

Addressing exploitation of labour migrants in Southeast Asia: Beyond a counter-trafficking criminal justice response

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Labour migration and trafficking in persons: a political economy analysis

Key messages

Large numbers of young people in Southeast Asia seek work opportunities outside their country of origin, migrating both regularly and irregularly, and with little power to access or negotiate safe and fair migration and work conditions. The risk of exploitation is high. The potential for human trafficking in these situations has attracted significant attention.

Yet much of the response by regional governments and international donors has focused on identifying and prosecuting ‘traffickers’ rather than addressing the many vulnerabilities and forms of exploitation that many labour migrants experience.

This thematic brief sets out a diversity of forms of exploitation that labour migrants in Southeast Asia experience, and the implications for how efforts to respond might need to adapt. This includes broadening beyond the dominant frame of criminal justice in order to address exploitation at scale and in a manner that is realistic about the prevailing political economy.

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About this publication

This publication has been developed through a research partnership between ASEAN-ACT and ODI. The research involved conducting an applied political economy analysis to understand the dynamics of labour exploitation and trafficking in persons in Southeast Asia in order to: 1) improve the evidence base for ASEAN-ACT and partners' programming and policy engagement; and 2) develop and implement a process for feeding that evidence into ASEAN-ACT and partners' programming and consultations on a regular basis.

The research seeks to advance understanding of the vulnerabilities of labour migrants to exploitation and trafficking. This can contribute to improved response capabilities of state agencies and international programmes to address these issues and strengthen protection and support for labour migrants and victims of trafficking in persons.

Phase 1 of the research project includes four country studies: Cambodia, Laos, Thailand and Vietnam.

This thematic brief is the second of four in Phase 1 of the research project.¹ Thematic briefs distil findings from across the four country studies on key cross-cutting issues. This brief focuses on the vulnerabilities and protective capacities of labour migrants.

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¹ For brief 1 see S. Jespersen, H. Alffram, L. Denney and P. Domingo (2022) 'Labour migration in Cambodia, Laos, Thailand and Vietnam: migrants' vulnerabilities and capacities across the labour migration cycle.' Thematic Brief 1. London: ODI and ASEAN-Australia Counter Trafficking.

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Acronyms

| | |
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| ACTIP | ASEAN Convention Against Trafficking in Persons |
| CSO | civil society organisation |
| ILO | International Labour Organization |
| NGO | non-government organisation |
| SEZ | special economic zone |
| TIP | Trafficking in Persons |
| UNTOC | United Nations Convention on Transnational Organized Crime |

1 Introduction

Labour migration is an established feature of Southeast Asian demography, which has a long history of cross-border migration for seasonal agricultural and other work. More recently, economic disparities between the countries in the region, as well as demographic trends within them, have meant that patterns of labour migration have solidified. Many young people from Cambodia, Laos and Vietnam, for instance, travel to the wealthier countries of Thailand, Malaysia, Japan, South Korea, Taiwan – and further afield – in search of employment. An estimated 23.6 million Southeast Asian migrants live outside their countries of origin, of whom approximately 7.1 million remain within the Mekong sub-region (Migration Data Portal, 2022).

While this brings a range of benefits for individual migrants and their families, as well as their original and destination communities and countries, labour migrants also face many risks along their journeys and at their destinations. Data is notoriously patchy (van der Heijden et al., 2015), but it is estimated that in 2021 there were 27.6 million people worldwide in forced labour, with Asia and the Pacific accounting for over half of this total (ILO, 2022: 2;3). Labour migrants are disproportionately represented in these forced labour figures (ILO, 2022: 3). Labour migrants may also experience a range of other forms of exploitation at various stages of the migration cycle – from debt bondage, to low or withheld salary payments, poor work conditions, confinement, intimidation, and physical and sexual abuse. All these forms of exploitation are possible because of the vulnerability that labour migrants regularly experience and their limited recourse to protection from government authorities, the justice system or civil society.

