

AFRAID OF THE LIGHT

**Unmasking the Discourse on
Irregular Migration and Its Implications
for Migration Governance in ASEAN**



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Abstract

This paper attempts to investigate the issue of irregular migration in the ASEAN region. The space and attention given to a burgeoning reality of irregular migration is yet to be given its due space at national policy-level and regional discussions. The primary objective of the paper is to function as a baseline study for future advocacy on protection of the rights of undocumented migrants in the region. Primarily, it focuses on the governance of migration, or the lack thereof, by contextualising the current status of irregular migrants in major destination countries of the ASEAN region, being Malaysia, Thailand and Singapore.

Abbreviations and Acronyms

ASEAN – Association of South East Asian Nations

G2G – Government to government

ILO – International Labour Organisation

KL – Kuala Lumpur

MoFA – Ministry of Foreign Affairs

MoHA – Ministry of Home Affairs

MoL – Ministry of Labour

MoM – Ministry of Manpower

MoU – Memorandum of Understanding

NV – National Verification

TIP – Trafficking in Persons

UNHCR – United Nations High Commission for

Refugees

UNODC - United Nations Office on Drugs and Crime

Introduction

In 2014, it was reported that 58.8% of ASEAN labour force are employed in vulnerable forms of employment, both within and outside the region. (ILO, Asian Development Bank, 2014). The economic boom of the 1980's gave way to a large influx of migrants, skilled and unskilled. However, as boom-and-bust cycles occurred, there was an emergence of 3 clear contenders within the region, as destination countries - Malaysia, Singapore and Thailand.

Migrants are prevalent in all sectors that are labour-intensive, like agriculture, construction as well as service-centred like the F&B and domestic work. Porous borders, shared cultures and in most cases, better financial earnings prompted intra-migration flows in the region. Less positive circumstances of civil war, natural disasters and displacement due to development projects have led to migration flows that are unstructured and ambiguous. Intra-migration flows of irregular migrants are typically enabled through geographical factors like porous borders of waterways or hilly regions that allow to cross borders undetected.

In the ASEAN region, irregular migrants follows mixed migration patterns, including economic migrants, migrants reuniting with family members, forced migrants, stateless persons and involuntary migrants or trafficked persons. Migrants and their families enter countries without immigration documents required, technically rendering them ‘undocumented’ or ‘irregular’. This leads to their vulnerability to exploitation and abuse, without the adequate protections that may be accorded to them in a regular channel. They may enter as workers, to seek asylum or circumstances beyond their control that coerce them into migrating into a foreign land. Nonetheless, without any legal and valid proof of identity or visa for the country they have entered, they become undocumented. They may also become irregular despite entering the country legally. Expired documents, losing or having their documents confiscated and entering the country on a visa not for the intended purpose of visit are the pathways to irregularity while in the country.

The chief cause of irregular migrant labour abuse in ASEAN was found to be withholding of wages and confiscation of documents. High cost of money transfers and the requirement of valid identity document forces

them to choose between these formal methods and an informal chain of money-lenders and brokers. An example is the remittance corridor between Malaysia and Myanmar that has a high rate of informality.

Currently, Asia represents 66.4% of the global number that are enslaved. According to Dato' Sri M Ramachelvam, Chairperson of Migrants, Refugees and Immigration Affairs committee, Bar Council of Malaysia¹, human trafficking continues to be a primary point of concern for civil society organisations in the Member States and has been since the 70's. During the Vietnam refugee crisis that extended till the 90's ASEAN nations like Malaysia, Indonesia and Thailand were criticised by civil society as their actions were not in accordance with International Humanitarian Law and Principles. Moreover, apart from the Philippines at Tier 1, Malaysia at Tier 2 Watch List and Laos at Tier 3, the rest of the ASEAN members are at Tier 2 as per the US TIP Report 2018.

Lack of rule of law leads to lack of development – this is particularly evident in the Mekong region where

¹ As presented at the MFA Workshop on ASEAN Consensus Document Action Plan, Manila

Thailand has higher economic level compared to Laos and Cambodia. There are many different perspectives and stories that describe the push and pull factors of this flow. Social cost of irregular migration has been felt in Thailand wherein migrant workers give birth to new generations that eventually join the labour force and work in a labour-intensive industry. Regulatory frameworks are not yet accessible to migrant workers to come to Thailand legally and so borders are relatively porous for irregular flows.

In Myanmar, Burmese migrants that fled the military regime in the last few decades were allowed to initially stay in Thailand without documents. This was accepted until Thailand had pressures to begin measures of control. What was normal had effectively become abnormal and the example has shown how politics and states act or has the defining power that determines whether migrants are determined as irregular or regular. This example also lends further support to the cause of understanding the illegality discourse further and for civil society to not buy into this discourse.

China continues to play a ‘big brother’ role in the region using economic and cultural clout. There are flows from

SE Asia to the country and women from Cambodia, Viet Nam, Lao, migrate to China irregularly. The situation in Cambodia is persistent. The economic leverage these countries have by way of investment, foreign aid, etc. to some extent influences how countries of origin address or do not address irregular migration.

Regulations are cumbersome and complicated. Some groups that are minorities in their own countries do not have documents in the first place. This may lead to political backlash when regulatory systems fail to work in their intended manner. For example, in South Korea, the migration of Yemeni refugees was initially accepted under the Refugee Convention. Around 500 Yemenis arrived seeking asylum. Conservative, political and xenophobic forces caused an uproar that forced Korea to deny refugee claims, imposed restrictions on Yemenis, and deportation. Transparency of the government becomes an issue in terms of following a rule-based system. The lack of it has led to multiple standards of government response to regular migration.

In terms of protecting trafficked persons, common challenges that ASEAN member states face are: (1)

Capacity building of frontline officers (2) Legislation to combat TIP (3) Dealing with push factors of illegal migration and trafficking (4) Identifying and protecting victims (5) Improve investigation and prosecution of traffickers (6) Enhancing direct communication and coordination between and among competent authorities of ASEAN members (7) Lack of regional legal and other mechanisms to further international cooperation.

Currently in the ASEAN, irregular migrants are dealt through practices such as detention, deportation, amnesties and other measures that are based on the true yet unfair perception of irregular migrants as indulging in the theoretical criminal activity of not adhering to immigration laws. Reliance on migrant labour and the desperation of their circumstances, however, has led to situations where despite the knowledge of their status of irregularity, migrants pursue work or life in neighbouring countries.

In 2007, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was signed by 16 countries in Cebu, Philippines. The ASEAN Consensus on the Protection and Promotion of the Rights

of Migrant Workers was announced in 2017, ten years later. Despite being a non-binding document, the Consensus managed to acknowledge identified fundamental and specific rights of migrant workers and their families; specific obligations of sending and receiving states in protecting migrants, commitments assumed by ASEAN Member States towards migrant protection. The Consensus is detailed compared to the Declaration and calls for the development of a mutually agreed and discussed Action Plan.² However, the Document fails to be accountable for the rights of irregular migrants.

In view of these issues, MFA endeavoured to undertake a study on irregular migrants within the region for the purpose of evidence-based advocacy. ‘Afraid of the Light’ functions as a baseline study on irregular migration in the region. The title attempts to capture the reality of the lives of undocumented migrants, choosing to live in the darkness and cautious of the lights they see – both physical and the metaphorical light of escape from their circumstances.

² Lawyers Beyond Borders Philippines

Supported by Heinrich Böll Stiftung (hbs) Southeast Asia, the study was undertaken to recognize irregular migration as a reality that has not been overtly and explicitly considered as a policy and developmental issue concerning access to services, labour and human rights as well as historical relations of mobility in the region. This paper is a product of research completed during the period of August-November 2018 with the assistance of MFA partners and members working at the grass-root level.

Based upon qualitative research, the scope of the paper involves the migration process of irregular migrants and the lives of irregular migrants in the destination countries of Malaysia and Thailand. It further attempts to describe as well as analyse the role played by embassies and civil society in responding to irregular migrants. Finally, possibilities and areas of opportunity to ensure the rights of those in irregularity, are explored through civil society respondents.

The paper has been structured into country-wise chapters and a final conclusive section. Each chapter includes the components of literature review, primary

research findings and particular stories of interest of the respondents.

About the Study

Irregular migration, as a concept, is complex and chock full of complicated circumstances and contexts. The foremost method to understand and study the complete environment of irregular migration in a specified region would require qualitative research. Qualitative research allows the researcher to capture realities and patterns beyond data that would be numerated and that are not easily represented. Furthermore, due to the nature of the topic and scope of the paper, quantitative research is inadvisable and would be non-representative.

Qualitative research for this paper involved primary and secondary methods. The primary research component involved qualitative interviews with irregular migrants, members of civil society and embassy officials of origin countries. Research is further supplemented by literature review of secondary sources such as relevant and existing academic papers that address migration issues in the region and ad-hoc published material of civil society organisations that work with irregular migrants on the ground. Methods had to be evolved depending upon, foremost, the respondents convenience, safety and comfort and

secondly, the resources available to our partners at the grass-root level.

Sampling

The samples of irregular migrant respondents in each country was determined by MFA's network of civil society members that work at the grass-root level. The field area included both respondents in and around the capital as well as specific towns that were known to have a higher proportion of irregular migrants. The researcher has tried to ensure representation by speaking to irregular migrants from different origin countries with larger proportions of migrants. By doing so, the intention is to capture contextual differences leading to irregularity. Case studies of specific towns were also utilised to enrich the study and expand the sample group. Snowball sampling was utilised due to difficulty in access to irregular migrants (*elaborated in Challenges*).

In **Malaysia**, there were a total of 29 migrants and 20 migrants in Perak and Kuala Lumpur-Cyberjaya areas respectively. They represented, listed by number of respondents, Indonesia, Nepal, Myanmar, Bangladesh and

Philippines. We were able to speak to 9 members of civil society and officials of the Embassies of Myanmar and Nepal. In **Thailand**, there were a total of 22 Burmese migrants in Mae Sot. We were able to speak to 2 members of civil society, 3 professors from Chulalongkorn University and grassroots workers. In **Cambodia**, there were a total of 16 returnee migrants and 13 returnee migrants in Kampong-Cham and Phnom Penh respectively. We were able to speak to 4 members of civil society.

Methodology

For irregular migrants, interviews were conducted with minimal risk to the respondents and the researcher - either telephonically or face-to-face at places of work, markets, and in some cases, respondents gathered as a group in residences. Key informant interviews were conducted with civil society members and embassy officials. Interviews were open-ended and were guided by a set of questions (*Appendix 1*).

Field visits further deepened the understanding and context of the migration in the towns or region. 2 focus

group discussions and 3 focus group discussions were carried out in Mae Sot and Perak respectively. 2 focus groups were further conducted in Kampong-Cham and 1 focus group in Phnom Penh. The topics of discussion followed the interview guide. Regional Consultations were also held with MFA members and partners in South-East Asia for their inputs during the period of the study. These inputs have been incorporated in various ways into the report.

Analyses has been done with the following as bases:

- Existing rights accorded to irregular migrants (if any) :
 - » Living conditions
 - » Working conditions (from recruitment till present)
 - » Areas where they face restrictions/ lack of access and opportunity
- Government initiatives regarding irregular migrants (since each destination country was observed as having a different governing 'style' to irregular migration) and the gaps and outcome of these initiatives, analysed from a rights-based perspective.

- Reach and scope of work of embassies and agencies at origin countries.
 - » Occupational risks to working on the issue of irregular migration (in destination and origin)
- For CSO's :
 - » Reach and scope of work
 - » Reach/impact of advocacy and occupational risks

For migrant respondents, commonly cited issues which were found during interviews and the consequent transcription (to the point of saturation of information) helped us pinpoint particular trends/ behavioural patterns. Analysis was also aided by secondary sources from our members and partners. Case studies helped focus on particular issues or bring forth a particular subset of migrants/ stories of interest.

Data has been validated through:

- ❖ MFA members and partners, who have contributed directly and indirectly (through their own published works on the issue).
- ❖ Speaking to different types of respondents, i.e., CSO's, embassies and migrants – the respondents confirmed each other statements independently without

prompting by the interviewer nor prior knowledge of discussions with other respondents.

- ❖ Furthermore, as someone not from the region, the interviewer does not, to an extent, possess preconceived bias or notions about the respondents. The only possible bias is of reliance on our members and partners whose area of work may be limited in the country, if at all.
- ❖ Another form of validation which we saw was the saturation of information from respondents, wherein, beyond a point, all respondents gave similar answers and spoke of similar issues despite the interviewer prompting to provide any different perspectives.

Triangulation and respondent validation could not be performed due to obvious restrictions of speaking to undocumented migrants.

Challenges

A major challenge faced at the beginning of the field work was the timing and duration of field work pursued. In both Malaysia and Thailand, there were significant

immigration raids that were carried out during the period of research that severely limited access to irregular migrants in the areas. As a matter of fact, the presence of the raids necessitated travel beyond capital regions. Due to raids, civil society partners at the grass-roots advised the researcher to be wary of the situation in terms of the respondents' safety as well.

Primary research was not pursued in Singapore due to CSO's reporting very low numbers throughout the year of undocumented migrants. Furthermore, CSO's did deal with trafficking but only in terms of sex trafficking, which the research does not include. During interviews, the researcher was mostly assisted by interpreters or the social workers for translation. Hence, the findings may depend upon the quality of translation and understanding of English between the researcher and the interpreter.

Sampling and representation may be affected depending on the scope of work and functions of the members and partners at the grass-root level which may be community, gender, religious or developmental in nature. Due to the nature of the topic being contentious, assistance was provided by members that possess the resources specific

to the research. Embassy officials, although cooperative, were restricted by their schedules and general caution of speaking about irregular migration.

Furthermore, some respondents that were irregular migrants were guarded due to their status. They preferred to remain hidden in society and are extremely difficult to access unless through community leaders known to them personally. Hence, some migrants, especially plantation workers, misquoted their ages (as higher than the minimum age, although they physically looked in their teens) as well as being dishonest about their channel of migration (For example, migrants that travelled on a student visa claiming they were ‘disappointed at the lack of facilities at the university’ and so left to earn enough to travel back home). Societal taboos around sex prevented female migrants from speaking about sexual abuse in front of their husband/family.

Malaysia

Undocumented migrants in Malaysia are from Indonesia, Bangladesh, Nepal, Myanmar, Cambodia and the Philippines. Their routes of travel differ across their nationalities. Undocumented Indonesians, Cambodians and Burmese typically travel and reach Malaysia by waterways either from their origin country or through Thailand. Filipinos and Bangladeshis are seen to have two categories of migrants – those that travel by the above-described waterways and those that travel by air but become undocumented after arrival in Malaysia. Nepalese fall into the latter category as well. Civil society members reveal that numbers of undocumented migrants are indeterminate, but the numbers run into more than 1 million.

Malaysia is not a signatory of the 1951 UN Refugee Convention. Nonetheless, a large number of undocumented migrants arrive as asylum-seekers, unaware of the availability and access to the UNHCR card or not. Of the 161,140 migrants who are registered with UNHCR in Malaysia, 139,740 are from Myanmar; other countries include Pakistan, Yemen, Somalia, Syria, Sri Lanka, Afghanistan, Iraq and Palestine. There are roughly 42,620 children below the age of 18. (UNHCR, 2018).

