mutual understanding and respect. Irregular migration can best be addressed in bilateral and regional frameworks complementing national policy.

- **Strengthening Bilateral Cooperation:** Cooperation between sending and receiving countries proves to be effective in addressing irregular migration. The MoU signed by Cambodia and Thailand in 2003 is a showcase of effective collaboration to address migration issues. While the primary goal is a framework for recruiting Cambodians to work in Thailand, the MoU also seeks to convert Cambodian undocumented workers to legal migrants. The two governments jointly undertook regularisation by providing certificates of identity to undocumented workers with which they apply for a two-year work permit. As of 2007, 48,362 Cambodian undocumented workers were targeted for legalisation, of whom 24,783 were granted work permit extensions, 10,094 were issued national verification and 12,461 did not show up for verification.<sup>8</sup> While Thailand faces a shortage of low-skilled workers, its government should continue to work collaboratively with sending countries on regularisation. After this successful experience, Cambodia should ask Malaysia to consider regularisation for irregular Cambodian workers.

Another successful partnership in addressing irregular migration is the agreement between Cambodia and Thailand to issue daily cross-border passes to commuters and seasonal workers living in border provinces. With the pass, Cambodian nationals, mostly farm labourers, domestic helpers and petty traders, can work in Thailand with less worry about detention. From the survey, irregular migrants who work as farm labourers near the border

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8 Cited from ILO (2008), *Inter-state Cooperation on Labour Migration: Lessons learned from MOU between Thailand and neighboring countries*, working paper No. 16 (Bangkok: International Labour Organization)



are less vulnerable to abuse and exploitation than those working in fishing, construction or factories. This experience addresses irregular migration and thus shows that the countries should continue to collaborate to facilitate cross-border movements in border provinces.

- **Toward an integrated Greater Mekong Sub-region labour market:** Cross-border labour movement across the GMS has been so dynamic largely because of significant social and economic disparities and complementary labour market structures. Thailand is a major labour market destination, while Cambodia, Laos and Myanmar are sources of supply of unskilled labour. Despite the magnitude of intra-regional labour flow and its economic importance, there is no sub-regional regulatory or institutional framework to facilitate labour movement. Compounding this weakness, labour migration has not been included in the GMS cooperation programme. It is anticipated that GMS cross-border labour migration will continue to grow in size and scope; thus it needs an integrated labour market.

This proposal can be of benefit to every participating country. For labour-scarce countries like Thailand, access to an integrated regional labour market that can guarantee a steady and reliable supply of workers is critical to sustaining competitiveness in many labour-intensive sectors. For labour-abundant countries like Cambodia, Laos and Myanmar, easier and freer international movement of workers can ease unemployment pressures. The initial step to achieve this is to include labour migration in the GMS-wide development agenda and then create an expert forum to explore the feasibility and provide recommendations to leaders.

- **ASEAN economic integration and free movement of labour:** Unlike the European Union, ASEAN does not provide for the free movement of labour. Although migration and mobility should be among the priority issues in ASEAN, there has been little discussion of labour mobility or migration in meetings of labour ministers. Prior to 2007, several initiatives on migration mainly addressed human trafficking. Not until 2007 did ASEAN leaders sign a Declaration on the Protection and Promotion of the Rights of Migrant Workers. The ASEAN Declaration is perceived by many as an important first step towards greater protection and respect for migrant workers' rights. Notable progress has been made by the ASEAN Committee on the Implementation of the Declaration, established to follow up the declaration by adopting a work plan, drafting an ASEAN instrument on the protection and promotion of migrant workers and creating an ASEAN Forum on Migrant Labour for regular consultation.

However, the ASEAN Declaration is not legally binding and contains no obligations on member states. Civil society organisations strongly recommend that the ASEAN Framework Instrument be legally binding. It is guided by four central principles. First, it should include and cover all migrant workers in ASEAN. Second, it should recognise that the protection of the rights of migrant workers is a shared obligation of sending and receiving countries. Third, it should follow the principles of non-discrimination in treatment of migrant workers and their families. Fourth, it should ensure that migration policy and practices are gender-sensitive. The implementation committee has worked on the Framework Instrument through broad-based national and regional consultation. ASEAN labour ministers should seriously consider its recommendations and work toward a binding framework.

In addition to protecting migrant workers' rights, ASEAN needs to work toward a free flow of labour within the region. The ASEAN Economic Community Blueprint, a strategic action plan to achieve an ASEAN Economic Community by 2015, has provision for a free flow of skilled workers only. Unskilled workers create the majority of labour movement, and

ASEAN should treat migration as key to integration by facilitating the free circulation of skilled and unskilled labour.

