

Country study

Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Thailand

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July 2023



Labour migration and trafficking in persons: a political
economy analysis

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Pilar Domingo and Kuanruthai Siripatthanakosol, (2023) Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Thailand. ODI Country study. London: ODI (<https://odi.org/en/about/our-work/political-economy-of-labour-exploitation-and-trafficking-in-persons-in-southeast-asia/>).

This document is an ODI publication, in partnership with ASEAN-ACT. ASEAN-ACT is supported by the Australian Government and implemented DT Global. The Australian Government has funded this publication through the Department of Foreign Affairs and Trade. The views expressed in this publication are the authors' alone and are not necessarily the views of the Australian Government.

Acknowledgements

The authors thank Paul Buckley, Naruephon Boonyaban and Lucia Pietropaoli for their support and valuable insights, as well as the wider ASEAN-ACT team. We also thank Professor Thitinan Pongsudhirak for his very valuable comments and feedback, and Kathryn Nwajiaku-Dahou for quality assurance. We would also like to recognise the support of Maegan Rodricks, Sherry Dixon and Rawena Russell in the publication process, Deborah Eade for copy-editing and Elaine Antwi for managing the project.

The paper was generously funded by the Australian Government through the ASEAN-Australia Counter Trafficking (ASEAN-ACT) program.

About this publication

This publication was produced as an output of 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, for the purposes of: 1) improving the evidence base for ASEAN-ACT and partners' programming and policy engagement; and 2) developing and implementing a process for feeding that evidence into ASEAN-ACT and partners' programming and consultations on a regular basis.

The purpose of this research is to advance understandings 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 Country Study is one of four countries assessed in Phase 1. In addition, thematic briefs distil findings from across the four country studies on key cross-cutting issues.

Research team

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Abbreviations and Acronyms

ASEAN	Association of Southeast Asian Nations
CBO	Community-based organisation
CSO	Civil society organisation
DSI	Department of Special Investigation
FDG	Focus group discussion
KII	Key informant interview
ILO	International Labour Organization
IMO	International Organization for Migration
MDT	Multi-Disciplinary Team
MOE	Ministry of Employment
MOJ	Ministry of Justice
MOL	Ministry of Labour
MRC	Migrant Resource Centre
MWAC	Migrant Workers Assistance Centre
NGO	Non-government organisation
OHS	Occupational Health and Safety
PEA	Political economy analysis
PRA	Private recruitment agency
RTG	Royal Thai Government
RTP	Royal Thai Police
SDG	Sustainable Development Goal
TIP	Trafficking in Persons
UHC	Universal Health Coverage

Executive summary

Labour migration is a prominent feature of Southeast Asian development. While this brings many positive outcomes, many labour migrants are exposed to risks of trafficking in persons (TIP) and labour exploitation. The vulnerabilities that migrants face are a complex problem, is shaped by political economy factors associated with structural conditions, institutions, power and interests. Addressing these vulnerabilities therefore requires understanding how these factors combine in context specific ways to sustain practices of exploitation and trafficking.

Labour migration into Thailand is an important feature of the country's development model. In the context of an ageing population, combined with a history of rapid economic growth and a demand for low-skilled workers across key sectors, the flow of labour migrants into the country has hugely expanded over the last 20 years, particularly from Cambodia, Lao People's Democratic Republic (PDR) and Myanmar.

This paper on Thailand is part of a series of ASEAN country studies seeking to understand what shapes labour migrants' vulnerabilities to exploitation, including TIP. Its main aim is to assess the key political economy factors that sustain practices of trafficking and exploitation, how to counter these in a destination country. This includes understanding the political economy of the structural, institutional and political enablers and constraints that shape prevention and protection capabilities, as well as advancing knowledge about ways to reduce victims' vulnerability to trafficking and labour exploitation, and to improve their voice and agency in navigating the challenges that they encounter.

The study included a literature review, 17 key informant interviews with people from major stakeholder groups and four focus group discussions (FDGs) with labour migrants in Chiang Mai, Srakaew, Samut Sakhon and Mae Sot, Tak provinces.

Findings

Challenges

The exploitation of labour migrants in Thailand is the outcome of a particular trajectory of export-led growth in the context of a history of limited political contestation and civic space. The prevailing political

settlement has favoured an elite bargain that privileges business, the military and state bureaucracy and limits the space for political contestation. While political instability has resulted in changes of government, elite interests have fundamentally remained constant.