Unregistered asylum seekers gain access to the islands after travelling from Thailand or their own countries. Those registered with UNHCR disclose that the allowance they receive is not sufficient and therefore seek employment illegally.

Malaysia regularly detains and deports irregular migrants. Operations against irregular migrants are held periodically. The amnesty programme that began in 2014, allowed migrants considered 'illegal' to leave the country upon paying a fine, ended on August 31 2018, which is Malaysia's Independence Day. Despite backlash from civil society³ and fears of labour shortage⁴, immigration authorities further announced a crackdown on migrants found without documents, after this date. However, operations to detain undocumented migrants have been a continuous process, official numbers from January to August being *"9,208 raids conducted (till Aug 15); arrests of 28,063 illegal immigrants and 799 employer; From 2014 until Aug*

³ "Immigration raids make criminals out of victims" (4 July 2018).

Malaysiakini. Retrieved at <https://www.malaysiakini.com/letters/432752>

⁴ "Industry urges 'final round' of rehiring programme" (6 August 2018). New Straits Times. Retrieved at <https://www.nst.com.my/news/exclusive/2018/08/398458/industry-urges-final-round-rehiring-programme>

1 2018, RM400 million in fines have been collected from over 840,000 migrants who worked or overstayed in Malaysia”. (The Straits Times, 2018) Dubbed the “3+1 programme”, the amnesty initiative requires migrants to pay a RM300 fine and RM100 for a special pass allowing them to leave as well as the transportation cost. It blacklists workers through a biometric system for 5 years. This is the third amnesty programme pursued in the country since the first one in 2005.

The amnesty was handled through 3 government-appointed vendors with multi-layer processes, seen as cumbersome for both employers and workers⁵. The previous “6P amnesty programme” was handled directly by the immigration department. The programme has faced criticism from employer representatives and associations for the government’s ambivalent response in dealing with undocumented workers between deportation and allowing them to re-register as well as worries of insufficient labour supply for sectors of construction and plantation, affecting particularly small industries.

⁵ “The fee was causing the cost of hiring ‘new’ foreign workers to be cheaper than legalising illegals.” (The Straits Times, 2018)

Malaysia additionally pursued a rehiring programme since 2016 (which ended in June 2018) that allows employers to rehire workers (providing valid work permits) who were undocumented for particular sectors including manufacturing, construction, plantation, agriculture and service sectors. From the period of 15 February 2016 to 28 May 2018, a total of 744942 undocumented foreign workers and 83,919 employers registered under this Rehiring Program. (Bhuyan, 2018). Those who were not registered under the rehiring programme were eligible to leave via the aforementioned amnesty.

After the Rehiring Programme, “Ops Mega 3.0” was undertaken by the immigration department launched on August 31. The reasoning of Datuk Seri Mustafar was thus : *“We do not want to compromise on the issue of illegal immigrants... because there are many other problems that will arise from this, for example, in relation to health issues and drug abuse,”* (The Daily Star, 2018). The rehiring programme was outsourced to electronic services solution provider MyEG. The process was criticized by civil society and in the media as *“lengthy and non-transparent, and the subcontractors and sub-agents of rehiring face little accountability...workers are not given receipts of rehiring payments and many agents cheat workers, taking their money*

but not providing e-cards...no adequate redress mechanism to investigate and track these agents?'. (Tenaganita, 2018).

In 2016, new levies for foreign workers were announced. There are 2 categories for the levies – the first for manufacturing, construction and services sectors (RM 1850/\$441 per worker) and the second for plantations and agriculture (RM 640/\$153 per worker). These were ‘optimised’ rates from RM 2,500 (roughly \$596) and RM 1,500 (around \$358 respectively, applicable only for Peninsular Malaysia). The initial rates faced backlash from groups of employers.

Although undocumented workers are located across the country, particular pockets of undocumented migrants exist in the border regions of Johor, Malaysian Timur, Batu Pahat, etc. These pockets primarily exist due to the community network already embedded in these areas. The sense of community is particularly strong among undocumented migrants, most of them preferring to stay with compatriots or whose journey to the country and decision to migrate were based on relatives, friends and neighbours already working in the area and assuring employment.

While respondents from neighbouring countries typically worked/stayed with those they knew on a personal level in their own villages/towns, respondents from South Asia met others from their country at the workplace and forged a strong bond. This sense of community was seen during the amnesty and rehiring programmes, where friends convinced each other to apply for repatriation. The networking is the pathway for migrants to seek help from their community leaders during times of hardship. In fact, during the interviews conducted with Nepalese migrants personally, in the presence of their community leader, the migrant and the community leader confessed it was their first time meeting face-to-face as well as the fact that all previous communications had been through their friends or by telephone.

However, the sentiment is, sometimes, a double-edged sword. The implicit trust they place on their countrymen leads to them becoming victims of deceit and deception wherein unscrupulous and fraudulent agents that exist among them as workers cheat them of their money, in cases of visa or recruitment. At least 70% of the respondents confessed to not being aware of the consequences of their undocumented status until they

heard of immigration raids or were involved in a similar incident; due to incorrect preconceived notions, promoted by those that encouraged them to travel to Malaysia through improper channels. Almost all respondents of Nepalese origin, except those who already applied for the amnesty programme, preferred to approach their agents for help and advice, disregarding even advice by community leaders and civil society members.

While recognising that they were deceived initially by one agent, the agent convinces them of his trustworthiness through ‘proof’ he shows them (typically print-out of an application form, that has no bearing or consequence to the worker) and extracts money for his services. Most agents request for the money in cash to avoid proof/evidence of the transaction. Some respondents approached a different agent, only to be cheated again. However, this does not, in any way, diminish the role, dominance and authority of the agents over their fellow migrants. The deeply held social value that trusting ‘one’s own’ is better than trusting an agent of any other origin hinders the access of workers to justice and cheats them, in most cases, out of their savings.

Attitudes prevailing among migrants that it becomes ‘acceptable’ to leave their job is common as well. Although the hardship they face is what prompts them to leave, a combination of misinformation by their agent or friends, lack of awareness of their own rights and their confidence in their ability to survive the odds are what leads to most quitting their work within months or for reasons that can be handled. Migrant respondents were not particularly aware of the consequences of becoming undocumented until they were undocumented themselves. They managed to find work and earn and so the punitive measures of imprisonment and deportation were considered as far off possibilities until they were at the risk of being caught during raids.

Respondents also considered approaching the embassy as a last resort and not as an actual participant or stakeholder in their migration process. Although most do not trust their embassies to help them, they approach them towards the end of their migration process. This becomes difficult for embassies to manage, as by then, the consequences of their status are far greater for the embassy to intervene. The embassy, hence, relies upon community

leaders to sort out issues of living and working conditions while the embassy deals with issues of documentation.

Undocumented migrants in Kuala Lumpur or nearby regions are not particularly specified by their sector of work and are found at manufacturing sites, construction projects, eateries and domestic workers. Migrants in other regions are engaged in manufacturing and construction but predominantly in agriculture which is labour-intensive and perceived as less regulated. Certain sectors are restricted to certain nationalities, for example, Nepalese as security guards. The government-determined minimum wage for migrant workers is set at RM1000 (roughly \$250). While the wage is considered insufficient for all migrants, in the case of undocumented migrants, it is further compounded by wage cuts or lack of regulation in this regard.

Migrants who become undocumented after their arrival in Malaysia are in most cases those who left their initial employer due to verbal or physical conditions of oppression. Due to the tied nature of the sponsor relationship, they fail to take their passport or visa from their employer (or the employer refuses to give them their documents). Worker permit renewal fee which is an annual

fee is taken from the workers' salary illegally. In some cases where the companies they work for are blacklisted, they are forced to return, pay for a new visa (incurring large expenses) and return. Hence, most opt to work irregularly during the time due to mounting expenses and responsibilities at home.

Most respondents in KL (except for domestic workers) lived in low-cost apartments where 8-10 or more migrants, typically compatriots, live in one unit. Depending on those who work the day or night shifts, a bed would be shared by 2 people. Some respondents described situations where they take 2 shifts in a day in case the person that shares their bed has a day off. The apartment renting would be registered under the person that is in possession of their work permit. However, civil society members describe situations where they also reside in shipment containers and porto-cabins in conditions of low hygiene. Respondents working in plantations, typically stayed within the plantation or areas with forest cover as this allowed them significant invisibility and enabled them to escape during raids.

In response to questions of how long they have stayed undocumented, the duration varies from a few months to a couple of years. Grass-root level workers agree that except during nationwide raids where the immigration department is also involved, raids by police may be situationally bypassed by taking overtime at their workplace or through bribery by either employer or the respondents themselves.

In case of trafficking victims, the case would be registered in the web-based trafficking database maintained by the government. Trafficking cases are usually handled by police verification or by NGO's referring the case to the police. Police perform preliminary screening depending on the vulnerability of the workers (for example, sex trafficking situations in massage centres). If found to be trafficked after a verification process of 21 days, they are eligible to be provided stay in a government shelter under the protection order from a court. They may also avail the travel pass to leave the country. In case they are unable to verify their trafficked status, the migrant is sent to a detention centre. The migrant remains under detention until intervention from his/her embassy or until they are able to pay for his repatriation and fines. Trafficking

occurs through marriage as well, evident with Filipino and Cambodian migrant workers.

Indonesia as an origin country

“I never had a break. I would come back from the restaurant after 12 hours of duty to again be called by my employer to work at his house. I had around 4-6 hours to myself, if I was lucky. We had no days off.”

Shared history between the two nations, permeable geographical boundaries and extensive social network makes Malaysia an extremely lucrative destination for Indonesian migrants. The civil society respondent for Indonesia migrants opined that majority of undocumented migrants in KL are from Java, Lombok, and other islands further away from Jakarta. They travel to a large extent by boat to Johor-Bahru or through the Timur border areas of Sabah and Sarawak. Facing stark poverty in their regions, they travel without awareness of safe and legal migration nor any information on what borders and regulation mean. Low-skilled and possessing only basic literacy or education, Indonesian migrants from these regions primarily work as domestic workers or in fast food outlets in KL.

In 2009, Indonesia had temporarily stopped deploying domestic workers to Malaysia. However, it resumed deployment in December 2011 as both countries signed a

MoU about worker protection by the end of April 2011. However during this period, it was found that the number of undocumented female domestic workers to Malaysia increased by 58 percent compared with those in the two years prior to the moratorium, i.e., between 2008 and 2009. (World Bank Indonesia, 2017)⁶ The Government of Indonesia also promotes their online information platforms such as JendelaTKI by Ministry of Manpower, JobInfo by BNP2TKI and SafeTravel by Ministry of Foreign Affairs (for Indonesians travelling abroad, it includes travel information, halal food joints, prayer timings, as well as ways to connect with Indonesians in the

⁶ Indonesia passed a law for migrant workers in 2017. The new law, a revision of 2004 legislation on the placement and protection of migrant workers, sees regional governments in charge of providing pre-departure vocational training and work placement. The changes are intended to curb the activities of private recruitment firms that charge workers huge fees that tie workers to them as they work off their debt. Domestic workers do not fall under the labour law mandate and hence are prone to abuse and exploitation by agents according to Article 63(1) which stipulates that a ‘migrant worker should only work for a company, which is a legal entity’

destination). However, these are not considered effective



due to lack of access and updates.

Considering, most migrant workers arrive from rural areas and remote islands in the country, their access to the internet is limited and their channels to

information are opaque. This is largely due to geographical considerations as well as the presence of autonomous governments (such as in Papua, West-Papua, Aceh, Yogyakarta) whose priorities may lie elsewhere regarding awareness or service provision for migrants.

The civil society respondent, a former domestic worker herself, explained that there are three major pathways to irregularity for Indonesian migrants: first, those who run away from their employer; second, those who arrive on tourist visa and become ‘over-stayers’; and finally, those that take the ‘back-door’ route of waterways or are smuggled across. Cases of undocumented migrants are

informed to the civil society worker through family, or through friends of the victim or directly (which is much rarer). Relevant issues for undocumented Indonesians are unpaid wages, forced labour, abuse by employer and confiscation of documents. Furthermore, it becomes difficult in cases of sickness or death since employers have confiscated their documents and would refuse to acknowledge it.

Family reunification is an important and relevant issue among Indonesian undocumented migrants comprising of men, women and children that travelled to Malaysia to join their spouses/parents. A large number of workers that come to Malaysia already have family ties in the country or are joining their spouses. Shared history with Indonesians means complex issues of being undocumented; there are second or third generations here and other extended family in both countries.

Migrant respondents:

Due to the raids, the below migrants were spoken to by telephone.

- K, 44 years old and single mother of 5 kids works long hours from 4am to 10 pm at a canteen. Possessing a Diploma, the lack of job opportunity and the conditions at home forced her to travel to KL and join work as a doctor's assistant. Upon arriving, she found out her job was in a canteen. She came with the help of an agent and was completely unaware of the conditions of her visa and employment. She left the canteen without notice after a year and a half, effectively making her undocumented. She then joined as a domestic worker. Her second employer provided her money to apply for the rehiring programme, and to help regularise her status. However even after 6 months, she was unable to get the permits and her agent returned her money.

She had travelled home once in 2012 and came back through another agent, again without a valid permit but to work for the same employer. When she wanted to leave in 2013, her employer released her. Unfortunately, she did not have enough savings to pay for her way back and so she joined a friend that suggested to work at a canteen.

However, she has not been paid regularly. The biggest problem she currently faces is lack of freedom of movement. She plans to leave before turning 45 (Indonesians have a limit of 45 years to renew any documents) by obtaining the one-way travel pass. She has not approached her embassy as she needs to pay for her own ticket and documents to leave.

- N, 30, from Medan, arrived in 2008 with a tourist visa. He initially worked in a restaurant, recommended by a friend who worked in the same place. He came under the notion that he would get the work permit, however his employer did not give it to him. He paid RM 1500 (\$358) to an agent to get his permit done. But after paying, the agent became completely invisible. Other workers had conflicts with him and so he left the restaurant after a month and joined work in a marketplace. The fear of being caught from a visible location made him leave that job as well and his third job was in a restaurant again. The employer promised to get him a work permit, but not only did the employer not provide for one, he would cut N's salary every

month for the next 3 years he worked there. The restaurant eventually ran out of business and he worked in catering for a year. The long hours of work combined with overtime at the employer's home and low salary, made him leave that job as well.

After 5 years, he returned home but came back to Malaysia again. He works in a grocery shop and is paid RM 1200 (\$286) per month. He is supposed to get a day off however he barely gets his holiday per week; he makes extra money through small businesses he runs on the side, although he did not specify what those businesses entail. He is able to send money home through remittance stores that request for the sending address alone, unlike more popular remittance companies like Western Union that request proof of documentation. The biggest problems he faces are not being able to return home in case of family emergencies and not being able to complain against deceptive practices of agents at police stations due to threat of imprisonment and detention.

He recently came to know his procedures for regularisation through associating with awareness campaigns run by civil society members. However he has not yet contacted the embassy because of the following reasons: (a) lack of awareness of embassy role and duties (b) fear of being accused of doing something illegal (c) possible route to deportation in case the embassy asks him to report to the police (d) lack of time due to long working hours. He plans to return home and come back to Malaysia through formal channels.