## **7. CONCLUSION**

Although irregular migration has emerged as a major issue in the management of international migration, there has been little discussion of it in the broader context of labour migration management and national development in Cambodia. Irregular migration has neither been fairly covered in policy and regulatory frameworks nor received sufficient social and legal protection in sending and receiving countries. This serious policy gap results in irregular migration happening largely uncontrolled and with a high risk of abuse, exploitation and human trafficking. Cambodia's irregular migration needs to be treated as equally important with regular migration. The widespread problems of irregular migrants and challenges to labour migration management create a strong need to address the issue. Managing irregular migration is complex and intractable. It can be best addressed in a holistic and comprehensive approach involving policy and programmatic interventions at all stages of migration by a range of those concerned.

The findings from the Cambodian case study on irregular migration align with international literature suggesting a combination of at least three sets of measures: addressing the causes, strengthening protection and enhancing international cooperation. The first two sets have a lot to do with national sovereignty and development priorities involving community development, improving the regulatory framework to make legal migration more transparent and more widely accessible and enhancing support services of information, consultation and legal protection. The third set of measures involves bilateral, regional and international cooperation. Cooperation between Cambodia and labour-receiving countries on regularisation or making legal migration more accessible can be part of an effective response to irregular migration. In the long run, irregular migration can be solved through a more integrated labour market in the GMS, supported by sub-regional regulations and institutions as well as through an ASEAN Economic Community that sets a legal framework for a free flow of labour. To achieve such regional initiatives requires leaders to treat migration, especially irregular migration, as part of the broader labour market and not only as a legal and security issue. The success of managing irregular migration in Cambodia depends not only on the country's ability to transform "migration as survival" into "migration as choice" but also on how regional organisations like GMS and ASEAN and the international community respond to this issue.

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## APPENDICES

### A. Statistical Appendix

**Table A.1: Cambodian migrant workers sent officially**

Year	Malaysia			Korea			Thailand		
	Total	M	F	Total	M	F	Total	M	F
1998	120		120						
1999	86		86						
2000	502	307	195						
2001	846	342	504						
2002	1,049	246	803						
2003	573	73	500	756	638	118			
2004	809	105	704	674	519	155			
2005	1,776	467	1,309	468	432	36			
2006	1,690	231	1,459	1,501	1,341	160	4,116	3,222	894
2007	3,081	174	2,907	584	499	85	4,846	3,249	1,597
2008	3,432	53	3,379	2,531	2,127	404	2,991	1,816	1,175
2009	9,682	876	8,806				3,543	1,968	1,575
<b>Total</b>	<b>23,646</b>	<b>2,874</b>	<b>20,772</b>	<b>6,514</b>	<b>5,556</b>	<b>958</b>	<b>15,496</b>	<b>10,255</b>	<b>5,241</b>

Source: Ministry of Labour and Vocational Training

**Table A.2: Breakdown of costs of sending workers to Thailand**

Itemized Expense	Fee (in USD)
<b><i>Expenditure going to Cambodia</i></b>	<b><i>480</i></b>
Passport	150
Medical Check-up	10
Exit fee	5
Training	15
Travel	10
Recruitment agency income	70
Other expenses	220
<b><i>Expenditure going to Thailand</i></b>	<b><i>220</i></b>
Work permit	106
Application form	3
Medical Check-up	18
Visa fee	59
Travel to site	20
Other expenses	14
<b>TOTAL</b>	<b>700</b>

Source: Chan (2009)