Rapid economic growth contributed to the reduction of poverty and improved human development indicators, but Thailand remains a deeply unequal society. The economic model has come to rely on low-skilled, low-paid labour migration. Weak rule of law and rights protection, and a socio-normative context that favours hierarchy and personal networks as the basis of social organisation, results in poor implementation of relatively progressive legal and policy framework on anti-trafficking and labour protection.

The state bodies charged with implementing the policy framework on anti-trafficking, labour law and labour migration continue to experience gaps in capacity. The response efforts that prevail tend to mostly focus on the prosecution of traffickers (for the most part achieving convictions of small-scale brokers rather than high-level convictions), and less on a victim-centred focus that prioritises addressing labour migrants' vulnerability to labour exploitation.

Two key constraints are, first, that too many stakeholders gain from poor implementation of relevant legislation and policy. This is by no means to suggest that there is a fully coordinated effort to subvert the law. But enough powerful incentives and interests at different stages of migrants' journey stand to gain from the status quo. Second, discriminatory attitudes towards migrant workers continue to prevail.

Migrant workers' capacity to counter labour exploitation is undermined by insufficient knowledge of rights and protective measures, linguistic barriers, and distrust of government-provided protective systems. The weight of structural inequalities places them at a huge disadvantage in their interactions with employers and state officials, which in turn contributes to their vulnerability to trafficking and exploitation.

Opportunities for change

There are several opportunities to alter, albeit modestly, some of the power imbalances that are part of the problem.

Thailand's commitment to anti-trafficking efforts and associated processes of legal change are hugely important. There is also now support to work across jurisdictional areas and to invest in a victim-centred approach. This includes working to go beyond the traditional focus on prosecution, and investing more in the protection of victims of trafficking and labour exploitation. To realise this potential, it is important to invest in cross-departmental collaboration, making the most of current policy commitment to a multi-disciplinary approach. It is therefore vital to break down organisational barriers across relevant government agencies.

Some strategic networks and coalitions present clear opportunities for engagement, such as the space to improve the exchange and collaboration across different government, jurisdictional and law-enforcement bodies. There is also a possibility to further develop interactions and coalitions between government agencies, (international) non-government organisations (NGOs) and civil society, and unions. Furthermore, there are more opportunities to take advantage of regional and international exchanges across these categories of stakeholders.

There are opportunities to build up protection for migrant workers through more strategic engagement with existing informal networks and support mechanisms. There is a need to better understand how to harness the information and capabilities that these networks have to strengthen labour migrants' protective capacities and their voice and agency. There is also a need to invest in their capacities to alter the power imbalances that shape the relationship between migrant workers and employers, and with the state. These networks are likely to be organised around nationality and sector of employment, but little is known about how they work in practice.

Finally, it is critical to recognise that migrant workers do have agency. In the face of huge inequalities, labour migrants make choices, and have room for agency. A victim-centred approach needs to involve a better understanding of their capacity for action to seek remedy or contest situations of labour exploitation and rights violation, including through invoking the law and using a rights-based lens. At the same time, focusing more on survivors of rights violations should avoid placing the burden of responsibility on them, precisely because they have little choice given the sub-national, national and global structural drivers of trafficking and labour exploitation.

Recommendations

Recommendations are aimed at both the domestic and international level, and should inform the policy, donor, (I)NGOs and civil society communities of practice, as well as the relevant research community. They are relevant for Thailand and more generally for destination countries.

Invest in knowledge and analysis of how change happens to better address victim's vulnerabilities to trafficking in persons and labour exploitation.

- It is crucial to work with an **understanding of the wider political economy of structural inequalities and global supply chains** that are at the root of the problem of trafficking in persons and labour exploitation.
- It is also important to invest in **understanding the boundaries of what change is possible and realistic**, given political economy

constraints. This means research and analysis that identifies emerging opportunities.

Invest in integrated approaches across different policy domains.

- Invest in the emerging multidisciplinary approach across different policy areas, to enable more strategic collaboration among labour protection, anti-trafficking, migration and social protection agencies whose work is relevant to reducing vulnerabilities to trafficking and labour exploitation. It also includes investing purposefully in protection and prevention capabilities, beyond the current focus on prosecution.
- Work *beyond* the criminal justice system in response to human trafficking, to engage more proactively with labour justice and administrative channels through which to obtain remedy or compensation for labour migrants. The focus should be on what migrant workers consider to be justice and remedy priorities and protection issues, rather than assuming what these are in advance. It also includes being aware of the nature of informal rules and practices that different stakeholders abide by in practice.
- Invest in legal change, continuing to support substantive change in the content of law and implementation processes across the various jurisdictional domains which are relevant to addressing the experiences of victims of labour exploitation.