- A, arrived in 1998 for the first time, through an agent to work as a domestic worker. She worked for a Taiwanese-Malaysian couple. Initially she did not even know what her passport and visa looked like as it was all possessed by the agent and she was mostly locked indoors. She had to take care of a developmentally challenged child and both of them were locked into a room for days together. She was working for 1 year and 8 months trying to gain her employers trust to venture into the compound. She was unable to send money back home.

Meanwhile, her son got into an accident back home and she requested for leave from her employer, which was denied. She was forced to leave the home, however she found it difficult to leave as the compound and home were locked from the outside. One day, however, she met a fellow Indonesian worker who worked as a repairman. She confided her problems at home and he suggested she run away from the workplace. Looking for a leeway, she finally found a day where the backdoor was open, she climbed over the gate and escaped. The same repairman helped her get another job at a different home. Her new employers even provided her money to send home for her son.

After 3 months, she got a job at a laundry service where she worked for 2 years. She returned home for 3 months in 2004 and then she came back to Malaysia via tourist visa. She returned in 2010 through an amnesty program and in 2016, she was blacklisted by immigration. Throughout this period, she was continuously cheated by agents for her return to Malaysia and was even convinced

they could help remove her blacklisted status by paying extra to them, which she did. Then she travelled from Java to Batam and from there to Pengarang in Johor by boat. However she is suspicious as her original destination was shown Pasir Gudang, another town in Johor so she is worried if she could get into trouble. Nowadays, she works in cleaning services.

The biggest problem she faces is the lack of freedom of movement. Due to the raids that were ongoing at the time of the interview, she was unable to participate in or associate with civil society members and organisations. She plans to save up money prior to leaving to Indonesia. She wants to approach the embassy however she knows they would only help her renew her passport and not her permit.

- Honi, currently working in the kitchen of a restaurant, is from Surabaya. She travelled with her then husband (they separated in Malaysia after he took another wife) to Batam. She paid RM 1200 (\$286) to her agent to travel by boat to Batam and

then from there to Johor-Bahru. She was given an on arrival visa for 3 months in 2012. Her sister and aunt also work in KL for restaurants, and so she joined her sister at her workplace. She was paid RM 1300 (\$310) and she was content. However after the expiry of her visa, she has not been able to obtain a visa till date. She then moved to Cyberjaya where her new workplace promised to make her visa and work permit, at a wage cut of RM 300 (\$72) every month. She then went to the embassy to renew her passport, but in vain. Her employer said they have registered her on MyEG, which was false. She then left her workplace to where she works currently. She has faced sexual harassment from corrupt authorities who knew of her undocumented status. However, her current employer has attempted to shield her from these attempts.

Her biggest fear is the situation where those authorities would turn against her and be the cause for her arrest and detention. She is currently paid RM 1800 (\$429) and provided accommodation, despite her status. She is able to send money back

home now and does not possess any savings in Malaysia. A single mother, she does not know how she will travel back home, unless she contacts an agent. Her ex-husband, also undocumented, is in Malaysia although she is unaware of his whereabouts. Her child is brought up by her mother in Indonesia. She still hopes to get the money back from her first employer and get regularised.

Bangladesh

“We suffer the most. We feel like our embassy or government does not care at all. They only need our money. Our families too. They don’t know we eat only once a day. I don’t know who to ask for help. I just want to leave.”

Although there are no parameters or comparisons to be made, Bangladeshi workers are seen, by civil society, to be suffering the worst forms of labour conditions and exploitation as compared to other groups. Bangladeshi respondents were largely seen as arriving in Malaysia using a student visa (2-year period) with no way to convert it into work permit. The colleges they have apparently secured seats to, are commonly referred to as ‘visa colleges’, making the intention clear. This was not seen with other nationalities. However, civil society respondents also report trends of mixed migration with Myanmar.

Civil society respondents say there are easily 1 million undocumented Bangladeshi migrants in Malaysia. As of June, it was reported that roughly 3,403 Bangladeshi workers, who became undocumented, were detained by the Malaysian immigration police since January, according to Malaysian national news agency Bernama (Bhuyan,

2018). By the end of the programme, the Malaysian immigration department had detained “more than 30,000 undocumented migrants, including an estimated 7,000 Bangladeshis” this year wherein 5,959 Bangladeshis as well as over 1000 employers (at Sabah) were detained between January 1 and August 29. The arrests were quoted by the immigration department as the “result of more than 10,000 operations”. (The Daily Star, 2018). 4,82,535 Bangladeshi workers got themselves registered under Malaysia’s Rehiring Programme. (Bhuyan, 2018)

Almost all respondents report of a large syndicate working behind the scenes as agents and visa processing, involved in exploiting labour for recruiting fees, etc. and being protected by corrupt authorities with political interests. Bangladeshis have been migrating to Malaysia since the 90’s. There was a G2G programme for recruitment and it was said to be effective as workers only had to pay BDT 40,000 (\$465) as recruitment fees. But it was also stopped due to low registration numbers which is again chalked up to the strong agent lobby.⁷ However, the

⁷ Also documented in newspapers. Refer to “Recruiting agencies free to send workers to Malaysia” (26 September 2018, Financial Express, Dhaka). Retrieved from:

G-to-G Plus programme between Malaysia and Bangladesh from 2006-7 saw the most amount of exploitation. Agents, then began using student visas to bring labour. And later, they began using professional visas for the same. Beginning 2017, they began a system of ‘calling visa’ with the lobbying of the Bangladeshi syndicate. A respondent, who was formerly undocumented, spoke of being deported and returning to Malaysia thrice before finally coming through a legal channel currently. After the first two experiences with unethical recruiting agents, he eventually understood the legal way to proceed.

All respondents spoke of the dismal working of the embassy with regard to labour issues. They claim that the embassy speaks of insufficient budget as an excuse to them but they are aware that considering the large Bangladeshi diaspora in the country, this should not be the case. Respondents also said at several instances when they attempted to call the Bangladeshi embassy there was one

<https://thefinancialexpress.com.bd/trade/recruiting-agencies-free-to-send-workers-to-malaysia-1537933496>

receptionist who did not speak Bengali and hence they had a hard time accessing people at the embassy.

Migrant respondents:

- Islam, reached Malaysia in 2015. He came under a professional visa (for skilled workers) and the agent brought him to Johor-Bahru to work for a metal factory. He faced physical abuse and forced labour conditions. His agent promised him that under professional visa he could get any job he wanted, which pays RM 3000 (\$716). His agent misled him into thinking that he would easily be able to change jobs and be in possession of his passport. Due to it being a 'professional visa' his agent charged him BDT 380,000 (\$4,416). He left the factory but returned due to lack of documentation. However, he was paid only RM 800 (\$191) per month despite being promised RM 3000 (\$716). The company asked him to pay RM 2000 (\$477) if he wanted to leave. After borrowing from friends, he paid the company and left for Kuala Lumpur.

He joined a petrol pump that paid him RM 1350 (\$322) with 14 hours of work. He got in touch with

an agent to change his location but to work with the same petrol pump company. He came to Cyberjaya with the same pay and working hours. His employer asked him to ready his work permit soon so that he could continue working and he asked a fellow Bangladeshi worker to help him with it. The person said he could help register him for the rehiring programme that was carried out at the time. He paid the person RM 5000 (\$1,193) for it.

He was caught in an immigration raid but was released after he was found to be registered for the rehiring programme. He paid another agent for RM 6500 (\$1,550) to help process his MyEG registration process and the agent took his passport. The agent disappeared soon after. The registration program ended and he couldn't become regularised. He has not paid up his debt in Bangladesh and has not been able to send any substantial money home with the loss of all his savings. Due to his debt, he chooses not to leave. He has not approached the embassy.

- Mosh, came on a student visa in 2016 and he paid his agents BDT 300,000 (\$3,486). His uncle stayed in Pandan Indah and after discussions eventually allowed him to come to Malaysia. His agents promised him he could change his student visa to a work permit after a year. He worked in an amusement park in Cameron Highlands as a ride operator. After a workplace accident where he fell from a three-storey building, he spent 20 days comatose in the ICU with a head injury. The entire treatment cost RM 7000 (\$1,669) which the employer refused to pay and told him he would need to pay if he wants to keep his job. He escaped to Cyberjaya.

He wanted to get regularised and paid an agent RM 5000 (\$1,193) for the same. However, the agent disappeared with his money. His uncle tried to help him and called the agent but to no avail. He remained unemployed for several months till he finally found a job at a restaurant where he was promised monthly wages RM 1500 (\$358). He is currently paid daily wage of RM 55 (\$13) for 12-hour shifts. He says the owner forces him to take

leave at times so they do not have to pay the daily wage. He stays in a 3 BHK flat with 12 other people. Within this time, he has only been able to send around BDT 5000 (\$58) per month, which is insufficient for his family's wellbeing and to repay his debt.

- From a middle-class family in Sylhet region, Kabir arrived in Malaysia in 2015 after incurring a debt of BDT 300,000 (\$3,486) owed to his agent in Dhaka. He allegedly came to study in a college but left studying after seeing the 'dismal state' of the college.⁸ His college visa has expired and he claims when he tried to renew it, it was denied. The college was later blacklisted for fraudulent functioning. Now he works 'part-time' after meeting an agent and paying him RM 5000 (\$1,193). He apparently registered with the rehiring programme through this agent. But he says the agent, who is also Bangladeshi, has disappeared with the money. Upon being informed that he has

⁸ It is evident from the exchange that K has lied to the interviewer to save face. He speaks English well and seemed educated.

been cheated and advised that he will not be able to leave through the programme, he wanted to ask the agents he knew prior to making a decision.

He currently earns RM 2000 (\$477) with overtime.

His family does not know of his whereabouts.

Nepal

“Our family knows about our situation and want us to come back. But what do we do for the money then? We are trying to earn for them. Even to go back we need to save our money which leaves them with nothing.”

Nepalese in Malaysia are roughly considered as the second largest community of migrant workers. The embassy speculates that around 100,000 Nepalese could be undocumented in the country and was taking specific measures to issue the migrants the Special Pass to leave at the time of the amnesty period. Numbers reported are far lower than the estimates of civil society advocates as to how many Nepalese bypass these systems and travel through irregular channels regardless of regulations. Due to restrictions and visa fees, Nepalese prefer to go through India and other neighbouring countries.

The biggest issues faced by Nepali migrants according to the embassy is withheld or lowered wages as compared to the contractually-specified salary. The embassy subsequently attempts to mediate between the employer and the worker to settle the issue. In case the employer refuses to show up, the embassy works with the agent in Nepal to facilitate the process. However, civil society

advocates speak of how the process may pressure the workers to accept the solution regardless and that the workers may furthermore face a disadvantage when they join their workplace. The respondents too allege that despite the mediation process, they feel they have not been accorded their righteous compensation. The Ministry of Human Resources in Malaysia is approached as a last resort. With regards to the welfare fund established for migrant workers who are in distress, compensation would only cover regular migrants for health, repatriation (dead body), emergency rescue, health treatments, scholarships for the children of distressed migrant workers (if they have injured/lost limbs).

Malaysian policy of employing only Nepalese for security guard jobs means that once they become undocumented, Nepalese migrants are seen joining such jobs primarily due to ease of access as well as a perceived lack of regulation. Under the previous Malaysian government, Nepali migrant workers were required to apply for work visas through a Kathmandu-based affiliate, Malaysia VLN Nepal. The process became complex since Nepalese had to go through security and health checks conducted by various private companies with hefty charges

as part of the visa requirements. These include the online registration Migrant Management System (MiGRAMS), One Stop Centre (OSC) to collect visa forms, passports and drop them at embassy, and Immigration Security Clearance (ISC). The recruitment process was managed under a system developed by the Malaysia government called the Foreign Workers Centralised Management System (FWCMS).

The first round of discussion on labour cooperation between Nepal and Malaysia was held in Kathmandu on February 20-21, 2017. Malaysian government reservations on cost of repatriation, visa fees and other relevant service charges lead to a breakdown of a MoU process. In May, it was reported that the sending of workers to Malaysia was temporarily halted by the Nepal government as the workers were charged exorbitant fees for visa related services by private companies appointed by the previous Malaysian government. Following that, the Nepali government launched a crackdown on various institutions collecting extra fees from migrant workers as it was against Nepal's policy. The sending of Nepali workers to Malaysia was put on hold as Nepali companies affiliated with the

Malaysian side were under investigation and workers could not process their visas via the companies.

The government of Nepal does have a system of registered agents for the recruitment process in Nepal. However, there are undocumented migrants that have arrived through these channels. In such cases, the embassy claims investigation is carried out in Nepal as well, although workers may become undocumented despite coming in through legal channels. The embassy claims they do not engage with or entertain agents in Malaysia. The previously mentioned mediation process does not work in the case of undocumented workers. The embassy would not pursue it as they claim the employers would not take responsibility and holding them accountable is difficult. Furthermore, they say since undocumented workers have already 'broken the law of Malaysia' by running away from the workplace, the embassy cannot assist them. Workers are consistently discouraged from leaving their workplace and asked to contact the embassy first. This method, however, does not answer the question of those who came on a wrong/fraudulent visa into Malaysia without their knowledge or even domestic workers who do not have the access to communication channels.

The embassy does conduct outreach programmes or ‘mobile camps’ for migrants in Penang, Klang Valley and Johor-Bahru, assisting with documentation and renewal of documents for migrants in these areas. Roughly 500 migrants have accessed the documentation services, although the numbers are far more for those who approached them for information. The embassy continually engages with diaspora organisations and community workers for awareness and outreach initiatives. It also has an active presence on social media. The embassy concedes that there are limits to their capacity and activity as an embassy, some of which cannot be surmounted as a diplomatic institution. There are few legal channels to help undocumented migrant workers that they can pursue.

Migrant respondents:

Migrant respondents were those planning to take up the free pass or those who already obtained it through the Nepal embassy to leave Malaysia.

- KiBi*, from Nawalparasi, a married man with children, has been in Malaysia for 2.5 years. He and his wife were agricultural workers, and due to low income, he decided to migrate to Malaysia. He paid

NPR 140,000 (roughly \$1200) for his visa and recruitment fees to his agent in Nepal, which he borrowed from his friends and family. Till now, he has been unable to complete repaying the loan. He was initially working in loading and unloading in a paper factory in Ipoh, Perak and was promised by his Nepali agent that he would earn RM 950/\$227 for 8 hours of work and he would be paid for overtime. The company provided accommodation but no food. For him and his family back home, the income was not enough and so he left the job after 4 months. Later, he worked for a construction company for 7-8 months. His papers are still with the first company. Now he works as a security guard. His first month of the job only paid him RM 400 (\$95) but he claims he earns well now by completing shifts of more than 12 hours. He is able to send money back home by using his friends ID at a remittance house. He did not approach the embassy for the free pass as he wanted to save enough money for his air ticket. He further thinks they are unable to help him in any way so he might as well earn, repay his loan and help his family.

- Bhim*, echoes Kibi's sentiment. Living in Malaysia for 4 years, he maintains that problems with the company are sorted out by agents. His father was a schoolteacher in his village and so Bhim is slightly better educated than his colleague and able to speak in English. His parents travelled with him to Kathmandu from his village to send him off although he was not willing to travel to Malaysia. He paid NPR 150,000 (\$1,326) to his agent for a 3 year contract where he was to be paid RM1500 with overtime pay. He was working in the same company as KiBi in Ipoh, Perak where they met and bonded. They left the company together. He sustained a knee injury at the workplace for which he had to spend RM 1800 (\$429). Prior to this, in 2013, he worked in an immigration office for 9 months in Putrajaya as a security guard. He was never asked for his documents although he was undocumented.