This thematic brief sets out the diverse forms of exploitation that labour migrants in Southeast Asia experience, and the implications for the prevention of trafficking and response efforts. While many policy frameworks² recognise that a holistic response to exploitation of labour migrants requires prevention, prosecution and protection measures, in practice, responses have focused heavily on prosecution through a reliance on the criminal justice system. That is, on pursuing prosecutions of those deemed responsible for the crime of trafficking in persons (TIP), and less on a victim-centred approach

² See, for instance, the ASEAN Bohol Trafficking in Persons Work Plan 2017-2020, available at: https://asean.org/wp-content/uploads/2021/01/Final-Version-of-Bohol-TIP-Work-Plan-2017-2020_13Nov2017.pdf and the 4th COMMIT Sub-Regional Plan of Action, which both outline a focus on prevention, prosecution and protection approaches.

that focuses on addressing the vulnerabilities that labour migrants experience. This is evident on the part of some of the major bilateral donors working on issues of TIP – including Australia and the United States – as well as the governments in the region and some large non-government organisations (NGOs). But prosecution alone is a blunt tool for dealing with a highly complex issue and is arguably often an unrealistic approach given the prevailing political economy of countries in the region and the scale of exploitation to be addressed. More investment is therefore needed in a broader set of responses that better accounts for the diverse forms of exploitation that labour migrants experience. This may include using criminal justice approaches in selective, strategic ways but also encompasses civil and social and economic justice, as well as prevention and protection work to be more migrant-centred. Such broader approaches can better reach the large number of migrants experiencing exploitation and are better suited to the political economy realities of the countries under study.

This thematic brief draws on research undertaken by ODI for the ASEAN-Australia Counter Trafficking (ASEAN-ACT) Program, looking at the political economy of vulnerability to trafficking of cross-border labour migrants in ASEAN. Country studies have been undertaken to date in Cambodia, Laos, Thailand and Vietnam, and further country studies are planned for 2023. A political economy lens helps in understanding the formal and informal institutions and incentives that sustain the vulnerability of labour migrants to trafficking, as well as hamper more effective responses. This brief synthesises findings from the first four country studies with the aim of distilling key messages for the counter-trafficking community, and in particular for ASEAN-ACT to guide future programming.

2 Definitional challenges of ‘trafficking’

This research project began with exploring the political, economic and social causes leading to labour migrants’ vulnerability to trafficking. But it quickly became apparent that there is a wide array of forms of exploitation that labour migrants experience, and that some of the international community’s counter-trafficking responses are poorly suited to addressing this. In part, the response of the international community is shaped by the international instruments related to trafficking, which are themselves the subject of much debate.

There are significant definitional debates regarding what constitutes human trafficking and how best to interpret the definition. These debates are not the focus of this research, but are important to note as the terminology can obscure what is being empirically discussed, and to a degree shape international response efforts. Our understanding of human trafficking for the purposes of this brief is defined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, one of the so-called ‘Palermo Protocols’, supplementing the United Nations Convention on Transnational Organized Crime (UNTOC). This definition is largely used to inform developments in the ASEAN Convention Against Trafficking in Persons (ACTIP) and national legislation in Southeast Asia, as elsewhere, given that the four countries under study are parties to the protocol. In the literature, however, human trafficking for labour exploitation is also often considered as akin to modern slavery or forced labour and related phenomena (Scarpa, 2008).

The Trafficking Protocol defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud, deception, or other means with the aim of exploiting them (UNODC, 2022). This definition combines three core elements, each of which must be present to constitute a crime of trafficking in persons, when the victim is an adult – namely, an act, a means and a purpose. The act includes recruiting, transporting, transferring, harbouring or receiving people. The means includes using or threatening use of force, coercion, fraud, deception, abuse of vulnerability, giving of payments or benefits or kidnapping. And the purpose is for exploitation. The forms of exploitation captured here can include sexual exploitation, forced labour, debt bondage, domestic servitude, organ removal, forced begging, child soldiers,

and forced marriage among others. But even the interpretations of these three core elements of how human trafficking is defined are contested (Gallagher, 2015).

Some argue that if you find exploitation to the degree of forced labour in a given case, you are also likely to find the other elements of 'means' and 'act', as stipulated in the UNTOC Convention, which may therefore constitute trafficking (David, 2010). Others highlight that given the Trafficking Protocol is under the framework of the UNTOC Convention, a narrower understanding of human trafficking is appropriate, and that it must involve organised crime (McAdam, 2020). There has also been an evolution in understanding of human trafficking. For example, the definition does not necessarily require movement and certainly not across borders. The definition itself describes exploitation 'at a minimum', recognising that member states' domestic legal frameworks may identify exploitation more broadly. Further, there remain ambiguities in the definition and understanding of trafficking that result in broader or narrower conceptions of the phenomena between different stakeholders. This definitional debate is important here because it can influence the scope of what responses are deemed appropriate and which actors are seen as relevant to involve in it.