Support capacity development of the justice sector, law-enforcement, migration and other relevant state agencies tasked with labour rights, protection of labour migrants and addressing vulnerabilities to trafficking and labour exploitation.

- Invest in state agencies' technical and strategic knowledge and capabilities to apply an integrated approach across anti-trafficking measures, labour rights and labour conditions, and migration policies and practices, social protection measures and other relevant issues.
- Facilitate dialogue and strategic engagement between state actors and NGOs and civil society organisations (CSOs) to create ongoing exchange and to build relationships and trust.
- Facilitate dialogue and strategic engagement among state actors, NGOs, CSOs and the private sector.

Invest in NGOs and civil society capabilities in order to enhance protective response capacity and improve legal migrant's voice and agency.

- Work with NGOs and CSOs – including community-based organisations (CBOs) and migrant networks – to build their capacity for improving legal voice and agency of migrant workers.

This includes raising awareness and sharing information regarding the full spectrum of protective measures in law.

- Invest in civil society capacity to work across different jurisdictional domains relating to labour exploitation, including anti-trafficking and labour justice.
- Invest in interpreting and translation services which can improve communication and information sharing for direct engagement with migrant workers at risk of labour exploitation at the different stages of their journey and engagement with employers.
- Work with labour unions (including at a sub-national, national and regional level) to identify opportunities for strategic coalition building with NGOs and CSOs.
- Work with NGOs and CSOs to learn from migrant networks on their experiences of labour exploitation and abuse in order to better tailor protective measures and efforts to support their voice and agency.
- Support civil society engagement with informal networks of labour migrants on a sector and nationality basis.

Work with the private sector to better understand business incentives at sub-national and sector level, in order to identify blockages and entry points for innovative engagement that can contribute to changing practices. Coordinated action and investment along global supply chains to improve regulatory capacity, punitive measures, and shift consumer behaviour continues to be critical to changing incentive structures.

Invest in ASEAN-level exchange of experiences, lessons and innovative practices. This includes supporting exchange that integrates the multi-thematic approach identified in this approach, working with government and state bureaucracies, as well as civil society. It also includes supporting ASEAN-level spaces for safe exchange for civil society actors.

1 Introduction

Labour migration is a prominent feature of Southeast Asian development and related patterns of people's movement. The vulnerability to trafficking in persons (TIP) includes the risk of labour exploitation that many migrants experience. The range of factors and power dynamics that affect human trafficking and associated vulnerabilities to labour exploitation cut across political, economic, social and cultural institutions and structures. These vulnerabilities are ultimately the result of unchecked practices of exploitation and coercion by powerful interests, while those who are vulnerable to TIP and labour exploitation are among the most marginalised and voiceless in society.

The ASEAN Convention against Trafficking in Persons, especially Women and Children (ACTIP), agreed in 2015, represents a milestone in regional efforts to address the problem of TIP. More widely it reflects a growing body of changes in global norms on trafficking, modern slavery and labour exploitation. The wider context of the Sustainable Development Goals (SDGs) provides in principle a global policy yardstick against which to judge progress. Of specific relevance to ending all forms of violence, including against children, forced labour, exploitation and modern slavery, protection of labour rights and justice for all, and safe and orderly migration and related policies (detailed below).¹ The SDGs and the 'leave no one behind' agenda, paying attention to the most marginalised groups, offer a strategic global policy platform to give visibility to those who are particularly vulnerable to trafficking and exploitation.

Interventions to date have had some successes, particularly in developing policy and awareness of the problem, but there are still fundamental challenges in relation to effective governance, justice, protection, and prevention responses. Some of these are well recognised, and well documented, while others remain more ambiguous or only implicitly understood.