The security company deployed him and was trusted by immigration department. According to him, as security guards, they are rarely checked and are only caught when raids are conducted at their

places of residence. Only if someone had a complaint against them for being undocumented, would the police arrest them. After he left his initial workplace, there was a period of unemployment during which he had not eaten for 5 days. He requested a few migrant Filipino women living in his apartment building for food. He says they were also the ones that helped him survive and even arranged a security guard job. Now he is paid RM 1700 (\$406) without overtime pay. He says he hasn't received salary for a few months together at times. For every day that they miss at work due to illness or any other reason, their salary is cut by RM 200 (\$48).

As for their residence, 25 people live in 3-4 two or three-bedroomed flats with 2 toilets. He planned to leave with the embassy's help. He was able to send 800,000 Nepali Rupees (roughly \$6,500) back home in the 4 years he worked here. He claims his bitter experiences has instilled a deep mistrust of Malaysian and migrant communities. He believes there is corruption within the embassy and that they would not or as he says 'cannot do anything

to help'. However he plans to approach the embassy for his free pass back home. He believes the embassy does not help when they are undocumented and finds it easier to work and earn than wait for the embassy's help. They asked the researcher during the interview if it is possible for the embassy to help them if they are arrested and were surprised to hear the Embassy would help him. He was planning to leave on September 15.⁹ He wanted to go to Dubai after this, with the impression that Dubai is better than Malaysia.

- Babu Ram works as a security guard and has been in Malaysia for 5 years. A resident of Gulmi in Nepal, he has 3 kids with the eldest being 15 years old. He came through an agent to whom he paid NPR 150,000 (\$1,326). His agent told him the work would be not too difficult and food would be available but that was not to be. He paid his agent 80,000 Nepali rupees (\$707) in Nepal and then the rest he paid from his salary.

⁹ Update: None of these workers have been able to leave.

In Malaysia, another agent then helped him get his second job. Initially working in Johor Bahru as a construction worker, he quit the job due to the trauma of seeing a fellow co-worker fall to his death from a scaffold and consequently left to come to KL. His papers are still with the first company. He then worked for a security company that stopped paying after 6 months of working there although he earned RM 1400 (\$334) initially; he has been penniless for 3 months and not been able to send money home. He has been working as security for an apartment for 4 years but switched companies several times. He was meant to receive salary for RM 1700 (\$406) but has faced wage cuts as well as confiscation of his mobile phone. He works for 12 hours. He lives with 6 people in a room provided by the company. For the past 6 months, he has not been able to send money. He was even able to make a duplicate/fake IC card twice and he has not been caught yet. But now the dates on the card have also expired. He said he would go the embassy and get his papers sorted out for the one-way document. He has been able to

send home NPR 1 million in total. He has a relative in the country whom he trusts with his decision to leave.

Myanmar

“I did not have to face the police yet but because of these operations, I don't go anywhere else. I won't be able to go back to Myanmar but I'll have to stay here and apply for other countries as I have no other choices.”

In Malaysia, the Chins are said to be the second largest refugee group. As per latest UNHCR statistics, out of the 157,580 refugees who registered themselves with the agency in Malaysia, 31,150 are Chin. Chins, who are mostly Christians, have been fleeing their homeland following the attempt by the majority community in Myanmar to make Buddhism the state religion, reportedly leading to their persecution on religious grounds. The embassy of Malaysia also claim that the Chin people use the UNHCR card to travel to a third country and not as legitimate refugee or asylum-seekers.

Most migrants from Burma that were met knew of their irregular status and were aware that the channel they took was considered by the state as ‘illegal’. Most work in fast food joints or construction, working alongside other Myanmar nationals who may/may not be undocumented. Some admit they have the money they need to leave but

without documents, or the cooperation of authorities, this is difficult. This is a consequence of the lack of regular channels for Burmese migrants. Regular migration from Myanmar is expensive because of bureaucratic and discriminatory practice that is dependent upon personal connections and ethnicity. (Arisman & Jaya, 2018)

In addition, there has been no transparent Myanmar policy to receive arrested and deported irregular migrants from overseas, particularly from Thailand. Some of Myanmar respondents sent their children to schools under the UNHCR project. They describe long, taxing journeys by foot across their country and finally smuggle themselves across seas to get to Malaysia. Many of them initially travelled to Thailand and then from there to Malaysia.

The embassy of Myanmar estimate that of the 300,000 migrants in Malaysia (as per their numbers), roughly 1000 undocumented workers approach the embassy for documentation (including passport) in a week. Few possess the UNHCR card, however the embassy is unable to assist them in obtaining a passport or identifying documents without their national Certificate of Identity or their Family List (proof that their parent or grandparent and other

family members are legal citizens of Myanmar and the corresponding address proof in Myanmar). Naturally, the embassy continues to deny provisions of consular assistance for documentation for refugees and others since irregular migrants left Myanmar in violation of local emigration laws. (Arisman & Jaya, 2018) The embassy claims they travel every week to detention camps to verify whether there are Myanmar citizens in the camps.

Embassies pursue unclear policy and their practice is non-standard regarding assistance to irregular migrants. Moreover, unlike the Nepal embassy, the Myanmar embassy does not work with community leaders or non-governmental organisations in repatriation. Embassies are perceived to work clandestinely with sub-agents and illegal recruiters prior to regularisation of migrants. (Arisman & Jaya, 2018)

Migrant respondents:

- Sen, in his 40's, arrived at Malaysia in November 2010. He initially crossed the Thai border, by foot and by bus. He was then 37 years at that time and alone. He later brought his entire family to Malaysia through the same routes. His first job was

at a restaurant and was paid RM1200 per month initially, which was a decent amount of money considering that the accommodation was also provided by the employer. He worked there for 3-4 years and left to move to another city where he knew other Burmese. He did not have any documents when he came to Malaysia. He has a UNHCR card but that does not guarantee a work permit. He however works to support his family. He was interviewed by UNHCR for his relocation but was rejected by the country he applied to move to. His children go to schools under the UNHCR. He felt insecure about the immigration operations that were carried out at the time (during the study) and feared for his life.

- Win, left Myanmar in 2010. He says although 11 of them had crossed the border together to Thailand, only 2 of them came into Malaysia. They started their journey on a boat, waited for it to get dark, then ran across the border to get in a car and drove the rest of the way. He left Myanmar when he was 20 years old and had to pay his smuggler RM 1600 (\$382). He says his first employers were fine with

him being undocumented and so, joined a furniture shop in Seremban. Due to his prior experience in the field, he was even paid RM 28 as a daily rate for 8 hours of work, much to the chagrin of the local workers. His colleagues turned against him and he left to join another furniture shop. He says he was arrested once by police due to being undocumented. He was physically beaten till his friends arranged to pay the police RM 70 (\$17) for his release. He tried to apply for the 6P programme twice but he was rejected twice without reason.

He and his wife live in one room and initially they used to live in a container with 30 other people. His wife was initially on a legal visa but she too has now overstayed her visa. His parents still live in Myanmar and although he talks to them, they do not know of his situation and he does not want to reveal the truth either.

- They left Myanmar when he was 13 years. His family used to cut and sell wood for a living. The day the military moved into their area, he faced a traumatic experience. He saw his father killed by

the military. The fear drove him to walk for 45 days till he reached the Thai border. Now 26 years old, Thet has been in Malaysia for 4 years. In Thailand, he worked in various fields like fishing, carpentry, etc. Due to his tender age at the time, he faced several incidents of abuse and exploitation at the hands of his employers. He found it hard to find new employers without his documents so he decided to shift base to Malaysia. While moving, he had to pay the smugglers RM 1200 (\$286) for him and his uncle. Now he is working in a job that was previously occupied by his friend who passed away. He is unmarried and has a younger sister and a sickly mother in Myanmar to whom he sends money. He has a few relatives in Malaysia with the same predicament. The nature of his case is such that he is afraid to approach the embassy or any other authority. He does not possess a UNHCR card and does not want to bring his family to Malaysia as he himself is scared.

Case Study: The Plantations of Perak



Perak, a state in Malaysia, is known for its large palm plantations that spread across acres of land and clusters of foreign migrant workers. Plantation workers in Malaysia have rights to a certain extent and are recognised as a potent part of the labour force. They may be represented by Malaysian trade unions for plantation workers. However, to join a trade union, they must be documented. Since trade unions are headed by Malaysian citizens, their priorities and sympathies in advocacy efforts may not necessarily lie with undocumented foreign workers that have reached Malaysia through irregular routes. Irregular migrants might get an easy permit to get into the plantation

industry but choose to alternatively work in the more lucrative construction industry.

The workers that were met as part of this paper, were Indonesians predominantly from Belu Regency (part of East Nusa Tenggara), who travelled by boat from Surabaya to reach Johor-Bahru directly. NGO workers that visited Belu to meet the families of those they help say the area is stricken with poverty, and has such a large population of natives that have migrated out of the country that, there are few men and women in employable age (between 16-50 years old) in the area. In fact, many travel to Penang, instead of Jakarta, for healthcare facilities lacking in their own villages or towns.

In Malaysia, NGO workers help them in accessing healthcare services by calling in sympathetic doctors to the workplaces or shelters and providing financial assistance during emergencies.¹⁰ The obstacles they face at the

¹⁰ Hospitals are seen to ask for higher amount of money to treat undocumented workers since they are legally not allowed to treat them. The grassroot worker mentioned an incident where he had to head to the hospital at night to pay RM 10,000 to the hospital for an accident case. Due to the nature of plantation work, there are several instances of occupational accidents for which undocumented migrants are rarely allowed access to healthcare.

grassroots relate to the distance from Kuala Lumpur where majority of civil society members are located. To communicate and deal with particular cases related to the irregular migrants at the central level is difficult and many NGO's do not want to discuss issues related to those that entered Malaysia through irregular channels. NGO's within Perak are also working at limited visibility to avoid accusations of colluding with 'illegals' by immigration and police.

The constant supply of workers means that the owners of these plantations consider them essential to their trade but disposable. Few workers travelled through bigger cities like Kuala Lumpur and even fewer have seen life beyond their plantation or the town. When asked about how they travelled to Malaysia, they admitted that the combined circumstance of porous borders and corrupt officials are easy to navigate through. They are wary of travelling within the town due to not having documents. They leave the plantation to remit money through remittance centres or particular shopkeepers or agents that help them send money home clandestinely.

The respondents, mostly male and in the age group of 19-40, came to Perak when they were in their teens, usually with other males from their village. Among the workers, there are those who, in appearance, look to be in their early teens. This is particularly true of males in the community. NGO workers inform us that despite their appearance, they do not reveal their true age. To understand their age, workers ask them whether they have had their baptism or communion at home in Indonesia, to have an estimated guess of when they left their home.

Homes within the plantations were makeshift structures that may be easily removed or dismantled in case they need to move elsewhere. There were 6 families living within the 2 makeshift homes. While there was a larger, built structure near the entrance of the plantation, it was empty. Respondents mentioned that living near the entrance of the plantation meant that “in case they got loud after a night of drinking, neighbours would report them to the police”. Hence, workers chose to live within the trees to easily escape authorities. On escaping authorities, they were of the view that if it was the immigration authorities, they were bound to get into trouble. If the authorities were police however, they could be bribed. They say roughly

once in 6 months, police raid their premises and arrest them but they are soon let off after bribes are given or appealing to sympathetic policemen. In case they are deported, they immediately board the boat to take back to their area without complications.

Living as solitary communities in each plantation, there are roughly 1000 workers in each plantation. Grassroot workers say roughly 10% are actual documented workers – the owners of the plantations also prefer to maintain the bare minimum of legal workers to avoid state action. They work from early morning till 5pm at a daily wage rate of RM 45. When they visit home, they say they cannot stay for more than 3 months as by then their savings would have run out. So every few years, they visit home for a period of 2 months and are able to return soon. The cost of travel to their homes itself costs them 2 months wages.

Workers in these communities follow the eldest male among them as a leader – in fact, during problems or disputes that arise with the employer, the leader is the one who speaks and negotiates with him, representing workers' interest. His agency however is limited due to his own fear of being undocumented.

Some plantations have females in the residential area as well, who are usually the wives of the workers. They are undocumented as well – they did not travel with the men, rather they became undocumented in Malaysia after leaving previous employers due to abuse and met the male workers in Malaysia itself. The lack of freedom of movement of the male workers lead them to meet the women through social media. Once they began living together, they claim they legitimised their relationship through marriages carried out by nearby churches. These “marriages”, church authorities inform us are only to legalise from a religious perspective and further to ensure they do not have another family in Indonesia (verified through a network of churches). In fact, their membership or record of attendance at certain churches are the only form of documentation or records of their existence. Most do not possess a birth certificate.

Women were found to be better educated than the male members since they spend a longer time in their village before leaving and hence, are able to pursue a high school degree. Community interactions are considered patriarchal – seen when women become undocumented and join their partners to end up not working in the

plantation and restricted to homemaking. The men decide how much of the earnings their wives may take and remit to their own families back home. The women are only 'allowed' to work in case the men need extra help at picking the fruits, etc. and typically eat after the men have eaten. Women are also not exposed or aware of safer/modern methods of contraception, sexual diseases, or marital rape. In the case of childbirth, it is done within the residential area, with other women of the community acting as midwives – due to the lack of access to healthcare.

After their children are 2-3 years old, the women travel back through the same irregular channels (boats, etc.), drop their children at home and then come back to the plantation. There were few children at the plantation.

Civil Society Response

“It’s not about convincing authorities that they have rights. It’s about convincing them once anybody is in their territory, they are responsible for that person. It’s not just having stronger border controls to control irregular’ migrants, it’s also that they have entered through your borders and they should be accorded their rights while they are here.”

Civil society workers in Malaysia that work with irregular migration are predominantly involved in legal case handling, post-arrival orientation, awareness campaigns and organising workers. They describe civil society as being relatively free in Malaysia and NGO’s (established by Malaysians) are open to hosting a number of community-based organisations under their umbrella providing them visibility, and access. Furthermore, civil society members were optimistic of the current government in terms of political and social climate that would be conducive to change. However, they maintain that the current government has not yet shown overt change to policies, preferring to continue the migrant policy that was instituted by the previous government.

Civil society members continue to be critical of the interventions the government has pursued until recently.

In their opinion, every amnesty program was wrought with errors in planning and implementation. The current amnesty program blacklists workers for 5 years, which could discourage people from enrolling for the amnesty and hence forces them to become undocumented. Companies may also become blacklisted leading to its current workers losing their jobs without warning. During raids, respondents confirmed that authorities round up all the migrants living in a building and arrest them till they are able to prove their documented status. The rehiring programme allowed agents to register on behalf of workers, which lead to a cycle of exploitation of workers. It became a complicated and expensive system for employers who were discouraged to pursue it for their workers, particularly SME's (that are usually charged levies of 1 year for a worker upfront). However, despite blacklisting, companies continued to open or operate under different names in the system with no fear of verification.

