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***Labor migration / labor flow in
the Greater Mekong Sub-region: The case of Thailand***

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Introduction

Thailand is the major destination and the center of the unskilled labor flow in the GMS, especially drawing people from Cambodia, Lao PDR and Myanmar.¹ This continuing migration from neighboring countries might be due to the Export Economic Policy of Thailand, which supports improved manufacturing, product standards, and investment in industry. This policy has helped to encourage the labor flow into industry.² The successive governments of Thailand have tried to solve problems relating to illegal migrants by allowing smuggled and illegal immigrants to have temporary work permits.³ However, Thailand still faces challenges in terms of illegal migrant workers since these undocumented workers are not recognized or protected by law. This leads to problems.⁴

This research paper will focus on the effects of labor migration and labor flow from other countries in the Greater Mekong Sub-region (the GMS) to Thailand because nowadays Thai laborers rarely migrate from their country to others in the GMS. The number of Thai laborers migrating to foreign countries has tended to decrease since 2011 (from 90,237 in 2011 to 79,628 in 2012), which may be the result of the raising of the minimum wage in Thailand. Of those, the majority of Thai migrant laborers migrated to Taiwan (56.13 percent) while only 0.10 percent migrated to Cambodia. This study will focus only on the case of illegal migration into Thailand which has been a serious problem since 1992.

¹ Soothornthada, A., “Migrant Workers in Greater Mekong Sub-Region”, accessed 18 March 2016, From, <http://www.ms.ipsr.mahidol.ac.th/ConferenceXI/Download/Book/447-IPSR-Conference-A10-fulltext.pdf>. (In Thai)

² *ibid*

³ Pitayanon, S., “Migration of Labour into Thailand”, Chulalongkorn Journal of Economics: V. 13 Number 2 (May 2001), retrieved 18 March 2016, from: <http://www.econ.chula.ac.th/publication/journal/journal01.html> , p.17

⁴ Huget J., Chamrathirong A., and Natali C., “THAILAND AT THE CROSSROAD: CHALLENGES AND OPPORTUNITIES IN REVERAGING MIGRATION FOR DEVELOPMENT”, retrieved 18 March 2016, from: <http://www.migrationpolicy.org/research/Thailand-Leveraging-Migration>

This research provides knowledge about the current status of illegal migration in Thailand and promotes a greater understanding of the positioning of the Thai government in respect of labor migration in the region. A summary of challenges facing the country on the topic will be analyzed and this will lead to the policy option proposals to reduce illegal migration in Thailand.

Current situation

Legal framework

The GMS comprises the countries of Cambodia, Lao PDR, Myanmar, Thailand, Vietnam and the People's Republic of China (specifically Yunnan Province and Guangxi Zhuang Autonomous region), and has a composite population of approximately 326 million.⁵ Labor flows in this area are influenced by growing economies because these raise labor demand in destination countries. Furthermore, the labor flow can affect society and stability, for instance having an impact on human trafficking, smuggling, and crime in general.⁶

Most of the labor flow in the GMS is irregular immigration.⁷ Thailand is the destination of an unskilled labor flow, legal and illegal, from Cambodia, Lao PDR, and Myanmar (referred to in this paper as CLM). Generally, labor migrants, who would like to work in Thailand, have to be aware of at least three main laws which can be categorized into two groups: controlling laws (1. and 2.) and protection laws (3.).