In the ASEAN region, migrant workers – the largest category of migrants globally – are among the most vulnerable populations to

¹ SDG 16.2 seeks to end abuse, exploitation, trafficking and all forms of violence against and torture of children; SDG 16.3 aims to ensure equal access to justice for all; 8.7 aims to eradicate forced labour, end modern slavery and human trafficking; 8.8 seeks to protect labour rights, including of migrant workers; and 10.7 calls on countries to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. For the full text (<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>).

human trafficking and labour exploitation. This is especially the case for those whose migration is not through formal channels, making them irregular or undocumented in the countries through and to which they travel, with even fewer protections available to them (Chantavanich et al., 2013). Few people are ever officially identified as victims of trafficking, however, and many of the responses are based on understanding human trafficking as being mainly for the purposes of sexual exploitation (Weitzer, 2014). This situation is also owing to the limited understanding of the nature of trafficking for labour exploitation, the indicators, and the ambiguities regarding hidden forms of coercion.

The region is interconnected by the movement of migrant workers associated with the disparities in economic and industrial development between ASEAN member states, and the relative ease of irregular movement between them. The demographic differences between countries with a labour surplus and the demand for poorly paid work means that labour migration will continue characterise labour markets and societies in the region. To date, however, there is a dearth of practice- and policy-oriented approaches that integrate the complexity of the problems, while offering concrete recommendations on how to mitigate the vulnerability to trafficking for labour migrants, and how victims of trafficking can be afforded greater protection and legal agency.

This case study of Thailand is one in a series that reviews the structural governance and political economy factors that affect labour migrants' vulnerability to human trafficking. This includes understanding the political economy of the structural, institutional and political enablers and constraints that shape prevention and protection capabilities, as well as advancing knowledge on ways to reduce victims' vulnerability to trafficking and labour exploitation, and to improve their voice and agency in navigating the challenges that they encounter.

Labour migration into Thailand from countries in the region has become an important feature of the country's development model. In the context of an ageing population, combined with a history of rapid economic growth and a demand for low-skilled workers across key sectors of the country's export-led model of development, the flow of labour migrants into Thailand has expanded massively over the last 20 years – especially from Cambodia, Lao PDR and Myanmar.

Thailand has a population of 71,689,332 (World Population Review, 2022), of whom 51.34% are female. There were 38.63 million people in the labour force, 46% of whom were women and girls in 2021 (World Development Indicators, 2023). The country has seen a rapid demographic transition as it has become a rapidly ageing population, with the fastest-declining working-age population in Southeast Asia (UNFPA, 2019). The proportion of the population aged 60 years and

older was calculated at approximately 16% in 2017 (Harkins, 2019; UNDESA, 2017), and is forecast to reach 28% by 2031 (Gray, 2019).

From the 1980s Thailand transitioned from being a labour-exporting to a net labour-receiving country in the region (Rigg, 2016). In 2018, the non-Thai population was calculated at 4,898,460, of whom low-skilled labour migrants from Cambodia, Lao PDR, Myanmar and Vietnam were calculated to be 3,897,598 (almost 80%) (Harkins, 2019). Before the COVID-19 pandemic broke out from December 2019, 2,512,328 foreign workers had been granted a permit to live and work in Thailand. Of these, 2,063,561, principally from Cambodia, Lao PDR, Myanmar and Vietnam, were working in Thailand's labour-intensive sectors (DOE, 2019). As the number of undocumented migrants can only be estimated, these numbers may be contested.

The complexity of labour migration to Thailand means that there is no single approach to addressing the vulnerabilities to labour exploitation and to trafficking that migrants may encounter that would apply across sectors, nationalities, and gender-based inequalities. This is a multidimensional problem which requires action and investment in different policy areas and capabilities. It is also important to note that, similar to other forms of human trafficking, most labour migrants are choosing to seek work. In other words, labour migrants do have agency, which obviously does not detract from the severity of the abuses of exploitation, forced labour, as well as trafficking and associated vulnerabilities that labour migrants may experience.

Moreover, labour migration to Thailand, in the forms that it takes, mirrors structural factors and power asymmetries, multiple interests and incentives that benefit from different forms of abuse and practices of exploitation and trafficking. These do not constitute a coherent or coordinated set of practices, but at the different stages of labour migrants' journey different actors, interest structures, norms and practices come into play. These present multiple risks and dangers, and thus also mean that labour migrants have to take many decisions and make choices, where they do have agency and options.

The main aim of this country case study of Thailand is to assess the key political economy factors that affect vulnerability to human trafficking in labour migration in Southeast Asia with a focus on policy, governance, regulatory and justice dimensions of prevention and protection and the nature of (legal) voice and agency of migrant workers and trafficked persons, in order to offer recommendations for policy and programming on TIP and labour exploitation in a destination country.