Civil Society has been critical of MoU's that are signed with origin countries as the process and details of the topics are largely opaque and lack clarity. This leads to mass confusion in terms of information for workers, for civil

society and operationally, for front-line staff of government agencies. Furthermore, data on volume and direction of the movement of people are predominantly understood from reports on immigration raids or deportation.

Capacities of embassies are largely limited for undocumented migrants. The root causes of irregularity in Malaysia, for most migrant sending countries, are not engaged with, by the embassies. Hence they view their responsibilities as those of service provision of renewal of passport, assisting with visa procedures during amnesty and rehiring, and awareness regarding safe migration. Embassies further work closely with civil society for undocumented migrant cases that basically fall beyond their mandate. While civil society members perceive embassies as helpful in cases of repatriation, they also admit that the embassies are limited in their capacity to become a body to cooperate with the Malaysian government for their programmes thereby affecting their ability to become proactive partners in the process of policymaking. On a case-to-case basis, embassies facilitate financial assistance for the fines related to overstaying. Depending upon their financial resources, embassies may

provide shelters although most respondents prefer to fall back on their community network.

The Philippines embassy was quoted by all civil society respondents as providing shelter and assistance exclusively for women who were domestic workers. Under the Overseas Worker Welfare Administration Office, migrants pay membership fees and are bound by contract for 2 years. Moreover, they get compensated (in cases of being cheated or abuse by employers/agents) regardless of their documentation status. However, if the migrant fails to update their status (in terms of change of workplaces), they would get penalised when they are back home. This is thought to create disincentives for a migrant from returning. The worker may also fall into trouble if the POEA declines to register the new company they work for due to their specific standards for registering companies/employers. The migrant would again end up undocumented due to this loophole.

In terms of self-criticism, civil society members perceive a lack of cohesiveness among them in responding to urgent and pressing issues like immigration raids. Due to the problematic nature of the topic and indirect government

pressure, NGO's do not fully engage in issues of undocumented and irregular migrants. In terms of capacity building, community leaders or grass-root workers still require further training and assistance in understanding systems and requirements of casework, impeding the help they can extend to workers. Besides, CSO's have limited capacity in terms of human and financial resources as foreign funding are largely project based.

Specific recommendations by civil society include¹¹:

- Revising high recruitment costs that do not have a government regulated cap on prices, the lack of mechanisms for skills-employment matching and weak compliance of laws. Also specifically holding the employer accountable in cooperation with embassies of origin countries.
- Workers' rights to renewal and possession of their documents as well as access to justice is curtailed by the employer wielding a significant amount of

¹¹ Based upon an open letter written by civil society actors in Malaysia, including those interviewed.

authority over their status and renewal of documents.

- Facilitating the overhaul and expansion of government-to-government hiring mechanisms as the primary means by which workers are recruited in Malaysia should be considered - in a manner that is transparent, accountable, evidence- and rights-based.
- Healthcare is a priority: Leaving out one group of undocumented workers means others are at risk.
- Detention of unaccompanied minors, and migrant children when the parents are detained. This is contentious as separating child from the detained parents is not the solution either. The government should make available its standard operating procedure for conducting raids and detaining undocumented migrant workers, so that human rights and civil society organisations can ensure fundamental rights are protected and due process is guaranteed. The government should ensure all migrants have access to justice and the right to redress, including when they are caught and

detained. Migrants must have guaranteed access to legal aid from the National Legal Aid Foundation to achieve these goals.

- Rejecting the inhumane practice of deporting due to pregnancy: The consequences of such a policy are intense and infringe upon the reproductive rights of a women to have a safe and secure pregnancy and childbirth experience. If the pregnant woman is found to be undocumented, the government separate the family unless the father of the child is a Malaysian. By pursuing a highly questionable policy without considering personal circumstances, the female body of the undocumented migrant is objectified into an illegal entity. This pushes women to pursue pregnancy termination through illegal, unsafe methods of abortion or it lead the women to abandon her child. A far more serious implication and a current reality is that it encourages trafficking of babies which would seem lucrative for an irregular migrant struggling in abject poverty. There are no ways to guarantee her safety or rights if the pregnancy is unwanted as is in cases of rape.

Furthermore, if she is pregnant, she cannot get a work permit. This prevents her from accessing healthcare or obtaining the health insurance she deserves.

- There are no direct ways for workers to determine their status as undocumented or documented. In most cases the migrant would be stuck without knowing his¹² status, until he is forced to run away. Registration process for rehiring or amnesty must be directly done with the Immigration department instead of private entities that are given the responsibility. The government needs to further reconsider the criminalization of those that are undocumented (which is considered an administrative offense, not a criminal one).
- Institutional Reforms Committee should be allowed to facilitate safe dialogue spaces between the government of Malaysia and other relevant stakeholders and social actors to propose solutions based on verified labour market data (for example from the Institute of Labour Market Information

¹² Male pronouns used for purpose of simplicity.

and Analysis) and base its solutions on fundamental human rights and decent work principles. The involvement of the ILO would be advisable in this respect.

Thailand

Thailand is home to several communities of migrant workers, largely from the Mekong region. The largest communities include those from Myanmar, Cambodia and Laos. Due to natural and porous borders, irregular and undocumented migrants are mostly refugees and seasonal workers. According to UNHCR, Thailand hosts approximately 102,000 refugees although, officially, Thailand has not yet signed the 1951 Refugee Protocol. However, it does have its own protocol for refugees in terms of according them certain rights. (Human Rights Watch, 2017).

The Burmese are the largest migrant community in Thailand. Thailand supports Myanmar's infrastructure and trade. The 30-year loan, from Thailand's Neighbouring Countries Economic Development Cooperation Agency is an example of their long-standing relationship. Borders between Myanmar and Thailand are highly porous and the Moei River functions as the natural border. However, there are several points of movement between these two countries. Burmese migrants can cross through rivers or mountain ranges and there are large refugee pockets in the border region. These include those who have taken asylum due to political issues in Myanmar.

The Rohingyas have a history of being in Thailand – those that came before 1990 and those that arrived recently. The Thai government began issuing 10-year cards which is a work permit with access to healthcare and education, in an attempt to tackle their statelessness of those who arrived earlier. For those that came later, they may have been trafficked or travelled irregularly. They cross the border from the south or through Mae Sot in the north. If they were Rohingya, they were not forced to return since they are stateless. Hence, the Rohingya situation is complicated because they are considered as stateless or human trafficking victims in Thailand while their own country does not recognise their legality.

Cambodian migrants work in the agriculture in Aranyaprathet and Poi Phet among others. Cambodians also work in the fishing industry where large-scale exploitation has been observed (refer Cambodia chapter). The mass exodus of Cambodian migrants from Thailand began soon after the 22 May 2014 coup d'état by the Thai military, which established itself as the ruling authority in the form of the National Council for Peace and Order (NCPO). On 3 June 2014, the NCPO began to arrest and deport scores of undocumented migrants from Thailand.

The numbers quickly rose from 163 migrants deported on 3 June to 2,993 deportees on 10 June. The numbers of Cambodian workers leaving Thailand through deportation and self-departure was staggering. On 20 June, the reported number reached 226,000 which the government labelled as voluntary returns. (Mekong Migration Network, 2015) In response to increasing pressure from businesses and employers in various labour-intensive industries, the NCPO established temporary facilitation centres for Cambodia migrants to return at border provinces as well as One-Stop Service Centres. The Cambodian government at the other end also created One-Stop Service Centres to enable easier documentation for migrants wishing to return to Thailand.

Documentation continues to be a major concern for seasonal labour and workers that cross the border for work. Agricultural workers who work seasonally, may come through regular routes while crossing the border. However, since they move back when the season is over with valid documents, when they return on their own, it is without the awareness that their previous documents are invalid or expired. This affects the system where the government is unable to check the flow in terms of dealing

with the former as well as over-stayers. The MoU between Myanmar and Thailand was a step in this direction, in an attempt to keep track of Burmese migrants. However, it becomes an inefficient system as, for Burmese migrants, their government and missions have specific ethnocentric policies around documentation (only accorded to Burmese) and hence, may not provide them their passport.

Moreover, the cost of documentation or registration for migrants within Thailand come up to \$700 in total. Civil society members say although it is not more than \$200, the rest of the amount is largely taken by brokers. The initial levy not costs more than 30\$, medical check-up costs around 40\$ and then the visa which is around THB 500 (\$16). The government had earlier reduced these visa fees from THB 1000 (\$32).

When wage deduction by agents was raised as an issue by the ILO and civil society in Thailand, the prominence of agents were under threat and this further lead to complications where companies began placing agents as part of their HR department and violations continued in terms of salary deduction. There is a need to clearly examine the role of the sub-contractor/middleman in the

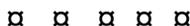
recruiting process, especially where there are two or three levels of subcontracting. Due to the nature of migration governance in Thailand and particular border towns, the importance of subcontracting needs to be further understood.

Certain members of academia opine that ILO systems may be too rigid in this sense (since it does not consider the role of sub-agents in the recruitment process) and including sub-agents (as a legitimate body) would help workers access better protection also in certain ways. In most cases however, the company of employment is the name of the manpower company and hence during legal cases it becomes a bigger issue to deal with for both migrants and companies. NGO's play their part in helping bring cases to court. In some cases, the nominee name would be the name of the driver of the owner for example so that it becomes easier to declare bankruptcy. However, the Thai government has been known to pass favourable judgement for the workers in certain cases.

Female migrant domestic workers are in some cases paid more than Thai domestic workers as there may be migrant policy on contract that is strict with salary, however, such

a policy does not exist for Thai workers. Migrant workers are allowed to have access to social security, healthcare, etc. Ministry of Labour allows them to change employers in case of violence and abuse, however they change their employer without notifying authorities, making them undocumented. In agriculture and construction, migrant workers are ready to be paid less than Thai agricultural workers.

Remittances are usually sent through Hundi system, although our respondents for this paper had no families back home. In the prevailing system, the person who helps them send money is the agent or broker. Informal channels are highly popular with irregular migrants by the border. The private sector has tried to capitalise on this by opening maximum number of bank branches as well as remittance centres in the border town as well on the Myanmar side.



Government policies of applying their ‘sovereignty’ to regulate migrant labour are dependent upon the changing flows in Thailand. More commonly, it faced criticism for failing to address forced labour with the same vigour. Official complicity was considered a major problem within

forced labour as well social workers, and NGOs to increase coordination of law enforcement and victim protection efforts. (US Department of State, 2018) The ILO has been urging Thailand to ratify the Convention on Forced Labour, although local civil society members do say there are several clauses within the existing system that correlate with the same. The current question before the government and civil society is harmonizing the systems of labour and refugee migration governance to the conventions. Nonetheless, recognizing and ratifying the Conventions would be the initial step.

As per the 2018 TIP Report, the Government of Thailand does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so; therefore Thailand was upgraded to Tier 2- this includes efforts of identifying migrants as well as identifying cases where there was official complicity from government authorities in trafficking of migrants, particularly the Rohingyas. Furthermore, the government established an anti-trafficking task force composed of law enforcement and civil society.

However, NGOs and trafficking experts expressed concern that the government inconsistently identified trafficking victims, leaving them vulnerable to penalization and re-trafficking. Human trafficking victims have to go through the state process of legalizing; if they have the national ID card, they are repatriated back and if they are identified as stateless they stay in shelters till they are resettled. These shelters however are similar to arbitrary detention conditions. Thailand has been criticised for failing to follow non-refoulement, thereby deporting victims to potentially dangerous situations back in their home country. (Human Rights Watch, 2017) Reintegration is difficult for trafficked victims due to de-skilling and unfair wages at their town. Finally, they agree to be re-trafficked or re-victimised in Thailand. Civil society agrees the situation is improving however there are calls for integrating victims of trafficking into the labour market through government institutions that promote vocational training.

The Thailand-Myanmar Corridor

While MoU's are a preferred form of regulatory mechanism and helps recognise the migration flow between countries, migrants and analysts opine that the process is long, expensive and ridden with complications. These complications effectively limit the ways migrants could travel through regular channels – where migrants would choose a far easier, faster pathway. Due to the expenses, it further limits the employer from recruiting legally- only big companies who can afford the costs would do so, which leaves SME's, small agricultural units, etc. under significant pressure. When the MoU between Thailand and Myanmar was introduced, it was lauded as a direct recognition of labour relation, however civil society is of the opinion that, at the time, there were fewer apparent loopholes.

Once the MoU was implemented, it was found that companies continued to rely on brokers and manpower agencies in Myanmar to recruit rather than through direct recruitment drives in the country. The Thai Union, for example, is a large fishing company who, as part of the MoU with Cambodia and Myanmar, run such drives in the

sending countries. The online system of registration in Thailand is also complicated in the sense that it requires the employer and employee to go the office with the online form, etc. for verification.

Overall, workers can be documented through 4 particular ways in the Thailand-Myanmar corridor – Passport, CI (similar to an ID card), Border Pass and Pink Card. On the ground we see that although, workers have some form of identification, the rules and ambiguity in obtaining or renewing each makes it easier for them to become undocumented or remain so. Migrant respondents all had documentation, however they claimed the expense and time of renewing each would be far too much for them, as agricultural labourers, to afford. Even more so, for the females in the household, most of whom do not pursue work outside.

Pink cards were introduced by Thailand's military government during a post-coup amnesty window. Pink Cards are temporary documents meant for seasonal workers, aimed at the influx of migrants from Myanmar who come as agricultural workers. The Pink card has, on one side, the ministry of interior's permit (with expiry date)

and the other side is the work permit (the pink side under the Ministry of Labour.

The Pink Card however needs to be verified by the Myanmar government, in the form of a national ID card or a passport. The Pink Card is under the Thai system and not recognized by the Myanmar law. In 2015, when Myanmar carried out a census, it was possible for some to become registered and obtain a Pink Card in Thailand. However, the government of Myanmar fails to provide adequate identification or protection to those not ethnically Burmese or Buddhist. The embassy does provide temporary passports (or Certification of Identity) for some depending on their case. Hence, there have been operational issues plaguing this initiative. Civil society advocates criticise the Pink Cards and its multiple extensions of deadlines and renewals as ways of extracting revenue. The revenue aspect of Pink Cards become more complicated with the involvement of agents in the entire process.

Furthermore, the card is not a legal ID and does not grant regularised working status. Pink cards are intended to allow short-term stays in Thailand for people who entered

the country undocumented. The migrant, if Burmese, were not allowed to renew their temporary passport (had they owned one) and were to necessarily revert to a Pink Card – effectively making them undocumented. The pink-card holders can be deported at any time and are vulnerable to arrest or extortion by police. Unlike those with temporary passports and work permits, pink-card holders are not eligible for benefits like social security, leave, workers' compensation or a driver's licence. (Aung, 2016).

The Border Pass is yet another initiative for migrant workers that cross the borders. Issued at border offices, it functions as a work permit. The Border Pass is valid for a 2- year term and is similar to a passbook. It is for seasonal migrants and they have to report every 6 months. Here too, the presence of the recruiting agent is prevalent. Popular companies and employers prefer a Thai middleman who would get people to come to the border. Agents and brokers also become part of this process to help renew the documents. The broker receives a commission for renewal or issuing of documents. Families would often change addresses to the border area of Myawaddy to facilitate the process. However, in cases of mismatch of skills with the needs of the employers. It becomes necessary to have such

recruitment agents who can match skills. At the same time, the same recruiting agencies or companies become employers themselves. The sponsor would be the manpower agent rather than the actual employer.