**Table A.3: List of Recruitment Agencies and NGOs licensed by MLVT 2010**

No.	Name	Thailand	Malaysia	Japan	Arabia, Kuwait, Libya
1	Cambodia Labour Supply PTY., LTD	√	√	√	
2	Human Resource Development Co., LTD	√	√		√
3	Philimore Cambodia Co., LTD	√	√		
4	Human Power Co., LTD	√	√		
5	Mey Yorn Service Co., LTD	√	√		
6	Top Manpower Co., LTD	√	√		
7	CDM Trading Manpower Co., LTD	√			
8	Chhun Hong Manpower Co., LTD	√	√	√	
9	Ung Rithy Group Co., LTD	√	√		
10	STP International Cambodia Public Co., LTD	√			
11	(Cambodia) Victory Cooperation Co., LTD	√		√	
12	C-Pro Co., LTD	√		√	
13	VC Manpower Co., LTD		√		
14	PRO CAST (Cambodia) Co., LTD			√	
15	MALCAM Human Resource Management & Consultant Co., LTD	√	√		
16	T & P Co., LTD	√	√		
17	CECH Co., LTD	√	√		
18	NGO ALC COMMUNICATION			√	
19	NGO GCHCC			√	
20	AJC Co., LTD			√	
21	Equine Resources (Cambodia) Co., LTD		√		
22	A.P.T.S.E & C (Cambodia) Co., LTD	√	√		
23	Job Asia	√	√	√	
24	GPGC International Pte Co., LTD	√	√	√	
25	Master Cam Human Resource Co., LTD	√	√		
26	Unicorn Manpower Group Co., LTD	√	√	√	
27	Champa Manpower Group LTD	√	√	√	Kuwait
28	SKMM Investment Group Co., LTD	√	√	√	
	<b>TOTAL</b>	<b>22</b>	<b>20</b>	<b>12</b>	<b>2</b>

Source: Ministry of Labour and Vocational Training

**B. Sub-degree 57 on the sending of Khmer workers to work abroad**

**KINGDOM OF CAMBODIA**  
Nation Religion King

ROYAL GOVERNMENT  
OF CAMBODIA  
No. 57 SDC

**SUB-DECREE**

On  
The sending of Khmer workers  
To work abroad



**The Royal Government**

- Having due regard for the constitution of the Kingdom of Cambodia
- Having due regard for the Labour Law promulgated by the decree No 99 DC dated 13 October 1992;
- Having due regard for the Law on Organizing and Functioning of the council of Minister promulgated by the Royal decree dated 20 July 1994;
- Having due regard for the Royal Decree of H.M Norodom Sihanouk Varman, the King of the Kingdom of Cambodia dated 1 November 1993, on the nomination of the Royal Government of Cambodia;
- Having due regard for the Royal Decree of H.M Norodom Sihanouk Varman, the King of the Kingdom of Cambodia dated 24 September 1994, on the modification of the composition of the Royal Government of Cambodia;
- In accordance with the proposal of the secretary of state for Social Affairs Labour and Veterans Affairs

**DECIDED**

**Article 1-** In order to access the higher standard of living and to upgrade vocational skill, and generate the national revenue the Royal Government allows the sending of Khmer workers to work abroad while the domestic labour market is unable to absorb totally the unemployed and under employed persons.

**Article 2-** The sending of Khmer workers to work abroad and the management these workers is under the competence of the Ministry of Social Affairs, Labour and Veterans Affairs.

The Ministry of Social Affairs, Labour and Veterans Affairs can permit through the ministerial order (PEAKAS), any company to take Khmer workers for working overseas.

If necessary, the Ministry of social Affairs, Labour and Veterans Affairs shall issue furthermore the rule implementing in questions.

The Ministry of Social Affairs, Labour and Veterans Affairs shall cooperate with the Ministry of Interior in complying with formalities such as issuing passports for the workers, and with the Ministry of Foreign Affairs and International Cooperation in monitoring them.

**Article 3-** Khmer workers of both sexes and at least 18 years of age, who have submitted their application forms for the job to the Ministry of Social Affairs, Labour and Veterans Affairs, are considered to be candidates for selecting and sending to work abroad.

**Article 4-** The Ministry of Social Affairs, Labour and Veterans Affairs is hereafter called the party providing workers (PROVIDING PARTY). The company making the proposal for recruiting worker is hereafter called party receiving workers (RECEIVING PARTY).

**Article 5-** All proposals of the receiving party shall be clearly mentioned the main criteria such as:

- The date of the commencement and termination of the job;
- The job specification;
- The place where the job is applied;
- The number of the workers and the skill required;
- The salary and other benefits including accommodation, meals, clothing, medical care and other needs for daily living;
- The transportation of workers forth and back;

After receiving the proposal, the providing party shall reply to the receiving party within 45 days stating whether the workers can be totally or partly provided or cannot provided, or it is need to discuss anymore.

The receiving party shall reply to the providing party within 30 days stating whether all or a proportion of the workers are needed. If the deadline of 30 days is exceeded and there is no further discussion, the providing party considers that the receiving party is no longer interned in those workers.

**Article 6-** The sending of the workers abroad can be carried out only if there is the permission from the providing party and the employment contract between workers and receiving party.

**Article 7-** Within 7 days after receiving official permission the receiving party shall deposit the guaranty money amounted to USD 100,000 in the account of the proving party. If the money has not been deposited, the permission shall be null and void.