1. Immigration Act, B.E. 2522 (1979): this law enshrines the rules relating to the immigration of legal alien workers and permitted occupations. Moreover, this law also prescribes the criminal penalties for people who smuggle migrant workers illegally into Thailand as well as the government officials and the people who help them.⁸
2. Alien Working Act, B.E. 2551 (2008): this law was enacted to control the employment of aliens, the issuance of work permits to aliens and to reserve certain occupations for the Thai labor force.⁹
3. The Anti-Trafficking in Persons Act, B.E. 2551 (2008): this law was stipulated to cover offences related to the exploitation of people, for instance, forced labor.¹⁰

⁵ Asian Development Bank, "Greater Mekong Subregion (GMS)", retrieved 18 March 2016, from: <http://www.adb.org/countries/gms/main>

⁶ Asian Development Bank, "MIGRATION IN THE GREATER MEKONG SUBREGION: Annotated Bibliography [Fourth edition]", retrieved 18 March 2016, from: http://www.mekongmigration.org/publications/4th%20MMN%20Annotated%20Bibliography_in%20-%20p.%2028.pdf

⁷ World Bank, "LABOR MIGRATION in the Greater Mekong Sub-region", retrieved 18 March 2016, from: http://siteresources.worldbank.org/INTTHAILAND/Resources/333200-1089943634036/475256-1151398858396/LM_in_GMSs_Nov06.pdf , p. 17

⁸ Immigration Act, B.E. 2522 (1979)

⁹ Labour Relations Act, B.E. 2518 (1975)

In addition, the registered occupations or permitted occupations are protected by three main Thai laws. These are:

1. Labor Protection Act, B.E. 2514 (1998): this law, covering Thais and migrant workers, concerns the rights and duties of employers and employees. It primarily establishes minimum standard practices in general labor force utilization, including holidays, remuneration, severance, and Employee Welfare Funds.¹¹
2. Labor Relations Act, B.E. 2518 (1975): this law is concerned with labor relations between employers and employees, such as changes and modifications to the Conditions of Employment (which specifies the standards required by law), procedures for settling labor disputes, and employers' and employees' rights to establish labor associations and labor unions to protect their interests relating to their Conditions of Employment.¹²
3. Social Security Act, B.E. 2533 (1980) : this Act requires the collection of contributions paid by employers, employees and the government for use in providing protection and welfare in respect of non-work related injury, sickness, invalidity or death, as well as maternity or child allowances, old-age pensions, or unemployment benefits to employees who are appropriately insured.¹³

Situation

Given the territorial cohesion and the economic situations in the migrants' home countries, Thailand cannot avoid illegal migration from the CLM, and the numbers of illegal labor migrants have continuously risen.¹⁴ As a result, successive Thai governments have supported the same policy since 1992 in allowing illegal migrants to register. In the early stages, the government of the time applied the policy for national security reasons as the number of illegal labor migrants in Thailand was increasing dramatically.¹⁵ Later, the governments implemented that policy to determine the numbers, locations, and occupations of illegal laborers.¹⁶

However, the Thai authorities ultimately realized that to deal with the issue with only (one-sided) domestic regulations was not efficient. Therefore, the Thai government signed Memorandums of Understanding (MoUs) with Lao PDR in 2002, and Cambodia and Myanmar in 2003. The aim

¹⁰ The Anti-Trafficking in Persons Act, B.E. 2551 (2008)

¹¹ Labour Protection Act, B.E. 2514(1998)

¹² Labour Relations Act, B.E. 2518 (1975)

¹³ Social Security Act, B.E. 2533 (1980)

¹⁴ *Ibid* 1

¹⁵ Pitayanon, S., "Migration of Labour into Thailand", Chulalongkorn Journal of Economics: V. 13 Number 2 (May 2001), retrieved 18 March 2016, from: <http://www.econ.chula.ac.th/publication/journal/journal01.html> , p.17

¹⁶ Visansak, P., "ALIEN WORKERS' RIGHTS SHOULD BE PROTECTED UNDER LABOUR LAW; CASE STUDY ILLEGAL ALIEN WORKERS AS PER THE CABINET' RESOLUTION DATE 16 MAY 2006", Master's Thesis, Department of Law, Graduate School, Dhurakij Pundit University, 2007

was to take action against illegal border crossing, trafficking and illegal employment. The MoUs have been consistently extended.¹⁷