The research project found a wide range of forms of exploitation that labour migrants experience. It also found that the extent to which those involved in some of the experiences of exploitation could be considered 'organised criminals' is not clear-cut. Some commentators would argue that such experiences fall outside the Protocol's definition of trafficking, while others would suggest they fit within it. Here, we are less concerned with what strictly counts as trafficking, and more with what responses are devised to address the diversity of exploitation experienced (albeit that these are not disconnected from the definitional debates). For these reasons of definitional confusion, the framing of the project was shifted to look at vulnerability to exploitation – best thought of as a spectrum, from vulnerability to human trafficking at one end and a range of other forms of exploitation along it. This seems a more accurate way to capture the diversity of exploitation that labour migrants experience, as well of those involved in facilitating it – and more importantly, opens up a wider range of response mechanisms for dealing with the problem.

3 The diversity of labour migrants' experiences of exploitation

At the more extreme end of this spectrum, for instance, are the experiences of labour migrants in the Golden Triangle Special Economic Zone (SEZ) in northern Laos, on the border with Thailand and Myanmar (see Denney and Xayamoungkhoun, forthcoming). Here, young people from across (and also beyond) the region are recruited through social media sites offering lucrative opportunities to work in call centres or online scams in the SEZ with links to Chinese organised crime groups (Interviews with migration organisation and regional trafficking expert, Laos, 2 March 2022; 8 April 2022; US State Department, 2022: 344). These often involve building online relationships with prospective migrants and convincing them to buy shares, invest in cryptocurrency, or other scams (Kennedy and Southern, 2022; Whong, 2022). Drawn by the promise of attractive salaries, young people travel to the SEZ and are then forced to work long hours with their pay often withheld, ostensibly to compensate the employer for recruitment costs. Some reports from escaped migrant workers suggest they are also kept in confinement (Whong, 2022). High scamming targets are set and if workers are unable to meet them, they are sold to other employers, or forced into sex work or other work related to the Kings Roman Casino, which operates in the SEZ (UCA News, 2022). The Casino is widely reported to be a hub for organised crime, with well-documented trafficking in drugs and exotic animals (Gore et al., 2022).

In a similar vein, Cambodia has recently received considerable attention as a destination country for men, women and, in some cases children, who have been forced, tricked or coerced into working in exploitative and abusive conditions for online and telephone gambling and financial scam operations – again with links to Chinese organised crime (Reuters, 2022; Strangio, 2022 Haider, 2021). NGOs, some police in the region and others claim that those working in these operations are subjected to illegal detention and physical abuse, including beatings, whipping, and electrocution (Reuters, 2022; Saksornchai, 2022; US Department of State, 2022). There have also been allegations that some police officers have colluded in this, while some of the scam and forced labour operations

are reportedly linked to well-known businesspeople and politicians (Mech et al., 2022; Saksornchai, 2022).

Also in Cambodia, government-registered Private Recruitment Agencies have been found to be complicit in labour exploitation – and in some cases – trafficking. Beginning from around 2010, private recruitment agencies started large-scale recruitment of young women to meet demands for domestic workers in Malaysia. While recruits were promised well-paid jobs and decent working conditions, many were subjected to various forms of abuse at their destination, including forced labour, non-payment of wages, and sexual and other forms of physical abuse (Human Rights Watch, 2011). The Cambodian authorities took legal action against representatives of some recruitment agencies for trafficking-related crimes and eventually also enacted a ban on recruitment of women for domestic work in Malaysia.

In Thailand, the fisheries sector in particular has been the object of investigation regarding human trafficking practices given the coercion, deception, and transport in the recruitment of labour migrants particularly from Myanmar and Cambodia (The Freedom Fund, 2022; HRW, 2018; Boll, 2017; ILO, 2014; IOM, 2011). Most recruitment is reported to take place through irregular channels, with practices of deception, drugging, forced transportation and physical coercion (Boll, 2017). Long-haul fishing in international waters makes both the recruitment processes and labour conditions less visible and harder to scrutinise, and combined with reported collusion by authorities, means that anti-trafficking efforts through national frameworks are difficult if not impossible to apply (Boll, 2017; ILO, 2014).

In other cases, the nature of exploitation looks significantly different. Thailand is a popular destination for labour migrants from Cambodia, Laos and Vietnam, and because they are able to travel overland via well-trodden migration pathways, many travel without appropriate documentation. This creates vulnerability to exploitation by authorities who extort them *en route*, and employers who take advantage of the fact that migrants in irregular situations are unlikely to seek out or receive assistance from authorities in the event of exploitation. For example, Vietnamese labour migrants in Thailand have reported regularly working 12-hour days, experiencing dangerous working conditions, not being paid, sexual assault by employers, and employers threatening to report them to the police if they complain (Jespersion, Ngo and Vu, forthcoming). In these cases, however, migrants were not forcibly recruited, transported or held; with no clearly stipulated contractual conditions there was not necessarily clear deception, and a number of migrants reported that they left exploitative employment to find a better alternative. These experiences arguably fall more towards the centre of the spectrum of exploitation.