Since 2009, Myanmar has also been proactive in processes to make its registered migrants fully legal through the NV (National Verification) process in Thailand. In July 2009, Myanmar opened NV centres in Tachilek (Mae Sai), Myawaddy (Mae Sot) and Kawthaung (Ranong). Originally, the process was poorly implemented with migrants returning slowly, at high cost (roughly \$250) and in fear of reprisals for them or their family once they crossed the border into Myanmar. Temporary passports issued to the migrants were valid for 3 years with 4-year work permit in Thailand. According to a CSEAS report in 2017, recruitment agencies can charge only THB 4000 (\$129) as fees in Myanmar with provision of health insurance and minimum salary.

For those who have Passport, Border Pass, CI, they obtain health compensation or insurance. Social Security Funds are expected to cover health benefits, unemployment compensation, pension, accident/life

insurance. For migrants however, it does not cover pension and unemployment compensation. Comparatively speaking, migrants continue to prefer Pink Cards as it is cheaper to obtain and at present, there is no need for passport verification. Migrants have the right to buy insurance even if they are undocumented, but in reality, health insurers wouldn't want to sell insurance to undocumented migrants. For health insurance however, the claims are time-specific and time-based, migrants can claim only during weekday and if it is after hours or on the weekends, they have to pay out of pocket. But for domestic workers who rarely get a day off during the weekday, it becomes difficult.

In Thailand, harmonizing all the present systems into one has been difficult and according to civil society, the government continues to pursue a laissez-faire attitude towards labour migration, primarily fearing backlash of manpower companies and employers. Civil society member observe the need for a balance between economic needs and security needs in the country. While, the government does respond to calls of trafficking and ensuring access to justice or health, it continues to detain and deport migrants at will.

Case Study: Mae Sot – Gateways and Revolving Doors

The Moei River, at the north western-most point in Thailand, forms a natural border between Thailand and Myanmar. Its width, which locals say has reduced considerably in the past few years, may be crossed by boat and is lightly shadowed by Thai border patrol. Cross-border trade is carried out between Thailand and Myanmar. It is highly symbiotic and both countries benefit from the trade.

The Moei River also flows beneath the Thai-Burma Friendship Bridge constructed to provide direct link by road between Mae Sot (in Thailand) and Myawaddy (in Myanmar). Mae Sot and Myawaddy are relatively recent towns defined by their ethnicities rather than by which side of the border they are on. People on both sides are closely associated and in many cases, related to each other. The concept of national borders is only visible through border police, and consequently the concept of ‘crossing the border’ does not arise. It is accepted as living on opposite banks of a river. To the residents of these towns, their close

associations mean that they find it easy to cross back and forth.

For this reason among others, over several years, goods were notoriously trafficked through this route. The parts of the river which had dried up, now have settlements of mostly Burmese migrants, who have taken advantage of the lack of regulation on this “no man’s land” to indulge in illegal trade. The areas surrounding the bridge include an immigration / detention centre and a large market area, sitting close to the banks of the river. We observe a large number of shops lined up attached clumsily to the border



Row of shops with illegal wares at the border.

railing at Mae Sot right opposite to the market. These shops typically sell things not found at the market- illicit sale of tobacco products, alcohol, adult-oriented material and a fair amount

of drug trafficking. However, lately, the government has made significant efforts to control both human and goods flow through this route.

As a town, Mae Sot is largely what one would consider ‘middle-class’ Thai town that clearly acknowledges its status as border town. With signboards in both Thai and Burmese, the town has a majority population of Thai – however the working population or the demographic of the labour in the area is predominantly Burmese, both as migrants and refugees.

Mae Sot is the first transit point of the migrant workers from the Myawaddy area. Manpower agencies have offices in clusters and large houses in the city are claimed to be owned by recruiting agents. Industries functioning and recruiting in the area include construction, agriculture and fisheries. It is also home to a thriving gem market, with the source of gems from the Myawaddy side. The gem market primarily employs Burmese workers for the purpose. As a consequence of the labour-intensive industries the town relies on, the number of irregular migrants outnumber the regular ones. Irregular migrants consider Mae Sot ‘their home away from home’. However, forced labour,

trafficking are major issues faced by undocumented workers that come through this channel. Workers face detention and deportation on a regular basis. Registration rates of migrants are extremely low and workers prefer to remain undocumented. The Friendship Bridge is the route through which dozens of irregular Burmese migrants are deported.

Authorities were found to not be as stringent with their regularization procedures, which could be due to the sheer number and volume, thereby, much harder to control (and making it easier to deport). Power centres in Mae Sot are largely in the same town, including major employer offices, the Chamber of Commerce, educational institutes, etc. A largely self-sustaining ecosystem which means the central government is perceived to not have a prominent voice in policy making or running affairs in the town and will not meddle in its issues, allowing employers and business owners determine labour management. Migration governance in such a region is understandably difficult.

However the brunt of their undocumented status falls upon the migrants themselves. Local traders and businessmen are strong in their opposition to the

documentation process and to providing lower registration costs in recruitment. Registration would mean them having to pay minimum wage, provide health insurance, etc.

□ □ □ □ □

A group of female ethnic Burmese that were met at the periphery of the town say they first moved to Thailand after floods in Myanmar destroyed their agricultural land. They were from Yangon, Bago and Arrakan regions of Myanmar. They were aware of channels to move to Thailand through friends and relatives and crossed first into Laos and then through a 'Zero Gate' into Thailand. Out of the 8, only 2 possessed some form of document. The rest were either undocumented or they had an expired document. All were wives of construction workers in the area, whose husbands possessed valid work documents. Some, among the women were working but stopped after their employer confiscated, cancelled or failed to renew their document.

They say they have been caught and deported by the police several times. They were usually arrested during early morning operations and do not spend more than 3 days at detention centres. The Labour Attaches of

Myanmar, from the branch office in Mae Sot accompany them during deportation (Prior to the establishment of the Labour Attaché office in Mae Sot, migrants used to live in the town for more than 25 years, considering it their residence) However, they manage to pass through the same point within 3-4 days. When asked how this was possible, they said during deportation, Myanmar officials ask them their address and they give the address of the village where the Gate is situated. The lack of documentation means the officials cannot verify the information.

Their homes have been built by them and look like permanent structures. Every time they are deported, they come back to live in the same home. They pay rent to their landlords alone (around THB 500/\$16), since the homes are their own effort. Money continues to be a major issue for workers due to delayed or non-payment of wages. Many family members have dire needs for healthcare and insurance, etc. Men generally have control over the earnings of the household hence, in many cases, women's needs may be neglected.

Regarding the children who are born, NGO's help in registering the child's birth so that they may be able to join

Migrant Learning Centres for education. This is regardless of the documentation status of the parents. Children are taught in both Burmese and Thai for free. At times when their parents have been detained and/or deported by police, the children are sent to stay with their teachers till the parents return. If a student is arrested along with the parents, the teachers at the school make it a point to pick them from the detention centre.



The second group of migrants were Burmese Muslims. The group had migrated to Thailand over 20 years ago and only 1 out of the 13 were documented. The younger ones among the group (roughly in their 20s) were born in Thailand; in their case, they do not even have a birth certificate as they were born at their settlement. Some possess Pink Cards that were expired or UNHCR cards. Both men and women work in construction, agriculture. They lived in the market and streets of Thailand initially. Currently, they earn a daily wage of THB 200 (\$6), which is paid fortnightly. The women, who work as domestic workers, say their jobs are not constant and hence earn a daily wage of THB 200 (\$6). Their children attend a school

run by Confederation of Trade Unions of Myanmar functioning in Mae Sot, learning both Thai and Burmese.

Talking about their travel to Thailand, they become overtly verbose. Tracing their roots to the region of Maw state, they left Myanmar due to discrimination based on their ethnicity and religion, which prevented them from getting jobs or a stable income. They walked to the border in Myanmar and then crossed over to Thailand by boat. This journey was described as arduous and they lived and hid in jungles during their travel. To prevent being caught in the crossfire between the army and ethnic minorities, they say they walked continuously for 7 days till they found a safe hiding location. They worked near the river, gathering and selling semi-precious stones and sand from the river, earning around THB 250 (\$8). Building temporary shelters along the rivers, they saved up enough and built enough local contacts within Thailand to cross over from Myawaddy.

Upon asking them if they have been arrested for being irregular, they confess they have been arrested over 10 times and deported, only to return through their own familiar routes. They are usually detained for 2 days before

taken across to Myanmar. They disclosed the particular town within Kayin (which is the closest to the border) and Ayeyarwady State they choose to be deported to. They choose to stay in Thailand due to better pay than Malaysia (which some of them have experience working in and then quitting to return to Mae Sot).

The constant balance of their fears of being arrested and that of being unemployed/penniless is persistent in their lives. They say they are treated better in Thailand being undocumented than being a purported citizen of Myanmar. They claim they were not provided National ID cards in Myanmar due to being Muslim¹³. Referring to Bogyoke Aung San and what they perceived as his largely inclusive politics, they say the lack of a political leader among their community affects their rights. A respondent had to use her father's CI (Certificate of Identity) to obtain hers, after paying approximately THB 5000, which was far too expensive. They have not attempted to use their

¹³ They claimed they were Burmese Muslim and not Rohingya. However, it may not entirely be an honest account they have revealed to the interviewer.

UNHCR at the embassy as it is not recognised without a CI.

Some are able to live in houses that they rent for THB 2500 (\$81), without utilities. Others have created shacks out of asbestos sheets and leftover wooden planks further down near a stream, which during wet season would overflow making their surroundings dirty and marshy. They keep poultry and some even have bicycles to travel to work. However, all of them choose to stay in the same area. When asked whether their landlords know their status, they admit they have not disclosed such information to them. Freedom of movement is still an issue they grapple with and finding or changing homes is difficult, so they choose to maintain good relations with their neighbours or their landlords and employers. They do not have any family back home to send money to and rarely use remittance transfer centres (unless to receive money from family members working in Malaysia or Bangladesh).

NGO's working in Mae Sot cater to the needs of the Burmese migrants. They provide services helping with documentation, service provision and awareness programmes. Owned by the MAP Foundation, a

community radio whose range extends well into Myawaddy side of the border, has both Burmese and Thai programming. A programme which takes questions from listeners across the border airs every week, with the single most asked questions being obtaining a work permit in Thailand.

Singapore

Singapore's policy on undocumented migrants is very clear – to that they are not tolerated in any manner. Being a smaller country, Singapore has the advantages of being able to maintain strict border control of their country as well as firm governing and implementation within the country. Furthermore, Singapore refuses to accept refugees, turning boats, etc. away at the border itself. The government however offered humanitarian aid for refugee initiatives at different instances. According to the TIP Report 2018, Singapore is at Tier 2 with Thailand. Sex trafficking continues to be a contentious issue in Singapore. The government has also been criticised for failing to regulate recruitment fees despite, its strict regulations.

Productivity concerns were the primary focus within the 'second industrial revolution' ethos of capital-intensive production from the late-1970s to 1989. Through the late 1990s and early-2000s, the government attempted to 'upgrade' the construction industry as part of Singapore's attempt to become a 'Knowledge- based Economy'. In 2010, the government sought to restructure economic recovery after the Global Financial Crisis (GFC) through productivity gains rather than an overall increase in the

labour force. (Arisman & Jaya, 2018). While Thailand and Malaysia have had inconsistencies in their policy-making and evolving structures of governance, Singapore chooses to have specific arrangement for levies for low-skilled workers and incentives for highly skilled workers, which is largely seen as being effective.

Foreign labour in Singapore is regulated through three major legislative instruments, namely the Immigration Act, the Employment of Foreign Workers and the Penal Code. The Employment of Foreign Workers Act 1990 (EFW Act) is the major statute regulating the employment of migrant labour. The EFW Act was formulated to regulate all labour “earning under \$1500 a month”. Domestic workers were also included under this law and employers must pay a levy for recruitment. The Act further allows the worker to claim for compensation if they are found to be ‘overstaying’ if they can prove their employment. The Employment of Foreign Manpower Act (EFMA) is one particular instrument that holds the employers accountable to the MoM for working and living conditions of their workers. However, the same act also details punishment for irregular migrants and their employers. (Arisman & Jaya, 2018).

As part of these legal measures, there is the Employment pass - meant for skilled labour to work in Singapore, those under this visa category are also able to bring their spouses and their family – dependent on their fixed income. Those with a particular trade qualification or ‘mid-skilled’ are given the S pass. Finally the Work Permit or R pass, meant for low-wage migrant workers largely in the field of construction, domestic worker and service sector. Through these passes, the Singaporean government has largely been able to control labour flexibility and ensure labour supply through altering levies (Kaur, 2010).

On the website of the Department of Statistics, the government reports that as of June 2018, work permit holders and domestic workers were 41% and 15% respectively of the foreign labour force in the country. Singapore has prioritised providing employment opportunities for Singaporeans and as a consequence of this and the concept changing quotas and regulations for migrant workers, the labour market is considered shaky, if not insecure. Workers (including domestic workers) face problems with lowered or withheld pay, long hours, extreme work conditions (without safety) and low purchasing power. Wage rates are seen comparatively

lower than other destination countries and fake or forged documentation is common as is withholding of contract. (Transient Workers Count Too, 2017).

NGOs and other civil society working in the field speak of having cases largely to do with victims of accidents or workplace conditions that are less than satisfactory. Domestic workers also face large-scale abuse at the workplace, although the government has made efforts to address these issues. Workers they encounter may be overstayers as well as those that have entered on the wrong visa with or without their knowledge. Hence, they commonly deal with those who are Work Permit holders. Since the system is strictly regulated with specifications on salary, levies, etc., employers also falsely claim certain wage level or qualifications of the worker leading the worker to be exploited in terms of receiving less wages or possessing forged documents.

While there continue to be reports of migrant caught for ‘overstaying’, the numbers are far smaller and in most cases, they are either regularised or deported to their country. Official data shows the number of overstayers has been falling every year – from 2180 in 2011 to 990 in 2017.

(Government of Singapore, 2017) By and large, the state's course of action on migration depends upon population control and balancing development and economic needs of the country. The media too supports government initiatives on being strict with those who overstay, bringing forth a narrative where overstaying is an offense against the state that is criminal in nature and being a 'security threat'. Public communication strategies adopted by the government are largely supporting this narrative and discourages citizens from helping those who overstay.

Singapore has been criticised for its policy of detaining without trial. The Immigration Act allows for detention of overstayers – till they are able to make arrangements to leave. Deportations and blacklisting arbitrarily are common practices, even for minor crimes. Workers are rarely put on trial prior to deportation and in many cases the Internal Security Act functions as a major debilitating factor to workers receiving appropriate access to justice. Domestic workers that fall pregnant while in the country are also deported, prior to access to healthcare. Deportations are facilitated by labour system where the employability of the worker is largely dependent on the employer. Dismissal in any manner leads to "illegality" of

the worker. Overstayers face caning (“Not less than 3 strokes”) or severe fines if they stay beyond 90 days of the expiry of their documents. (Attorney General's Chambers, 2018). However, they may also be taken to court after a month of overstaying. Those who the state perceives as concealing or sheltering overstayers are also punished under Singaporean policy. To ensure this is followed raids are regularly carried out at boarding houses and workplaces.