Figure 1: The number of illegal immigrants in Thailand, 2001-2010¹⁸

year	Employer/business	Total Num. from the CLM	Nationality			Occupation	
			Myanmar	Lao PDR	Cambodia	Labour	Domestic work
2001	157,718	568,249	451,335	59,358	57,556		
2002	120,717	409,339	340,029	32,492	36,818		
2003	89,409	288,780	247,791	21,314	19,675		
2004	205,738	849,552	633,692	105,259	110,601		
2005	205,562	705,293	539,416	90,073	75,804		
2006	185,876	668,576	568,878	51,336	48,362	583,580	84,996
2007	158,268	546,272	498,091	22,085	26,096	484,723	61,549
2008	154,304	501,570	476,676	12,800	12,094	447,637	53,933
2009	311,654	1,314,382	1,078,767	110,854	124,761	1,184,592	129,790
2010	216,695	932,255	812,984	62,792	56,479	844,329	87,926

From: the Office of Foreign Worker Administration of Thailand

Currently, under the auspices of the National Council for Peace and Order and the Thai Royal Government, Prime Minister General Prayuth Chan-o-cha has launched policies relating to the control of labor migration within CLM. First a series of One-Stop Service Centers was established across much of the country at which CLM illegal labor migrants could register. If CLM illegal laborers present themselves with their employers and register, they are granted a temporary license to work in Thailand on a legal basis. Moreover, they will be covered by the labor protection law and enjoy the minimum wage of 300 baht/day (USD 8.5-9).

The two policies mentioned above have had an influence on labor migration to Thailand. In September 2015, the Office of Foreign Worker Administration indicated that the number of migrants from the CLM countries who had registered was 1,626,235 (from Cambodia 738,947, from Lao 222,839, and from Myanmar 664,449).¹⁹ However, if the number of CLM migrant workers registered

¹⁷International Labour Organisation, “Review of the effectiveness of the MoUs in managing labour migration between Thailand and neighbouring countries”, retrieved 18 March 2016, from: http://www.ilo.org/asia/whatwedo/publications/WCMS_356542/lang--en/index.htm

¹⁸Somneng, C., “Situation of Alien workers in Thailand”, retrieved 18 March 2016, from: <http://www.siamintelligence.com/thai-labor-migration-status/> (in Thai)

¹⁹“Summary of the Performance of the Cabinet in Accordance with the Directive Principles of Fundamental State Policies, the Government of Prime Minister Prayut Chan-o-cha First year (12 September B.E. 2557 (2014) – 12 September B.E. 2558 (2015)”, retrieved 18 March 2016, from: <http://www.thaigov.go.th/pdf/report1year.pdf>, p. 15 (in Thai)

in 2014 (1,214,720) is included with that of 2015, the total of CLM workers in Thailand is more than 2.6 million.²⁰

Despite the 23 years during which this policy has been implemented, the illegal migration of laborers to Thailand has not stopped, although it has declined.²¹ Thailand's economy is continuously expanding, and, as a result, the demand for labor is increasing, especially in respect of workers from CML: these laborers can contribute significantly to Thailand's economic growth, especially in the construction sector and fishery businesses.²²

Although the legal regime and the policy for the registration of alien workers has achieved a reduction in the number of illegal migrants in Thailand, precise, current figures cannot be specified because there have not been any recent surveys of their numbers.

Challenges

Labor migration, especially among workers from Myanmar, Cambodia and Lao PDR, has been a challenging issue for the Thai government for a few decades. As unskilled workers are needed in private enterprises in Thailand, the policy, of which the philosophy is to find a balance between the demands of national security, human rights and socio-economic security²³, chosen to meet this challenge is to legalize the undocumented immigrant workers. In accordance with this policy, the government regularly announces the periods during which employers hiring illegal laborers may bring their employees for registration. After the process of registration, the employees obtain a work permit that is valid for one or two years. In relation to such workers, amnesty in respect of illegal smuggling is granted. If the illegal migrant laborers fail to be registered within the time specified, they may be deported back to their hometown.²⁴