This kind of exploitation is particularly common where labour migrants move irregularly, without the legal and social protections potentially, or nominally, afforded by regular migration documentation. However, it is also evident that regular migration is no guarantee that exploitation will not occur, given the practical complexities of migration regimes, and that labour conditions may still be exploitative in practice (Alffram et al., forthcoming). Regular migrants may still experience long hours, reduced pay, or confiscation of documents. Migration status does not ensure safe work.

Similarly, in Thailand, labour migrants from Cambodia and Myanmar working in the agricultural sector in border areas experience harsh labour conditions and are exposed to the threat of being reported to authorities, deportation or detention (Domingo and Siripatthanakosol, forthcoming). Here, however, recruitment practices are mostly based on consent rather than threat or coercion. Migrants report sharing information and moving between employers to avoid those with reputations for poor conditions or treatment. The type of documents they possess and the migration and labour regime they follow vary by nationality, gender, the specific agricultural sector, and whether work is on a daily basis, seasonal or throughout the year (Junghus et al., 2019). Accordingly, there is a mix of regular and irregular migration involved. Labour exploitation – and in some cases forced labour – does take place, the gravity of which is beyond question. Even so, the experiences are not in all cases best dealt with via existing counter-trafficking criminal justice responses.

The experience of irregular labour migration from Laos to Thailand via the use of informal brokers presents yet another example of exploitation, markedly different from some of those described above and an even less clear fit with existing counter-trafficking responses. A broker is often someone in the community who facilitates travel to or employment in Thailand. The literature and some of the counter-trafficking community are quick to label these brokers as ‘traffickers’, and have been the focus of most criminal investigation and prosecution by the Lao justice system (Interview with migration organisation, Laos, 18 February 2022; Interview with international NGO, Laos, 25 February 2022; Interview with Lao migration organisation, 2 March 2022; Interview with trafficking experts, Laos, 6 April 2022 and 8 April 2022). More widely, it has been noted that the media and NGO advocacy campaigns often rely on simplistic stereotypes of ‘traffickers’ as villains in order to attract popular interest and support (Raby and Chazal, 2022: 14). Yet in the Lao case, there seems to be little reliable evidence to suggest that these brokers are part of an organised criminal system and have the intention to traffic or exploit (although there are likely to be some instances of that). Contrary to the view of brokers as shadowy outsiders who lure unsuspecting people to migrate for exploitative work, the available evidence suggests these are people from the community, generally known to the prospective migrant – often a

friend or family member (Haughton, 2006: 4). They are often people with some connections in Thailand – either through family or having previously migrated to Thailand themselves (Molland, 2010; Rigg, 2007). Some accounts suggest that the brokers are sometimes labour migrants themselves visiting Laos and are incentivised by their Thai employer to recruit additional workers while back home (Molland, 2010: 843). There may be some exaggeration of pay or standards of employment given that brokers receive a financial benefit from the act of recruiting. But it is not clear that such brokers recruit migrants for the purpose of exploitation. In fact, people interviewed for our research suggested that brokers often arrange employment in Thailand that is not exploitative, albeit poorly paid (Interview with migration organisation, Laos, 18 February 2022; Interview with trafficking expert, Laos, 6 April 2022; Interview with trafficking expert, Laos, 8 April 2022; Interview with migration expert, 1 April 2022; Interview with global trafficking expert, 8 August 2022). The exploitation that occurs for those migrating from Laos to Thailand seems to occur almost entirely at the point of destination – by some Thai employers, and in different ways across sectors. This is not to suggest that such exploitation is not egregious – it is. But it makes little sense to label the brokers, facilitators or transporters involved in those journeys as ‘traffickers’ when they do not appear to be part of an organised system with the intention of exploiting migrant workers, and are not themselves organised criminals. Rather, holding the employers to account for labour exploitation, or crimes related to forced labour, seems a more accurate approach to address the nature of the exploitation. As McAdam and Gerasimov (2022: 2) recently point out: ‘Criminal justice responses [to trafficking], of course, need criminals. They need victims and perpetrators, goodies and baddies. But who are the baddies?’.