The providing party can use the deposit to pay workers instead of the receiving party in the event that latter does not comply with conditions stated in the employment contract.

During the implementation of the employment contract, if the deposit is partly withdrawn to pay workers, the receiving party shall reimburse in full amount.

The receiving party can take the deposit back when the employment contract is achieved definitively.

The deposit in pursue of this article can be reduced for the employer who personally needs a small number of workers to work in his/her won workshop or cottage industry.

However, the employer shall discuss with the Ministry of Social Affairs, Labour and Veteran affairs to make an individual contract with those workers.

**Article 8-** In accordance with the agreement stated in the contract the receiving party shall pay for services and the preparation of relevant document to the providing party.



**Article 9-** The employment contract shall be mentioned clearly:

- The name and address of each party;
- The date of the commencement and the termination of the contract;
- The place of work and job specification;
- The skills of workers;
- The salary and allowances;
- A part of salary and other allowances which shall be send to the workers' family;
- Hours of work and day-off and annual leave;
- Accommodation, meals, clothing and medical care;
- Social security contributions for each worker;
- Delivery and receiving of workers to and from;
- Salary for transportation of workers to and from
- In the event of the workers shall be send back to their country before the termination of the employment contract.

**Article 10-** All workers shall have the rights of annual leave paid by receiving party. The number of leaves shall be calculated on the basis of, at least, one and a half working day for one consecutive work month.

**Article 11-** The employment contract shall be written in two languages (in Khmer and in French/English) and both of the texts are equally authoritative. The duration of the employment contract shall not exceed two years.

Upon the termination of the employment contract, both parties can negotiate the renewal of the contract or making a new contract.

The renewed of new employment contract shall be re-stamped with a visa of the Ministry of Social Affairs, Labour and Veterans Affairs.

**Article 12-** The providing party is a labour scout who recruits workers in pursues of the number and skills and stated in the employment contract.

The employment contract which is signed by workers and receiving party shall be approved by the authorized labour inspector.

**Article 13-** Upon making employment contract each worker shall provide:

- The curriculum vitae with photograph (4x6).....2 sheets
- The justice clearance.....2 copies
- The health certificate issued by the department of occupational and health.....2 copies
- The copy of certificate or other qualification, if any.....2 copies
- The copy of workers' passports.....2 copies
- The job application card.....1 copies

**Article 14-** Before leaving for abroad, the providing party and receiving party are responsible for preparing and conducting training course on working system, life style, custom, tradition and common laws of the receiving country.

**Article 15-** The salary of each worker shall be imposed a tax in accordance with the existing law of the Kingdom of Cambodia.

**Article 16-** The receiving party shall be responsible for all expensed of the officials of the providing party accompanying workers to the receiving country and monitoring the work place and the lodgings of workers as stated in the employment contract.

The providing party shall send its officials to pursue the implementation of the employment contract when it is deemed necessary.

**Article 17-** If labour dispute happens; the receiving party will negotiate and settle it immediately with the workers based on the employment contract. In the event that it cannot be settled, urgent information shall be provided to the Royal Embassy or diplomatic mission of the Kingdom of Cambodia to the receiving country to participate in the dispute resolution.

**Article 18-** The receiving party shall notify the sending party within 45 days before the real date of the repatriation of the workers.

The receiving and the providing parties shall jointly agree with each other on the date and the agenda of the repatriation of the workers.

**Article 19-** In the event that the worker is missing during the implementation of the employment contract, the receiving party shall urgently inform the Royal Embassy or diplomatic mission of the Kingdom of Cambodia to the receiving country and the Ministry of Social Affairs, Labour and Veterans Affairs of the Kingdom of Cambodia.

**Article 20-** Any person who sends Khmer workers to abroad in violating of the provision of this Sub-Degree shall be punished by any penalty in accordance with the existing law.

**Article 21-** The provisions which are contrary to this Sub-Degree shall be null and void.

**Article 22-** The Co-Minister in charge of the Cabinet of Ministers, the Co-Minister of Interior, the Minister of Foreign Affairs and International Cooperation, the Minister of Economy and Finance, the Secretary of State for Social Affairs, Labour and Veterans Affairs shall carry out this Sub-Degree from the date of the signatures.

Phnom Penh, July 20, 1995

First Prime Minister      Second Prime Minister

Cc

- The Cabinet of the King
- The Secretariat General of  
The National Assembly;
- The cabinet of the First Prime Minister
- The Cabinet of the Second Prime Minister
- As article 22 "for implementation"
- File, Chronicle

Sealed and Signed

Norodom Ranarith      Hun Sen