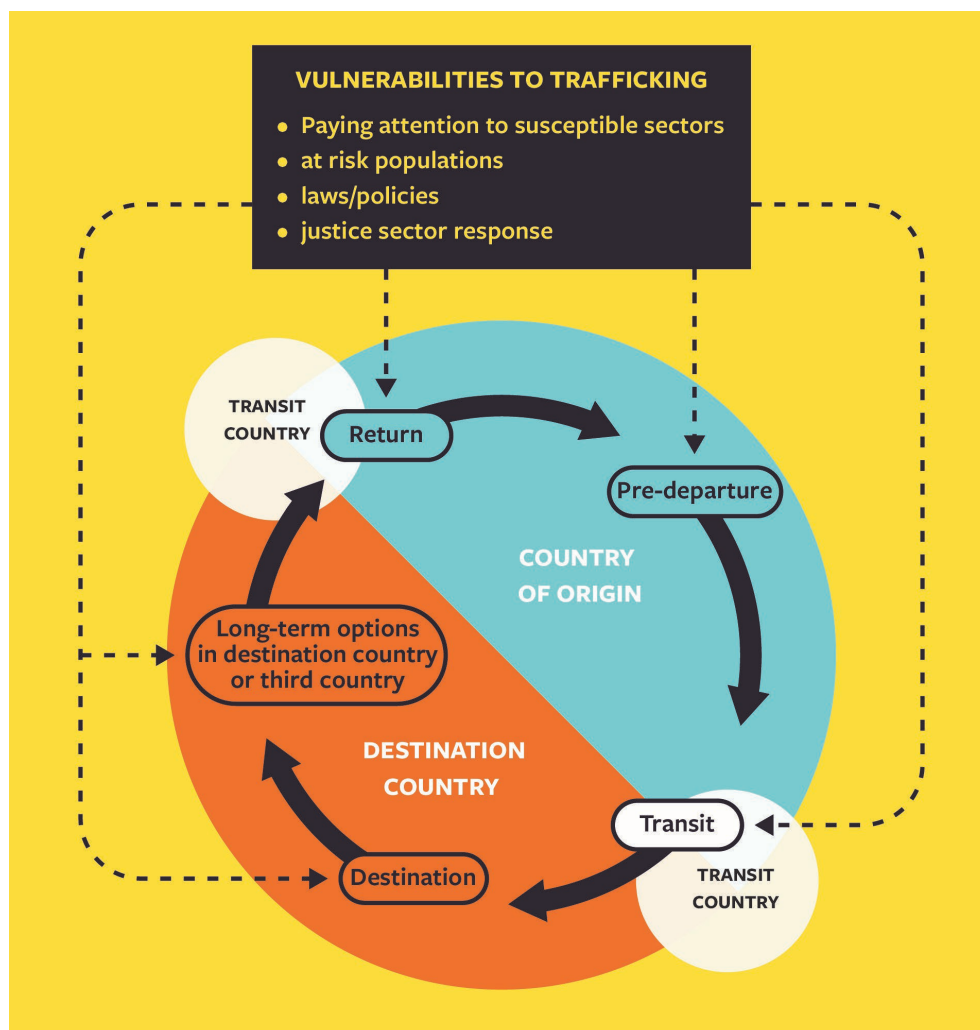
2 Methods

This report on Thailand is one of a series of country studies commissioned by the ASEAN-Australia Counter-Trafficking Program (ASEAN ACT), which was interested in understanding the vulnerabilities of labour migrants, as distinct from sex trafficking which has tended to attract greater interest (Weitzer, 2014: 7). The research began by developing an analytical framework that sought to identify the structural features, formal and informal rules, power relationships and interests that shape vulnerabilities to trafficking at each stage of the labour migration cycle. Using this framework as an organising device, a literature review was conducted and key informant interviews (KIIs) were undertaken in Thailand. In addition, three workshops were held to distil and test findings with ASEAN ACT and the wider research team who were concurrently undertaking identical country studies in Cambodia, Lao PDR, Thailand and Vietnam (studies in other ASEAN countries are taking place in a second phase).

The research used a political economy analysis (PEA) as the analytical framing by which to examine how vulnerabilities to trafficking are shaped at each stage of the migration cycle. A PEA highlights the role and interlinkages across formal institutions, law, informal rules and practices as well as wider social norms related to labour migration and trafficking in persons (TIP) in the region. It also engages with the incentives, interests and distribution of power among different actors, how these shape behaviour and strategic choices. Importantly, PEA engages with how these dynamics shift as relationships, rules and practices (formal and informal) evolve. It also identifies opportunities to advance change that better supports prevention and protection capabilities in addressing vulnerabilities to trafficking.