There is thus a diversity of exploitation, with vulnerabilities taking a different shape depending on the migrant journey (Jespersen et al., 2022). These vulnerabilities are linked to a wide range of forms of exploitation. This complexity of exploitation facing labour migrants matters because it shapes the responses of governments, civil society and the international community – it is therefore not just a semantic discussion. The ways we understand exploitation fundamentally shape what is considered to be an appropriate response, and what is funded, or not. It is the disproportionate focus of the counter-trafficking response on criminal justice to address diverse forms of exploitation that is problematic.

4 Problematising response efforts to date

Despite the diversity and complexity of exploitation of labour migrants, the counter-trafficking response by governments in the region and by some international agencies has disproportionately relied on a criminal justice response to address it. Thailand's 2022 Trafficking in Persons Report, assessing its performance on TIP, considers the protection of migrant workers from labour exploitation, as regulated through labour legislation; but the primary focus remains oriented towards the anti-trafficking framework. Of the countries that publish annual reports on their TIP performance (Cambodia and Thailand), reporting has a strong focus on measuring progress against criminal justice indicators (ASEAN-ACT, 2023; Domingo and Siripatthanakosol, forthcoming). It is important to acknowledge a broadening of Thailand's protection lens to include labour protection legislation, but the focus on the criminal justice approach remains central. Similarly, in Vietnam, a focus on criminal justice pervades much of the government's response to trafficking because in order to access a range of psycho-social and legal support and compensation, the individual first has to be formally identified as a victim, which in turn typically requires identification of a perpetrator (Jespersion, Ngo and Vu, forthcoming). This means that a criminal justice framing overlays the other non-criminal justice supports available.

In part, the focus on criminal justice derives from the original development of the Trafficking Protocol and its links with organised crime – which suggest a criminal justice response (even if this was not intended to supplant wider response efforts). But the strong focus on a criminal justice response is also driven by the international community. Principal among these is the United States' annual Trafficking in Persons (TIP) report, which assesses the effectiveness of states' responses to TIP in the areas of prevention, protection, prosecution, and partnership as defined by its own domestic legislation (Horning et al., 2013). The TIP reports rank countries on the basis of their efforts and while the methods of arriving at particular ranks is unclear (Gallagher, 2011), there is a strong focus on quantifying the number of 'traffickers' that countries have identified and prosecuted. The US TIP Report ratings are considered reputationally important by some countries in the region and in some

cases have had implications for levels of US assistance. In 2018, for instance, when Laos was downgraded from Tier 2 to Tier 3, the US restricted funding on de-mining and military education and training assistance (Congressional Research Service, 2018). As a result, countries in the region are pushed to act on TIP, but in ways that satisfy the US TIP report's focus on numbers of prosecutions.

In the 2022 TIP Report, Laos and Thailand were ranked as Tier 2 (does not meet minimum standards for the elimination of trafficking, but is making significant efforts to do so), while Cambodia and Vietnam are Tier 3 (does not meet minimum standards and is not making significant efforts to do so). For all four countries, the TIP reports have prioritised recommendations related to increasing prosecutions and convictions (US Department of State, 2022).

This strong criminal justice response is also driven by the programmes of other governments, such as the UK and Australia, as well as international organisations. The UK government focus on 'modern slavery' was also designed to highlight the role of perpetrators, with the 2015 Modern Slavery Act including provisions to target slave drivers and those facilitating exploitation. The Government of Australia has sought to broaden its response to human trafficking, but the focus on people smuggling and counter-trafficking and entrenched ways of working mean that there is similarly a strong priority given to criminal justice.

Much has been written to highlight the problems associated with the strong criminal justice response to trafficking and the neglect of rights-based approaches (see, for instance, GAATW, 2007). From the political economy perspective employed in this study, however, there are three primary concerns with the disproportionate focus on criminal justice of much of the counter-trafficking effort undertaken by regional governments and the international community. These relate to how effective such efforts are likely to be in addressing the exploitation and vulnerabilities labour migrants face given the realities of the political economy in the countries in this study, the limited reach of criminal justice processes, and the wider underlying causes of exploitation that remain unaddressed.

First, while a focus on perpetrators can result in a tangible (criminal justice) response with visible results (prosecutions and convictions), it can create pressure for quantity over quality, where large numbers of low-level facilitators are arrested and prosecuted, rather than investigating more complex cases of trafficking that target organised criminals (McAdam, 2016). This risks an additional injustice in responding to the first – by locking up low-level brokers and facilitators for often long prison terms on the basis of little evidence due to 'tough on crime' approaches.³ Rights and due process are not priorities in such results-based approaches that focus on

³ The prescribed penalties are prison sentences ranging from four to 20 years in the countries under study.

prosecutions and convictions and there are few restorative justice options in the region.