In 2014, General Prayuth Chan-O-Cha announced the policy granting amnesty to illegal laborers who had come from Myanmar, Lao PDR and Cambodia as long as they presented themselves with their employers within a period stretching from 26 June – 31 October. During this time span they were granted temporary work permits valid for 60 days. After that, they had to pass the nationality verification process.²⁵ Since the 1992 adoption of this kind of policy, one of the most

²⁰Srisom, A. "Policies on the problem of foreign workers", retrieved 16 March 2016, from: http://thailand.prd.go.th/1700/ewt/asean thai/ewt_news.php?nid=1019&filename=index (in Thai)

²¹Ibid 18

²²Somneng, C., "Situation of Alien Workers in Thailand", retrieved 16 March 2016, from: <http://www.siamintelligence.com/thai-labor-migration-status/> (in Thai)

²³Office of the National Security Council (NSC), Thailand, Current Migration Challenges in Thailand, retrieved 2 March 2016, from http://eeas.europa.eu/delegations/thailand/documents/thailande_eu_coop/migration_management/3_4current_migration_challenges_in_thailand_en.pdf

²⁴Immigration Act B.E. 2522 (1979), article 54 (in Thai)

²⁵Proclamation of the National Council for Peace and Order (NCPO) no. 70/2557, section 5-6

significant challenges has been the administration of the process, which takes a long time²⁶. As a result, the Proclamation of the National Council for Peace and Order no. 70/2557 announced that a One-Stop Service Center, where the illegal laborers can have their personal records registered, acquire an ID card and have their health checked, would be established in every province.²⁷ Although these new arrangements should ensure that the process now takes an average of 40 minutes per employee, there are still capacity limits in some centers; for example, the machine used for typing the ID cards can issue 100 cards in eight hours (office hours) but more than 100 employees come to register every day.²⁸ Moreover, the process of nationality verification takes more time than the validity period of the temporary work permit: in other words, the documented laborers become illegal again and further difficulties arise in that this nationality verification process is under the control of laborer's country of origin.²⁹

In order to overcome this challenge, the Prime Minister has announced an increase in the number of One-Stop Service Centers³⁰ and an extension of the period of registration so that this year, it will cover a period from 1 April to 29 July 2016³¹. Nevertheless, the challenges of controlling illegal immigration still remain. These can be detailed as follows:

1. The challenges in respect of a lack of adequate communication

Although the policy outlined above has been initiated to legalize illegal immigrant laborers so that they can be recognized and protected by the law, a lack of adequate communication leads to misunderstandings for both employers and illegal immigrants.

On their part, the employers who hire illegal laborers can misunderstand the policy and the rules and this can discourage them from registering their undocumented workers. For example, some employers have claimed that some employees change their work after getting the temporary work permit.³² This might indicate that the employers misunderstand or do not receive the information about the rules because, according to the cabinet resolution of 23 February 2016, registered laborers are not allowed to change their employers except in instances where employers have terminated the hire contract, the business has closed down, or the employers have maltreated the workers or broken the labor protection law. Furthermore, to change employers in such cases, the laborers need to

²⁶ Sumalee Pitayanon. 2001. Migration of Labour into Thailand, Chulalongkorn Journal of Economics, Vol. 13 Number 2, May 2001, p. 22

²⁷ Proclamation of the National Council for Peace and Order (NCPO) no. 70/2557, section 4

²⁸ Daily News, The last registration, retrieved 2 March 2016, from <http://www.dailynews.co.th/article/254876> (in Thai)

²⁹ Nitsaka Muangpat. 2015. Report on the immigrant labor registration: Challenges and Solutions. Bangkok: Institution for Good Governance in Bangkok, p. 16 (in Thai)

³⁰ Proclamation of National Council for Peace and Order (NCPO) no. 90/2557 (2014) and 94/2557 (2014)

³¹ The Cabinet Resolution of 23 February 2016 (in Thai)