Vulnerabilities to trafficking were identified and mapped at each stage of the labour migration cycle: pre-departure; transit; arrival in the destination country; long-term options in the destination or third country; and return (possibly involving transit) (Bisong and Knoll, 2020). The context-specific factors that enable or sustain the vulnerabilities identified at each stage were then analysed, and potential opportunities for change were noted (see Figure 1).

Figure 1 Mapping the vulnerabilities to trafficking along the labour migration cycle



Source: ODI, 2023

2.1 Desk review

A brief review of academic and grey literature was carried out. This helped in adjusting the analytical framework, based on the key political economy elements that were identified as being relevant to understanding the problem of trafficking and the vulnerabilities of labour migrants in the region arriving in Thailand. The review also contributed to identifying the relevant stakeholders, with a view to planning key informant interviews (KIIs). The review otherwise focused on identifying and understanding vulnerabilities as well as protective measures in relation to the migration cycle, especially in relation to labour migration to Thailand.

2.2 In-country fieldwork

Fieldwork was undertaken in Thailand between December 2021 and April 2022, with some extra interviews conducted subsequently.

The research team conducted interviews and focus group discussions (FGDs) with different stakeholders to help understand the vulnerabilities of labour migrants, and the different response options involving labour policy, migration policy and measures, and anti-trafficking efforts. Interviews were held with government and state agencies (n =10, one woman and nine men) from the Ministry of Labour (MOL), the Ministry of Social Development and Human Security (MSDHS); from the Department of Special Investigation (DSI), Ministry of Justice (MOJ), Royal Thai Police (RTP), Immigration Bureau, the Office of the Attorney General (OAG), and the Court of Justice. Interviews were conducted with three international organisations (the International Labour Organization (ILO), the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP)); and two civil society organisations (CSOs) providing support to international organisations (Human Rights and Development Foundation, and SR Law) as well as two international non-government organisations (INGOs) (Freedom Fund and International Justice Mission). Four FGDs were conducted with migrant workers living and working in Chiang Mai, Srakaew, Samut Sakhon and Mae Sot, Tak provinces (n = 30, 18 women and 12 men).

The research was guided by the Australian Council for International Development (ACFID) Principles and Guidelines for Ethical Research and Evaluation, and by ODI's Research Ethics Policy. As the research focused on persons of concern from vulnerable populations, notably TIP victims, it was imperative to follow ethical procedures. These included sensitivity in research design, including the location of interviews and FGDs, as well as how participation was structured. Informed consent was based on the local context, varying between written and verbal consent. Attention was also paid to data protection and ensuring participants' anonymity. Where direct quotes have been used, identifying features have been removed, and pseudonyms are used. The methodology and ethics assessments for fieldwork were approved by the ODI Ethics Review Committee.

During the research process, periodic workshops were held with all country research teams, focused on Cambodia, Laos, Thailand and Vietnam, as well as the wider ASEAN-ACT team, to share the approach taken and challenges that arose during the fieldwork. This was useful to identify strategies to fill evidence gaps. In addition, a sensemaking workshop was held towards the end of the research process to enable connections and interrelationships between the country studies to be further analysed and integrated into the written reports, and to identify cross-cutting themes that are explored in the thematic briefs alongside the country case studies.

2.3 Limitations

We should highlight the limitations of this study at the outset.

First, with regard to interviews, the political sensitivities of the topic mean that some issues are difficult to discuss openly with some of the respondent groups that were interviewed. At the same time, it is noteworthy that in contrast to some of the other studies for this project, there was access to government and public officials. Second, given the 'invisible' nature of the issues relating to vulnerabilities to exploitation and poor labour conditions, and to deportation, detention and trafficking, it is difficult to obtain interviews with hard-to-reach labour migrants. Third, given the relatively small number of interviews, the report does not aim to make representative claims about the experiences of labour migrants in Thailand.

It was decided not to focus on a specific sector, as vulnerability to trafficking and labour exploitation do not affect all sectors in the same ways, so that reflecting on more than one sector provides a more comprehensive picture of a broader range of vulnerabilities experienced in Thailand.