This is a particular challenge in countries such as Cambodia and Laos, where the justice systems face significant capacity, coordination and incentive challenges that make it difficult to conduct complex investigations (see Alffram and Sok, forthcoming; Denney and Xayamoungkhoun, forthcoming). Vietnam is more complicated, as there are risks of victims being prosecuted, and criminal justice officials are not rewarded for successful prosecutions of human trafficking to the same extent as they are for drug charges (McAdam, 2022: 100-5; Jespersen, Ngo and Vu, forthcoming). Where employers are responsible for exploitation, the difficulty of pursuing international prosecutions means that these have largely been avoided. This failure is exacerbated by migrant-sending countries' reluctance to jeopardise bilateral relations with destination countries. The same problem exists in respect of the pursuit of transnational organised crime groups. In some cases, cross-border prosecutions have only happened where there is NGO support for particular cases to push and enable the criminal justice system to operate as it should (Alffram and Sok, forthcoming). In Thailand, the prioritisation of business interests and economic growth has led to a reluctance to prosecute and convict private-sector actors for their role in facilitating labour exploitation (Domingo and Siripatthanakosol, forthcoming). So, the political economy of the justice sector and wider political settlement in the countries included in this study mean that response efforts that prioritise criminal justice are unlikely to have the outcomes that the donors and implementing agencies intend. While continued efforts to improve the quality of the criminal justice sector in those countries are important, this is a complex and long-term endeavour.

Second, criminal justice response efforts are not sufficient to address the scale of the problem of exploitation of labour migrants, nor are migrants' vulnerabilities, needs and options regarded as the core priority. In Thailand, for example, 455 individuals were formally identified as victims of trafficking in 2017, despite the population of labour migrants from Cambodia, Laos, Myanmar and Vietnam estimated to be 3.9 million in 2018 (Harkins et al., 2019). In 2021, in Cambodia, Laos and Vietnam combined there was a total of 106 prosecutions of traffickers that made it to court, resulting in 142 individual convictions (Vietnam, notably, convicted every individual prosecuted for trafficking) (US Department of State, 2022). In this context, a response that is predominantly focused on criminal justice reaches only the tip of the iceberg. It is not a scalable solution, and fails to address the needs of the vast majority of those experiencing labour and other forms of exploitation.

Third, focusing overwhelmingly on the criminal justice element of response risks treating the problem as one driven by the criminal behaviours of individual perpetrators, rather than one perpetuated by

systemic drivers and incentives. That is, it ends up trying to address exploitation by targeting a small number of exploiters, rather than addressing the ways in which the potential for exploitation is encoded within the structures, institutions and incentives of the way the world works (or has been made to work) (Howard, 2021). Far less apparent in international responses, for instance, has been a focus on how the capitalist economic system drives ever-greater cost savings in supply chains, which in turn create incentives for cheaper labour, exposing those at the end of supply chains to poor working conditions and insufficient (or withheld) pay (LeBaron et al., 2018). As Re:Structure Lab's Blueprint puts it (2021: 6):

When an entire infrastructure of sourcing and site selection consulting exists to help multinational companies find and inhabit zones of impunity, the surprise shouldn't be that there is forced labour in the supply chain, but that anyone is surprised that there is.

The International Labour Organization (ILO) has been notably involved in trying to keep such aspects of the challenge on the agenda. Issues of labour exploitation are less politically high profile as the security of sovereign borders either in donor countries or in Southeast Asian countries, but they are an overlooked component of the political economy that shapes exploitation and trafficking of labour migrants.

The current international response that focuses heavily on perpetrators through a criminal justice lens is thus neither capable of targeting those most responsible for crimes, given the political economy of the countries in question, nor able to address the underlying systemic drivers of what sustains the exploitation of labour migrants. It is unable to reach the vast majority of those who experience varying forms of exploitation. An alternative approach is therefore needed.

5 An alternative approach

None of this is to suggest that criminal justice – and justice support more broadly – does not have a critical role to play as part of wider responses. Beyond the criminal justice response, however, is a range of wider approaches to addressing exploitation that might be more politically astute and practical in the countries in question, get to the heart of some of the systemic drivers of exploitation, and reach a greater number of those affected. While there are organisations already involved in supporting these wider approaches, there is a need for regional governments and international partners to shift their emphasis if they are to make a dent in the scale and politically and systemically entrenched nature of exploitation of labour migrants. Recommendations are clustered under three broad proposed shifts.