Case Study: Indonesian female, TIP Referral¹⁴

In Indonesia, Hida was approached by recruiters. For a fee of S\$3,500, they said they could get her a job at a fast-food restaurant that paid S\$40 per day with 8-hour work days. A married couple, functioning as agents, promised she would hold a legitimate work permit and live in a hostel. No employment contract was signed when she paid the agent fees. On December 24, Hida travelled by ferry from Batam to Singapore, where a handler filled in her immigration paperwork. When she reached Singapore, she was sent to work at a food stall at a *pasar malam* (market/bazaar); Hida was not issued a Work Permit and was thus working irregularly on a social visit pass. She was housed in a tent with another woman and a man, where she slept on a cardboard box and had to use the tent as a ‘toilet’.

Hida worked from 8am to 1am and was not paid for her work: she was told she would only be paid at the end of her stint. Furthermore, she was instructed to not go out or speak to anyone and was only allowed to use

¹⁴ From MFA partners/members

her mobile phone after work. When Hida called the agent to complain, she was told to be patient and that this stint at the bazaar was ‘training’ for her fast-food restaurant job.

In cases of undocumented workers, NGO’s immediately refer the case to the Trafficking Taskforce or ask the migrant to report their case to the police, thereby allowing themselves to be regularised. Workers that are able to report their cases to the Ministry of Manpower, are eligible to receive a Special Pass that allows them to stay till the end of the investigation. Receiving this pass however, means that they have effectively lost their right to work (with exceptions). In an expensive country like Singapore, such a decision discourages workers from filing complaints as they are unable to earn as long as the case continues. Also, if a worker is caught or fired before they can report their case, they are punished as well, which provides further discouragement. Additionally, the Special Pass does not guarantee that they would be allowed to continue work even upon resolution of the case, in some cases, leading to

repatriation regardless of the outcome. During the mediation process, workers may face implicit pressure to settle their cases and agree to unjustified compensation. Workers also lack awareness of procedures and action of adjudication and mediation of their cases, compounded by the language barriers, inadequate guidance and costly fees of filing.

Observably, civil society's ability to intervene in the case is largely restricted due to the controlled environment they face in the country. Due to the levels of restriction and arbitrary forms of control imposed upon them, civil society members did not cite issues apart from those that are publicly reported or those that have been mentioned previously. In fact, CSO respondents toed the government line of preventive action and did not find merit in the rights-based argument for undocumented migrants, preferring to view it from a 'developmental economics' lens. CSO respondents viewed the state's right to protect its borders and ensuring rights of migrants as mutually exclusive.

“Who is responsible for the human rights of those on the move? ... tacit assumption that it should be the intended destination country, and this tacit assumption quickly leads to demands that the undocumented should be allowed to cross the border into their intended destination ... But why this tacit assumption? Why the destination country? Why not the origin country who should take them back and be responsible for their human rights? Often the answer is: Because the origin states are failing states ... Even so: why should destination countries be responsible for curing the ills of failed and failing states?”

CSO respondents regarded irregular migration as producing higher costs than regular migration, both financial and social. According to them, undocumented migrants give a sense to the local population of ‘losing’ their country, leading to xenophobia (which Singapore is no stranger to – media and government rhetoric on migrants contain implicit xenophobic undertones). Undocumented migrants further prompt ‘locals’ to lose social trust in law, thereby creating a ‘ripple effect’ of social and political stability.

While the CSO respondents speak from their experience of Singapore as a destination country, the context of a fragile citizenry, liable to lose trust in established government institutions due to the presence of a percentage of undocumented migrants (who usually work

in the shadows and considered invisible labour in destination countries) is an unfortunate growing reality amid tightening borders and anti-migrant rhetoric. However, this is in comparison to developing countries outside the region that also have significant inflow of migrants, where the hypersensitivity of locals and underlying xenophobia is an aberration, rather than a feature.

Cambodia

As earlier mentioned in the Thailand chapter, the exodus of Cambodian migrants during the coup d'état of 2014 was a major turning point for Cambodian irregular migrants. In Thailand, it is widely known among CSO's that less than 30% of Cambodians are documented. This is due to the expensive MoU system and porous borders between the two countries that facilitate this movement. Cambodians are mostly employed in plantations, poultry farms, domestic work, factories and construction. Female domestic workers are seen to be working in Malaysia, Thailand, Singapore and Hong Kong, in that order.

Common to all migrants, Cambodians have 3 particular channels to recruitment: through MoU, through agents (where they legality is not guaranteed) and finally by crossing the border by themselves. Cambodia is known to send migrants legally only to countries they have an MoU with like Malaysia, Thailand, Singapore, Hong Kong, Qatar, Kuwait and Japan where recruitment agencies are licensed to do so. The MoU's contents and implications are not revealed by the government publicly. Licensed recruiting agents charge around \$500 - \$800 per person, determined by the agency and not specified in the MoU.

Passports for migrant workers are meant to be free but workers are still charged around \$30.

As per the MoU, when the employer in Thailand (for example) approaches the MoL in Thailand with the demand quota, the diplomatic channel through the MoFA facilitates the quota with agencies in Cambodia. Once the licensed agencies get approval for the workers, they have to pay to the government in Cambodia. These workers are given the Overseas Cambodian Working Card, a document issued in Cambodia. Then the names of those with the OCWC is sent to the Ministry of Interior for issuing of passport. Finally this move to the Ministry of Interior in Thailand for issuing of work permit, etc. Migrant workers are heavily dependent on the agency during this process. There is no standardised recruitment cost to be paid and the worker never receives any receipt of payment from government offices. Even if the migrant workers obtains his OCWC, he cannot directly apply for his passport.

Moreover, the implementation, monitoring of these recruitment processes are fraught with bureaucratic red tape, lack of reach to the grass-root levels and a largely inefficient and incompetent labour system. CSO's give

examples where despite a MoU being scrapped due to migrant abuse and deaths in 2011, brokers and agencies were still sending workers to these countries with impunity. Agents have sent workers to be recruited as domestic workers or construction labour, into plantations and fishing industries. In fact, the major sectors where Cambodians are known to be suffering in exploitative conditions are in the fishing industry, domestic work and finally the trafficking for marriage.

As compared to Burmese migrants (See Case Study: Mae Sot – Gateways and Revolving Doors), Cambodian migrants are worse off during deportation and detention processes. CSO's report that migrants are arrested and then stacked or squeezed into vehicles 'like animals' and detained between 10 -20 days before deportation. Dropped off the border, many migrants do not go back home and choose to make a living at the border, which involves costs of corrupt border officials on both sides. Resettlement or reintegration of victims is again, far beyond government capabilities – cases are referred to Ministry of Social Affairs who in turn refers it to relevant NGO's when possible. For undocumented or trafficked migrants whose address is yet

to be verified, NGO's are relied upon to provide temporary shelter.

Domestic workers from Malaysia are seen as vulnerable by CSO's. They face physical abuse, document confiscation and sex trafficking. CSO's work their cases through community leaders in Malaysia and refer them to Embassy of Cambodia or other local NGO's at the destination country. Some CSO's in Cambodia provide free legal aid to take up a legal case against the agents. But most workers only want to return without taking any action or receiving compensation.

Cambodian embassies are seen as distant, inaccessible and beyond the migrant's reach, although the situation is changing through NGO's at the destination countries. Certain Cambodian missions did not have a Labour Attaché previously. But the growing movement among CSO's to hold government accountable, have led to embassies starting to become responsible and serious. Embassies are limited to their budgeting and many undocumented migrants that are being deported are largely stuck in detention until they or an NGO is able to finance their flight ticket. They are unable to support if the migrant

does not have the basic documents with them and appear unhelpful in processing it for them. Embassies also largely rely on labour inspectors of the destination country to take action against unscrupulous practices and are hence, hesitant to deal with these issues directly.

Civil Society Response

“When you hear about crack downs actually they are only arresting those people who work outside of these big nexus of agencies and not the main lobbies.”

CSO's in Cambodia face several challenges which are largely political in nature. Despite Cambodian migrants predominantly migrating and working in an undocumented status, there is no information nor awareness of the seriousness of this issue from the side of the government. There is lack of transparency to several government processes from policy-making to monitoring.

CSO's manage to hold conversation with Ministry of Foreign Affairs, Anti-Trafficking forces and other relevant NGO's in the destination country as well as missions in those counties. Major labour issues they see on a daily basis related to labour abuse, trafficking in the fishing industry or in marriages. Some criticise the ASEAN process of being too focused on economic dimensions of migration whereby the origin countries involved, are not able to start the conversation on their citizens in the destinations. Cambodia has the Trafficking Law as well as

Proclamations on migration. However, it is burdened by a lack of budgeting as well as implementation measures.

The contentious Trade Union Law passed in 2016, institutionalised already prevailing control over trade unions and NGO's. Almost immediately the lack of routes to access justice was noted¹⁵ and as part of the existing conditions, several prominent members of civil society were arrested for protesting against draconian government measures. CSO's are accused of working for the opposition party and are immediately clamped down through raids at offices, blacklisting, income tax accusations and other interventionist measures. CSO's also face restricted funding opportunities due to government control through tax laws. In cross border issues like trafficking, CSO's agree that the Ministry of Interior are easier to talk to, whereas the Ministry of Labour are regressive with vested interests. Recruitment lobbies are powerful within the ministry and they have brokers for these migrants so that they go through recruiters. Hence by and large, CSO's working with migrants carry a low profile, although they

¹⁵ Cases at the Arbitration Council, the independent body established to help resolve labour disputes, dropped 81 percent this year, from 248 cases last year to 47 as of 2017. (Sineat & Chen, 2017)

agree they are not able to make the changes required by doing so.

They assist with case work for returning migrants or those in detention. They carry out training, consultations and awareness programmes – however they require government permission prior to conducting outreach and advocacy efforts are largely restricted to social media. They are also able to issue statements on regulations and amendments to be sent to the Prime Minister, Ministry of Labour and the National Assembly, albeit restrictively through private consultations and not in public.

Migrant support services are only at the introductory or infantile stage for Cambodians. CSO's try to see where they can link them up through utilizing the social network they have. The wider the area CSO's try to work on, the more diffused and informal it becomes, and thereby it gets more difficult to process them as compared to them working sector-wise. Developing a regional approach could be used in some ways where interlinkages could be developed between Thai local organisations and Cambodian organisations. CSO's need to be cognizant of their role and

space in Cambodian society which in its limited nature, works to their detriment.

Case Study: Kampong Cham and Phnom Penh



Kampong Cham, a province in Cambodia has a large number of migrants. It was a commune, with long tracts of agricultural land. Respondents lived in villages far within the commune. After returning, they have all re-joined working in their agricultural fields. The day of the field work, we noticed a few people in the village had just left to Thailand. Locals say many come back a few years later weaker, physically and mentally, than when they left. Locals say they are always approached by agents in the village who convince them that life abroad is much better and they will turn rich but in vain.

Most respondents work in agricultural farms, growing rice, similar to their work in Thailand. The durations of their stays have varied from 5 months to a few years. For some, they travelled to Thailand on a seasonal basis after their agriculture failed in their commune. Others had debt (from loans and other moneylenders) and wanted to build houses. They mostly went after their family or friends had moved to the other side, who were also undocumented.

Most went through the Poi Pet border or Svay Chek and work at Pathum Thani or Sa Kaeo. They would travel in a cramped vehicle with 20 others to the border where they stay overnight and the broker would pick them from the other side. They say they didn't have to pay the broker anything and had personal relationships through those that were already there. The brokers were predominantly Cambodian and the employer was Thai.

For some, the employers themselves picked them up from the border. One of them had migrated through the MoU system but returned prior to the end of the contract as he found his recruiting agency deducted money illegally from his promised salary. After he came back, he re-

migrated to Thailand after a lack of opportunities and low wages in Cambodia.

Some left after they weren't paid enough or their pay was withheld. Others left due to their age, or personal reasons at home. They were paid hourly wages of around THB 30 or THB 230 daily for agricultural work. They admit if they had documents, their employer would pay them more (THB 300 to THB 350 per day). However in other sectors of construction and factory work, they were paid more than documented workers (around THB 12,000 per month).

They were able to send money back through remittance centres fortnightly, where they give the money to their broker. They trusted their brokers with the money although they never followed up with the family back home (without any way to communicate).

Some have had encounters with authorities who asked them to make Border Pass, but they found it difficult since they would leave soon after the season anyways. For some that possessed the Pink Cards, they found it difficult to renew them. But most did not possess any documents, whether from Cambodia nor Thailand. They were charged by their

employer for creating Medical Cards, paying around THB 1400 for 6 months.

One respondent claims he was arrested by police and put in a shelter that was not a detention centre. He was made to sleep with the dogs and they made him work for them before deporting him to Cambodia with other deportees. Once he reached Cambodia, Cambodian authorities asked THB 3000 to be sent to his home, without being arrested under Cambodian law, indicative of the deep-rooted corruption prevalent. He refused and they let him go by himself.



In Phnom Penh, a group of former domestic workers were met at the office of an NGO that represents domestic workers. Being in Phnom Penh they had easier access to registered legal recruitment agencies. However, the exploitation they faced at the destination was similar to those who went undocumented.

These recruiting agencies recruited women and they stayed in the office until they found a home to work at. In many cases, respondents report the stay could be anywhere

between a few weeks to more than 8 months till they are deployed, during which they do not receive any salary. Many were promised monthly salary of \$120 (for comparison, Filipino domestic workers are required by law to be paid \$400 in destination countries) – but they did not receive this amount either. Almost all respondents report sending money home only once in a few months or once in a year, and even sometimes once during the entire duration of their stay.

Working in Malaysia and Thailand, most of them faced similar issues of confiscation of documents, working more than 16 hours a day, physical harassment, etc. Most stated they were given canned, stale or expired food, lack of resting hours and made to work in multiple homes apart from their employers. They were forced to work at off-hours and perform duties not expected of them including painting and renovation activities of their employers' homes. One of them suspected that due to her sickness, her employer gave her a pill which she alleges could have been a drug that was a stimulant of some kind. Due to the language barrier, few could navigate their way through the city or make friends who could help their situation.

Majority of them who worked in Malaysia were arrested and detained where they complain of terrible conditions and physical harassment. Some of them had only been in Malaysia for a few months, when they were detained – not because they were irregular, but because their documents were confiscated and thus could not prove their legal status in the country. Once detained, they found secret methods to pass letters to those that were leaving detention, which was eventually to be given to the family back home.

One of them tried crossing over the Thai border near Poi Pet but was caught by sniffer dogs of Thai police. She initially worked as a construction worker for 4 years near the border. However she earned very less, which was when she tried to cross the border and got caught. She was imprisoned for a week and sent back to Poi Pet border. Her husband was imprisoned along with her but was charged as a broker for 8 years.

Some returned through the amnesty and others returned after their families approached NGO's in Cambodia who would use their network in Malaysia and rescue them from the employer's house or through other returnees that communicate their cases. The role of embassies was

conspicuously absent in some of their accounts. Some were not aware of their embassies, but only their agencies.



Cambodians are also known to be working in the Thai fishing industry. The industry has been accused of violating several rights of the fishermen that work on their boats. Most workers have gone through the same channels of illegal agents and sub-agents that approach their homes with the offer for work, seen as lucrative. Cambodia has no legal or licensed recruiting agency for fishermen.