³² Nitsaka Muangpat. 2015, op., cit., p. 14 (in Thai)

provide evidence.³³ Moreover, announcements from the government only emphasize the process of the registration without further details; therefore, most of the employers do not recognize the importance of the registration as they do not understand the advantages and disadvantages of this process.³⁴

On the part of the illegal immigrants, news reports during June 2015 showed that some had heard rumors that the government had announced a policy to eliminate illegal workers and that they would be imprisoned or sentenced to death.³⁵ There is, however, no Thai law that indicates the death sentence for illegal immigrants. Although the government announced the Proclamation no.67/2557 (2014) of June 2015, which emphasizes that there is no policy to eliminate illegal workers³⁶, and also announced the policy of temporary leniency 10 days later,³⁷ the misunderstandings still remain because of the language barrier; specifically, the updated announcement is available only in Thai and English while most of the immigrants know only a little Thai and no English at all.³⁸

2. The challenges in respect of loopholes in registration control

According to the Proclamations of the National Council for Peace and Order concerning the policy on the management of illegal immigrants, only the illegal laborers from Myanmar, Lao PDR and Cambodia³⁹ are covered. However, the process means that nationality verification runs after the registration and they (i.e. illegal immigrants from countries other than CLM) can take advantage of the policy until the nationality verification process is undertaken. Furthermore, if the nationality verification process, which is out of the control of the Thai government, takes a long time, these illegal laborers can also take advantage of the extension of the registration period announced by the Thai government.⁴⁰

3. The challenges in respect of law enforcement

³³ Office of Foreign Worker Administration. The registration of immigrant workers according to the Cabinet Resolution of 23 February 2016, retrieved 12 March 2016, from <http://wp.doe.go.th/wp/images/pr/pr5901.pdf> (in Thai)

³⁴ Nitsaka Muangpat. 2015, op., cit., p. 16 (in Thai)

³⁵ Radio Free Asia. More Than 160,000 Cambodian Workers Return From Thailand, retrieved 8 March 2016, from <http://www.rfa.org/english/news/cambodia/return-06162014170507.html>.

³⁶ Proclamation of National Council for Peace and Order (NCPO) no. 67/2557, section 1

³⁷ Proclamation of National Council for Peace and Order (NCPO) no. 70/2557, section 4

³⁸ The Office of Foreign Worker Administration has created a website that contains the necessary information for foreign laborers in the three languages; Burmese, Lao and Cambodian. However, the information available in these languages is not updated and the page that links to the information is available only in Thai. This is very impractical. See <http://wp.doe.go.th/wp/index.php/th/>

³⁹ Ibid. And also another policy for illegal immigrants from Vietnam. See the Cabinet Resolution of 10 February, 2015.

⁴⁰ Nitsaka Muangpat. 2015., op., cit., p. 17 (in Thai)

In the control of illegal immigrants the Thai government faces challenges in respect of law enforcement in both curbing new entrants and in the surveillance of enterprises hiring foreign laborers.

The leniency policies, granting amnesty to illegal immigrants and allowing them to work in Thailand legally for temporary periods, were first announced back in 1992.⁴¹ To date, these kinds of policies have been announced approximately 12 times.⁴² The fact that policies allowing for 'temporary' leniency have needed to be repeated so often shows that there are always new illegal immigrants entering Thailand because of weak law enforcement by the immigration police. Moreover, some illegal laborers who have already been deported back to their homelands may find a way to return to Thailand.⁴³ One of the most significant reasons why prevention of illegal entry is ineffective is corruption; specifically, some government officials are involved in the network of people responsible for the trade in illegal immigrant workers.⁴⁴ Additionally, some officials receive financial benefits to allow illegal aliens into the country and this can lead to problems of human trafficking and the temptation to pay substandard incomes to undocumented laborers.⁴⁵