1 Adopt a more migrant-centred lens

Much of the current response to labour exploitation and trafficking is focused on perpetrators, which while well-intentioned risks side-lining the voices and agency of labour migrants themselves. Making responses more labour migrant-centred is a good starting point for thinking differently about responses by recognising migrants not just as victims but as human beings with rights, agency and interests. From our research, recommendations include:

- **Listen to the voices of labour migrants:** Labour migrants themselves are best placed to tell governments and international organisations and donors what would meaningfully improve their lives and make them safer. This includes understanding both the diverse and multi-dimensional vulnerabilities they face (as this study has tried to do) and how these can be addressed, as well as understanding labour migrants' existing capacities and how these can best be supported.
- **Consider the risks of a criminal justice approach:** Criminal justice responses to exploitation and trafficking that continue to target low-level facilitators, brokers and transporters, run the risk of criminalising cross-border labour migration more broadly. This may limit options for labour migrants, rather than protect them. A migrant-centred lens can thus help to discern when criminal justice approaches are or are not likely to benefit labour migrants.
- **Target criminal justice responses to those who are most culpable – employers and organised crime:** Criminal justice responses should focus not on low-level actors in an effort to boost prosecution numbers to demonstrate action, but on the

perpetrators of the greatest harm. Most often, this will involve employers in destination countries and organised crime groups. The latter are increasingly operating in the region's ballooning SEZs with their weaker regulatory environments and lower oversight. Focusing the criminal justice response in this way will require greater support for cross-border prosecutions and building relationships between justice agencies across countries.

- **Cooperate with international actors, including China, to tackle organised crime:** Efforts to target organised crime require international actors to make a more coordinated response by in the places where it flourishes, including SEZs. Given the role of Chinese organised crime groups in some human trafficking in the region – as well as the experience of the Chinese justice system in dealing with organised crime – this may involve cooperation with criminal justice agencies in China and other affected countries to share information, learn from their experience, and coordinate response efforts.
- **Use civil law suits to hold employers and recruitment agencies to account:** Addressing actions such as labour exploitation, debt bondage and other forms through civil-litigation strategies seeking compensation can be important avenues for accountability and justice and may be more possible or appropriate than trafficking convictions. Labour law can also provide more options for the protection of labour rights, beyond anti-trafficking criminal justice (as is taking place in Thailand, for instance).
- **Support legislation and its implementation banning recruitment agencies from charging workers:** The 1997 ILO Private Employment Agencies Convention (No. 181) states that employment agencies will not charge fees or costs to workers, given the inequitable power relations and debt bondage that can result. None of the countries under study is a party to the Convention and even where national legislation to a similar effect is in place (as in Thailand) it is not adhered to in practice. This would address a key vulnerability for labour migrants.
- **Lobby recruitment agencies to improve accountability to labour migrants:** Recruitment agencies could be encouraged to voluntarily opt into the ILO Convention (No. 181), with the incentive of attracting more prospective workers if the costs of migration are not passed on to them. In addition, ensuring that recruitment agencies' complaint mechanisms are robust and functional could protect migrants from whose labour they profit from and prevent or address exploitation. Improving the protections available within recruitment processes might also involve working *with* brokers, given entrenched reliance on them, rather than criminalising them in a blanket manner. Building their accountability to the workers whose travel and employment they facilitate, and providing them with information and training, could

enable them to better support migrant labourers and avoid more exploitative employers.

- **Advance social protections in destination countries:** Advancing labour migrants' knowledge of and access to social protections and health and labour rights would encourage greater uptake of such protections but also possibly prevent exploitation or provide redress pathways for it.

2 Tailor responses to the local political economy

The political economy approach adopted in this study emphasises the particularity of context and how different constellations of structures, institutions and stakeholder power and interests shape what is politically possible in a given country. This reveals similar but importantly distinct opportunities and constraints in each country examined. There are unlikely to be universal or even regional solutions to providing better protections for labour migrants. Of course, regional initiatives have an important role to play in setting standards and promoting regional consensus, but how such regional-level commitments are implemented and what is feasible will differ from one country to another. Without taking political economies into account, programmes risk being wildly unrealistic about what change is possible, and through what avenues.