Interviews with labour migrants took place in labour-intensive sectors, such as sugar plantations in Srakaew, longan and orchid plantations in Chiang Mai and Lamphoon, small farms (maize and vegetables) in Mae Sot, manufacturing (clothing and seafood processing) in Mae Sot and Samut Sakhon and construction in Chiang Mai. It was not possible to follow migrants' full journey and protection experience in these sectors, or track where these sectors are situated in global supply chains. Moreover, the nature of agricultural work varies according to the specific crops, the size of properties and production scale and in terms of sub-national variations.

Despite these limitations, the interviews offered interesting insights into labour migrants' experiences and vulnerabilities. There is also now a growing body of academic and grey literature on labour migration and trafficking in Thailand, although in relation to sector-specific conditions this remains weighted towards the fisheries sector, which has been the focus of investigation in the last 10 to 15 years. However, this is rapidly changing. The report thus draws on both on the existing literature and on the interviews.

3 Political Economy Context

Thailand is one of the five ASEAN founding member states. It covers a territory of 513,120 km² and is located in the heart of the Greater Mekong Sub Region (GMS). Its eastern borders are with Lao PDR and Cambodia, it borders Myanmar to the north and west, and Malaysia to the south. Migrants from Lao PDR and Cambodia make up an important proportion of labour migrants to the country, and relatively few come from Vietnam.

This study focuses on Thailand as a destination country for labour migrants in the region.² It continues to be a country of origin and transit, but became a net destination for labour migrants in the 1990s, in the context of rapid export-led growth (Harkins et al., 2019; Boll, 2017 and others). The distinctive features of Thailand's political, economic and social history explain the current patterns of labour migration to the country, the vulnerabilities to which labour migrants are exposed associated with TIP and labour exploitation. How these are experienced varies across sectors, nationalities, gender and over time. The regional context, the nature of Thailand's economic insertion in the global economy and its place in global supply chains are also important for understanding the experience of labour migrants in the country.

This study reviews different stages of the journey into work as labour migrants enter Thailand from when they cross the border, taking account of the multiple rules systems – formal and informal – they navigate and negotiate. These are related to the recruitment process, crossing the border and different types of migration status, the risks of being trafficked, and the experience of labour exploitation once in employment in different sectors.

The complexity of the problem of trafficking has been extensively documented, although the evidence on how to effectively address issues of protection and prevention of labour migrants remains underdeveloped (Kiss et al., 2020 among others). Much of the policy focus on labour migrants' vulnerabilities is on prosecution and on a criminal justice response in Thailand (RTG, 2020; interviews). There is a need for more empirical knowledge on the interconnections across the issues noted in the previous paragraph. This includes

² Human trafficking and labour exploitation in Thailand have been better documented and analysed than in other countries in the region.

testing assumptions about potential causal factors that exacerbate labour migrants' vulnerabilities. It also includes acknowledging the structural complexities of choice and agency that inform labour migrants' decisions to migrate (and where to), and the scope for any action they may have in navigating and negotiating conditions of exploitation and forced labour. The research challenge is complicated by the fact that victims of trafficking and labour exploitation are a hard-to-reach population, that the practices affecting the experience of movement and entry into work are not visible, and that the range of key actors and how they are interconnected is broad and involves cross-border and transnational relationships and interactions.

3.1 Political structure and history

Thailand's political system is a constitutional monarchy. For 90 years, its political history has been characterised by political instability, frequent coups (19 since 1932), government change and constitutional reform (20 constitutional texts in this period). With exceptions – notably, for instance, the constitutional reform of 1997 – constitutions and the elite bargains that have underpinned successive governments have very seldom been oriented to prioritising democratic governance based on rule of law, rights, effective checks and balances and political accountability. At the same time, law and order has consistently been a priority as – despite different configurations of political alliances in government – there has been an attachment to a model of economic development based on export-led growth.

Thailand's system of absolute monarchy came to an end in 1932 through a bloodless military coup, followed by a complex transition to a form of constitutional rule. Since 1946 the monarchy has been the most stable institution, playing a key role in conferring legitimacy and continuity to the Thai polity. In the context of unstable politics through successive alternating elite coalitions that have governed either through civilian or military rule since 1946, the constitutional monarchy has provided relative stability and legitimacy to the state (despite ongoing *political* instability) through its symbolic embodiment of the values of Thai 'nationhood', the virtues of community, righteous justice, and protective law and order (McCargo, 2020; Wise, 2019; Dressel, 2018; ICG, 2014; Baker and Phongpaichit, 2006).