Furthermore, surveillance of enterprises that hire foreign laborers is weak and this means that the employers have no fear of the law and consequently avoid the registration process. Although the government has announced that illegal laborers who fail to register within the specified periods are working against the law, some employers still decide to keep their laborers illegal because the government officials do not seriously keep an eye on the practice, and they therefore see the registration process as a waste of their time and money.⁴⁶

Policy Options

In relation to the challenges stated above that the Thai government faces in immigration control, the following policy options for both short-term and long-term solutions can be proposed:

1. Short-term policy options

In order to overcome the challenges faced in the application of the registration policy, the following proposals could be considered:

- *Adequate communication and accessible information*: The communication between the government and the employers should be improved by informing the employers about the advantages

⁴¹ Sumalee Pitayanon. 2001 ., op., cit., p.17

⁴² Nitsaka Muangpat. 2015., op., cit., p. 8-11 (in Thai)

⁴³ *Ibid.*, p. 16

⁴⁴ Sumalee Pitayanon. 2001 ., op., cit., p.22

⁴⁵ Vasit Dejkunjorn. Let the criminal to the city, retrieved 8 March 2016, from <http://m.matichon.co.th/readnews.php?newsid=1442325648> (in Thai)

⁴⁶ Nitsaka Muangpat. 2015, op., cit., p. 13 (in Thai)

of the registration of undocumented workers. Moreover, information about the law and regulations should be provided in an understandable format. Additionally, for the migrant workers, the information relating to the process of the registration and to their rights, which are protected under Thai law, should be updated and translated into their languages so that they can access this information and better understand the policy of the government as well as the Thai law.

- *Improvement of the nationality verification process*: Although it is claimed that the nationality verification process generally takes a long time - and sometimes longer than the period of the validity of the temporary work permit⁴⁷ - this process is out of the control of the Thai government. However, an improved government-to-government dialogue might be established to call for co-operation from other countries concerning the policy to facilitate the nationality verification process in their own countries.

The advantage of the short-term policies indicated above is that they might help to improve and facilitate the operation of the registration policy until the completion of the nationality verification process and that the illegal laborers become legal and are recognized and protected by the law. However, these short-term policies may help only to resolve the problems at hand, and not the root of the problems: these can best be dealt with over the longer term.

2. Long-term policy options

In order to address the root causes of the challenges relating to illegal immigration in Thailand, these long-term policy options could be considered:

- *Preventing the entry of further illegal entrants*: As one of the causes of illegal entry into Thailand is the corruption of government officials, an increase in, and the use of, strict criminal penalties for government officials who allow aliens to enter illegally could be considered. Furthermore, the agencies involved in the importation of the foreign laborers could be strictly controlled in order to prevent illegal entry which can lead to the problem of human trafficking.

- *Strict surveillance measures*: One of the factors that encourage employers to fail to take their illegal laborers for registration and to continue hiring new illegal workers is that the government officials rarely keep their eyes on illegal labor issues in enterprises. Therefore, introducing strict measures for the surveillance of illegal laborers in private enterprises is one long-term policy option; for example, checking enterprises randomly, and more often than before, could be considered. Moreover, community participation, which encourages people in the community to participate in the surveillance of illegal laborers and to report to the government officials concerned, could be promoted.

Conclusion

⁴⁷ Nitsaka Muangpat. 2015., op., cit., p. 17 (in Thai)

Although illegal migration into Thailand is an offence that is subject to criminal penalties prescribed by the Thai laws, the Thai government prefers leniency, introducing policies to legalize and grant amnesty to illegal immigrants who come to register within the period announced. However, the challenges still remain as some employers have rejected the registration process because they see it as a waste of their time, while the illegal immigrants do not recognize the importance of the registration process. Moreover, it can be seen that these kinds of policy cannot tackle the root of the illegal immigration problems because the number of illegal workers who come to register does not tend to decrease. This means that the smuggling of illegal laborers into Thailand still continues. Therefore, finding policies to overcome this issue is still a significant challenge for the Thai government.

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