- **Consider the human rights implications of criminal justice efforts:** A weak and/or politicised justice sector in the countries under study, with varying levels of due process and evidentiary standards, mean that the prosecution of trafficking cases run the risk of committing human rights violations. High rates of convictions in trafficking cases, combined with long prison terms, can result in the incarceration of low-level offenders. The political economy of the justice sectors means that unintended but serious rights violations can result from supporting prosecutions that are not focused on those most culpable of exploitation.
- **Be realistic about what is possible through criminal justice systems:** Complex cross-border prosecutions may be less politically feasible in countries with weaker justice systems. Such political economy considerations are critical to designing programmes that are relevant and connect with realities in the countries in which donors are working.
- **Support civic space in differentiated ways:** Civic space is constrained across the region, but this plays out in different ways in each of the four countries studied and may offer different opportunities for action. There is more likely to be space for civil society to advocate for change in Thailand and Cambodia than there is in Laos and Vietnam, for instance, where civil society may need to play a less provocative role. Finding ways to support civic space and freedom of speech in migrant-sending countries can be an important step to facilitating greater research, knowledge

sharing and critique, as well as enabling oversight of government and other authorities. For migration, this can provide a more information-rich environment and help to build awareness on the part of prospective migrants, as well as to hold authorities to account.

In destination countries, civic space is critical to enabling stronger protections for labour migrants – whether through labour unions or associations, migrant networks or civil society organisations (CSOs). Support to labour migrants’ networks, legal advice and support, as well as organisations offering labour protection can support labour migrants’ capacity for voice and agency, as well as help labour migrants avoid exploitation, or seek protection and redress. But in any support to civil society, it is important to adopt a political economy lens in thinking about what roles are politically possible in a given context.

- **Engage the private sector in Thailand on regulatory standards:** In some destination countries, such as Thailand, there has been growing momentum on business and human rights, with a growing focus on due diligence and industry standards. Harnessing these opportunities to afford greater labour protections through regulatory standards can itself help to prevent exploitation and create a culture of rights compliance.
- **Put regulation of Special Economic Zones on the regional agenda:** Across Southeast Asia, SEZs are an increasingly common strategy to drive economic growth, but can also be havens for less scrupulous companies and organised crime due to tax breaks and lower regulatory barriers. SEZs are an important feature of the regional political economy that need to be worked with to ensure compliance with labour standards and protections. Putting these issues on the agenda at regional forums, such as ASEAN and COMMIT, can provide a platform for discussing these issues and sharing practices across the region.

3 Recognise and address systemic drivers

Existing global economic supply chains are deeply flawed and sustain the systemic exploitation of those at the bottom of the chain. This exploitation will continue regardless of any criminal justice responses in the absence of changes in the system itself. This is a formidable challenge but has growing support as environmental and human rights concerns are increasingly understood and the fragility of supply chains revealed – for instance during COVID-19. Efforts in this vein include the following:

- **Consider using strategic litigation:** Within a justice response, strategic litigation could be used, alongside advocacy campaigns, to hold abusive employers criminally accountable and making visible and politically uncomfortable the experiences of exploitation. It is important to be realistic, however, about the

extent to which precedent is likely to influence civil justice systems; as well as the degree to which ‘making an example’ of a small number of companies is likely to trigger more systemic change.

- **Lobby and advocate for stronger labour standards with governments and in regional forums:** This might include supporting labour laws and policies, as well as oversight mechanisms, such as labour inspectorates. It might also involve working with trade unions and CSOs, as well as private-sector bodies focused on strengthening industry standards (although it is important to ensure such industry efforts are meaningful and not tokenistic). It should also extend to trade and economic agreements that can include labour rights standards and enforcement for inclusive growth.
- **Work with positive outliers:** Political economy approaches underline the importance of identifying and understanding ‘positive outliers’ – good examples that emerge despite the wider political economy. In this case, that may be employers willing to improve their workplace standards. Such employers could be supported to put in place accountability mechanisms to build cultures of responsiveness to labour needs.
- **Work on legislative and policy changes in donor countries:** Given global supply chains, companies and consumers in donor countries are not outside of the political economy and structural drivers of labour exploitation. One of the most meaningful actions that donor programmes might take in this regard is to work within their domestic political economy to strengthen legislative, regulatory, and policy requirements for companies and partners within their supply chains to meet high labour standards and provide accountability. Given the constrained political context for improving labour standards in the countries in which ASEAN-ACT works, this may be a lever that donor-funded programmes could do more about.

Reorienting responses to exploitation of labour migrants in such ways would help to better account for the diversity of exploitation that they face and reduce their vulnerabilities to exploitation in its many forms.

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