Brokers are given commission depending upon the number of men they are able to recruit. Broker and agents help these men create passports and visa (with fake details). They also promise potential workers and their families that they would help remit money to their families. However, several workers families received only \$127 in two instalments and sometimes not at all.

Some of the respondents say their transits are through



South Africa, Singapore, Fiji, etc.¹⁶ None of them were aware of the work they were expected to do. They were never paid for their work and were not aware of how much they were meant to be paid either. The duration of

their stay on the ship range from a 1-3 years on average.

During their entire period of work, they never docked on land and were continuously at sea. For instance, if there were 3 boats, depending on whichever boat was full, the catch would be loaded onto another boat that would travel out to receive the catch alone. Hence during this period, their visas would have expired and they become undocumented. They faced severe physical harassment and

¹⁶ “By the 1980s, about a third of all fish landings in Thailand originated from outside Thai waters. However, Thailand’s efforts to explore new fishing areas were increasingly restricted by governments in the region, who were attempting to control their fish stocks and to develop their own fishing industry. This pushed Thai vessels to move west to Madagascar, South Africa, the Horn of Africa; or northwards into Russian waters.” (Piotrowicz, Rijken, & Uhl, 2018)

conditions of forced labour. They claim when men died on the ship due to work, they were pushed off the boat. They had no safety precautions, in some cases, forced to catch fish with their bare hands and were expected to bring in a certain amount every day.

They had no way to contact their family and their family never knew their whereabouts either. When they escaped and contacted home was when they asked other Cambodians on other ships to contact their family for them or the only time when they had docked to a port once since the license of the boat to operate had expired after a year. Their families immediately complained to the police, however they found the agency had already been blacklisted and the owner arrested. NGO's helped the families report cases to IOM since Cambodia does not have a mission in countries like South Africa.

People continue to leave from their areas as fishermen, although now the numbers have reduced. Right now, Cambodian government only grants fishermen to work in Thailand, Japan and Southeast Asia. Respondents while expressing wish to work abroad, say they are tired of being cheated and living in fear of authorities. However, they

admit that they do not know how they will be able to leave legally again, demonstrating a clear lack of awareness of legal channels of recruitment.

Other migrant respondents

- Pru¹⁷ was in Malaysia for 2 years and returned to Cambodia in 2016. She left for Malaysia due to the weak health of her husband. She went through an agent named only as Madam Lee, based in Phnom Penh and initially worked as a domestic worker. She was told that she had a factory job but all her documents and contract were forged. She was forced to work as a domestic worker for 3 families for 2 years on a daily basis. She was ill-treated, over worked and even kept hostage at the home without any payment. She communicated her situation to her family but they were helpless. She eventually escaped to work in what she thought was a salon, but was a front for a prostitution ring. In her desperation, she resorted to gambling and prostitution to make ends meet. Whispering to the

¹⁷ Having faced significant physical and sexual abuse, Pru cannot remember many details of her own story. Her story was corroborated by the CSO that assisted her return.

interviewer, she says she had not told this to her husband due to the stigma and the fear that her husband would abandon her. She slowly learned enough Malay to make out where the embassy was located. The embassy agreed to help her but she would have to cover her expenses. After her return, she worked in a farm earning KHR 20000 per day. 2 of her 4 children go to school and she is pregnant with the 5th child. Her husband now wants to migrate to Thailand sometime in the future.

- Mai, went to Thailand as an undocumented migrant in 2004 with the help of a broker and stayed there till 2008. She initially worked in construction, where she had to face a lot of difficulties owing to the fact that she did not know the language. Even though she came in as a documented migrant, her documents were not given to her by her broker. So she lived under the constant fear of police. She was detained by the police twice. She continued working in Thailand as a domestic worker. She worked under 2 employers and she faced several problems with the second one. She cried every day and wanted to come back

to Cambodia but she did not have enough money. Even when she was sick she was made to work and was not given medicines. The second employer refused to pay her salary for 6 months, citing that she is undocumented and reported her to the police when she demanded her salary. She was stripped off all her clothes to make sure that she did not steal. She says the condition of the detention centres were horrible. They were given very less food and even the food provided was stale and rotten. During the first time she was detained, there was no physical abuse but the second time was a different story. At that time she did not know about the embassy or anyone in the embassy. A Cambodian immigrant helped her out eventually to get back home.

In 2015, she began a small organisation for domestic workers. Though the government is not very open, she still tries to advocate and engage with them to help domestic workers. She gets very little support and funding is a major problem for her. Even though her organisation is trying to help the domestic workers, the members do not pay

their annual fees which she needs to keep the organisation afloat.

- Fei¹⁸, 38 years, left for Malaysia in 2010 and returned in 2018 through the amnesty. Her parents passed away and she stays with her siblings. Upon the insistence of her siblings, she left through a recruiting agency to be employed as a domestic worker. According to her family, she was missing for the latter 4 years of her stay. She was working with the same employer, a policeman and his family of 9 members during the 8 years. She was so weak that upon arriving in Cambodia and seeing her sister, she collapsed into her arms. At the time of the interview, she said her memory had been affected by the trauma and did not remember several details.

She initially went with a contract of 2 years. She used to work from 5am to 2 am every day. In a day she was asked to clean the floor, do laundry, and wash 8 cars owned by her employer. She was asked

¹⁸ Her story was told to us by her sister as she was not psychologically sound to speak about her experiences.

to carry bricks for the construction of her employer's new house. She faced extreme physical torture and the employer's wife cut her hair short as punishment. She could not speak on the phone to her family as her employer could understand Khmer and would stand by her as she spoke on the phone. She was given so little to eat that her stomach had shrunk and she faced serious illnesses. When she fell sick, they gave her painkillers and never took her to the hospital. When her sickness began affecting her ability to work, her employer arranged for her flight back. She did not meet anyone from the embassy till her return. Her family stays in a new home, built from her remittances (she was only able to send money once a year). She has not joined any work as she is not physically and mentally ready to begin working again.

Conclusion

We observe that across the board, irregular migrants predominantly face similar conditions of illegal recruitment practices, inadequate work conditions or living conditions. However, the responses to their circumstances are largely determined by government initiatives, embassy intervention and civil society freedom. The causes for irregular migration are similar yet specific. So are the causes for exploitation. Unequivocally, recruitment processes are currently one of the biggest problems faced by undocumented migrant workers. Other relevant and urgent issues concern unauthorized wage reductions (or lack thereof) and occupational accidents (especially observed among those working in the manufacturing sector).

Common trends among countries of origin illustrate them facing an ostensibly tough task ahead of them in regulation and monitoring of recruiting processes. CSO's in both countries of destination and origin find that legal recruiting agencies have less accountability in terms of recruitment – pre-departure orientation is not followed, confiscation of documents is rampant, and sub-agencies

continue to thrive. Legal and licensed recruiting agencies carry out their own duty of recruiting and are accorded no further responsibility. Cancelling and blacklisting of agents are only temporary reactions to violations committed. In a quick view, these commonly observed patterns point toward an explicitly mismanaged and unclear strategy towards understanding and managing irregular migratory corridors.

Deportation and detention continue to be pertinent issues in countries of destination. The processes of both are seen as arbitrary and generalised without looking at the migrants on a case-by-case basis. Workers may be detained or deported for a variety of reasons from health to overstaying- some of which are not verified or in most cases, migrants are not allowed any say in the process. Only in the presence of a police report or a similar legal case does the state treat them as a trafficking victim. However, if the state has arrested the migrant after a raid, the state might not screen the victims for trafficking (e.g. even when they are locked up). Even then, in case the abuser files a police report first, the state may place the victim with the abuser again. Workers would be deported with the possessions they had when they were arrested with. CSO's

in origin countries reported receiving workers who did not even have shoes. Civil society organisations continue to urge for alternatives to detention and similar practices – primarily the improvement needs to begin from the process of recruitment (such as the strictly controlled Singapore model of recruitment).

Accounts of abusive conditions inside the detention centres including bad living conditions, physically abusive practices, rampant corruption and no monitoring or redressal system persist in respondent accounts. Embassies, in many instances, do not possess the right information on those who have been deported, although they are the only ones allowed into the centres. Embassies also in many cases do not involve legal aid for those caught with immigration offenses, only criminal ones. Majority of migrant workers are not provided with counselling in their own languages. Shelters of embassies have also been accused of having conditions similar to detention where there is a lack of access to communication. For those who have been detained, bail is not an option – they have no bail rights or access to bail and remain in detention until trial dates if they have committed an offence.

State responses are not uniform, evidently. However, a noted observation is that particularly in Malaysia and Singapore, financial or even ‘commercial’ capability/value of the worker or the position of the worker in the labour system directly determine his access to rights – including the duration of the detention period the migrant may face, the duration or availability of the pass to leave or get regularised, and the services the migrant can access in the country of destination. In Thailand, workers are allowed to have access to a social security package and allowed to buy their own insurance, which has proven to be beneficial for them. The prevention framework followed by Singapore allows them to ignore the debate of undocumented workers entirely – states do not need to consume humanitarian intervention or position overnight, however it would be presumptuous to believe that citizens would be protected by this framework. (Labonte, 2013)

Social media freedoms, radio and print media are notable, efficient pathways to advocacy in the region. According to Labonte (2013), *‘taking the opportunity to act upon information asymmetries, exploiting communicative action opportunities with policy makers; and strong levels of coordination’* are three among the factors help CSO’s determine the

extent and effectiveness of strategy in evidence-based advocacy for human rights. However, CSO freedoms and institutions that protect them are seen to be hollowing out.

Although their duties include primarily organizing migrants by providing access to information and access to justice or redressal mechanisms, many grass-root level organisations prefer not to represent undocumented migrants as, acknowledging them and indicating state failure on the matter would lead to repercussions on their own activities. In the face of opposing forces both externally and internally, CSO activity in the region is perseverant, yet fragmented.

Recommendations

- Addressing historical corridors of mobility in a way recognises borders while not jeopardising the protection and rights of undocumented migrant workers.
- Collaborative efforts between embassies and government agencies of COD to ease and improve documentation systems.
 - Improving employer accountability through such collaboration
 - Ensuring government-to-government hiring mechanisms are transparent, accountable as well as rights-based

Revising the recruitment system

- Improving skills matching mechanisms
- Bolstering compliance of recruitment laws and institutions
- Improving systems of documentation for migrant workers which is not privatised nor involving third parties.
- Addressing the involvement of agents/sub-agents rather than punitive measures upon undocumented worker.

- Rejecting the practice of allowing agents to register or renew documents on behalf of migrant
- When companies are blacklisted, migrant workers under the company should be given a grace period during which they may search for another sponsor and issue a fresh visa **or** cooperate with their embassy to leave the country on their own accord.
- Strengthening monitoring mechanisms to be followed in the employee registry as well as payment of any permit renewal or sponsorship fees through adoption of transparent online systems as well as for accountability and transparency.

Access to services

- Ensuring the right to healthcare for all migrant workers regardless of documentation, particularly in the case of preventive and emergency healthcare.
 - Firewalls to be created between government departments (such as immigration and hospitals) in cases of undocumented migrants.
 - Ensuring undocumented female workers that are pregnant access to health care.
- Ensuring access to insurance and social security schemes

- Access to information
 - Direct methods and channels for migrants to determine their status as undocumented.
 - Direct methods and channels to report labour violations by employer at workplace.
- Access to education for the children of irregular migrants

Detention and deportation

- Access to justice and the right to redress, including when they are caught and detained
 - Ensuring the immigration departments and judiciary practice diligence in this regard
- Transparent system and operating procedure to raids and detention of undocumented workers
- Allowing local civil society access to detention centres
- Disallowing the detention of unaccompanied minors, and migrant children when the parents are detained.
- Rejecting the inhumane practice of deporting due to pregnancy.

- Reforming immigration system where the stay of migrants is tied to their employers.
 - Reforming the consequences of leaving a tied relationship from a human rights based framework.

Decriminalize the “undocumented” or “irregular” status of migrants

- Recognising the difference between an administrative offence and criminal offence
- Recognising the exploitative system of irregularity
- Facilitating dialogue spaces between civil society, government entities and independent review bodies to create sustainable solutions.
- Develop a long-term strategic plan instead of reactive policies with meaningful involvement of multi-stakeholders.
 - Promoting a whole of society approach to irregular migration
- Allowing civil society and migrant organisations to become meaningful stakeholders in the process
 - Enabling freedoms of monitoring, advocacy, and service provision
 - Allowing access to detention centres where undocumented migrants require institutional support for their case.

Appendix 1

Guiding Questions (20 mins)

1. Recruitment process
 - a. Length of stay in COD
 - b. Presence of agent
 - c. Orientation process if any
 - d. Method of travel
 - e. Recruitment expenses
 - f. Contract
 - g. Employment

2. Living conditions
 - a. Healthcare
 - b. Living quarters
 - c. Managing expenses

3. Work conditions
 - a. Duration
 - b. Leaves
 - c. Do they get to visit home / maintain contact with home
 - d. Issues at work
 - e. Wages – any wage cut, etc
 - f. Remitting money – methods, problems if any.

4. What led to un-documentation?
What are the documents on hand?

5. Have they contacted embassies? NGOs?
Why/why not?
If yes, what did it entail?
6. How do they view embassies?
7. Have they been arrested/deported before? Any contact with law enforcement in COD? If yes, their experience.
8. Do their families know of their status? If no, why not?
9. The most difficult part of being undocumented?
Where do they need most assistance?
10. Do they want to return home? Why/why not?
If yes, how do they plan to do it?

For Embassies

- Numbers/trends
- Embassy engagement/initiatives with the undocumented
- Outreach and awareness programmes for all workers
- CSO engagement
- What is the most difficult part of your job? (helping in narrowing down to occupational risks/issues they face)

For CSO's

- What work do you undertake as CSO? Is there a national level body for this?
- How far is advocacy effective in your country?
- What are the gaps in MoU signed between (destination) and (origin country)
- In terms of dealing with the issue of trafficking how far, in your opinion, is the ASEAN region going to move?
- Where do you see opportunity for advocacy by civil society?
- How helpful are government mechanisms of both countries?
- Issues with documentation process? Is this the same across all nationalities?
- What are the threats currently facing civil society, advocacy or other efforts in the country?

**Specific issue based question (for example, detention, recent law developments, engagement with recruiting agents or employers, domestic worker issues)

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Migrant Forum in Asia (MFA) is a network of grassroots organizations, trade unions, faith-based groups, migrants and their families and individuals advocates in Asia working together for social justice for migrant workers and members of their families. MFA believes in the human rights and dignity of all migrants irrespective of race, gender, class, age, religious belief and status.

*For more information on Migrant Forum in Asia, go to www.mfasia.org
Email: www.mfasia.org*

Afraid of the Light: Unmasking the Discourse on Irregular Migration and its Implications for Migration Governance in ASEAN aims to shed a light on the situation of undocumented migrant workers and to contribute to national and regional discourse on irregular migration. Through case studies and analysis of policy, the research hopes to foster awareness on the issue of irregular migration and serve as a baseline study for future advocacy efforts on the issue of protection and promotion of rights of undocumented migrants and those caught in situations of irregularity in the ASEAN.

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