The political landscape since 1932 has featured an unstable political settlement between the military, elements of the state bureaucracy and evolving economic elite interests. The 1932 coup did not fundamentally reflect popular sentiment against royalism. Nor did it indicate a widespread aspiration to ideas of liberalism, democracy, individual rights, rule of law, let alone a socialist revolution (Wise, 2019; ICG, 2014; Baker and Phongpaichit, 2006). Rather, it reflected a realignment of elite interests, bringing together a new configuration of allegiances among the military, the state bureaucracy, and new emerging business interests at the service of an emerging model of

export-led growth (as discussed below), and which in turn benefited from the particular form that this model took. The ideational backdrop at this time included the development of new ideas about nationhood, state and society around a Thai identity, in a global context of revolutionary changes in the first 30 years of the twentieth century, the emergence of nationalist ideologies in Europe, and rapid global economic transformation (Baker and Phongpaichit, 2006). Over the next 90 years, the development of a Thai conception of nationhood drew on traditions of community over individual interests, and a paternalist hierarchy, where loyalty is conferred to a higher authority in exchange for protection and order as the key premise for stable governance. Thus, personal ties and networks are at the core of patron–client relations, which remain important. This narrative of Thai nationhood has served as the basis for the legitimacy of the Thai state, and thus politically useful for governing elites, including in the absence of inclusive politics (Chambers, 2021).

For almost a century, the military, the state bureaucracy elites, and the private sector have been key interest groups (albeit not internally cohesive groups) at the core of the political settlement. Strategic alliances among these have been unstable, reflecting changing power dynamics between and within these groups, including shifting personal rivalries and allegiances, generational cleavages, and rural and urban tensions in a fast-growing economy. The political alliances formed across these groups over the decades have also shown a capacity to adapt to, and reinforce, a model of economic development oriented to supporting private-sector investment centred on export-led growth, and largely deferential to business interests since the mid-twentieth century (Wise, 2019; Sen and Tyce, 2017).

The military has been a powerful political actor since the 1932 coup. Alliances with business interests, especially since 1957, as well as the state bureaucracy have been important in securing the political resilience of the military. It has also been able to ensure that narratives of security, law and order remained priorities through sustained international support since World War II, mostly from the US in the context of the Cold War and the particular form it took in the region (Farrelly, 2013). Subsequently, Thai–US security interests have remained important in what remains one of Thailand’s most important bilateral relations.

The state bureaucracy represents a distinctive set of interests related to the development of a state characterised by a relative degree of autonomy and technocratic capacity dating back to reforms in the nineteenth century (Wise, 2019; Baker and Phongpaichit, 2006). In the second half of the twentieth century and into the 2000s, state capacity has been important in securing human development gains in education, infrastructure and more recently universal health coverage (UHC). The state bureaucracy and its different manifestations at the national and sub-national levels is also embedded in the network of interest structures and clientelist politics that have both supported

and benefited from the development of export-led growth across different sectors. At the same time the balance of power *within* the state bureaucracy has evolved to reflect different generational interests and shifting allegiances at the provincial and central government levels, in keeping with the logic of patronage and personalist politics in Thailand (Chambers, 2020; Wise, 2019; Sen and Tyce 2017; Baker and Phongpaichit, 2006). Thailand's trajectory of state development thus combines effective administrative capacity and provision of services (which have fluctuated over time), with bureaucracy interests enmeshed in evolving clientelist networks of private-sector and military interests (Chambers, 2020; Sen and Tyce, 2017).

Finally, business interests have thrived in a context in which, from the 1940s, Thailand adopted what has remained a consistently pro-business policy culture and practices that have succeeded in attracting investment and supporting rapid export-led growth (Wise, 2019; Rigg, 2016). In turn, business elites, through money politics, have secured the support and protection of successive governing coalitions, whether civilian or military.

The constitutional and other institutional reforms of the 1990s – notably through the 1997 constitutional text – and into 2000s, brought in new forms of checks and balances, and a proliferation of oversight bodies in different areas of governance. Party politics gained ground but remained personalist, even though this period brought with it a wave of policy activism (Pongsudhirak, 2008). Political power based on network politics has mostly remained above the rule of law. Neither electoral politics, nor legislative or judicial power have been effective in mediating political contest, and although the new constitutional court gained political visibility through enhanced powers for a while in the 2000s, this did not indicate an advance in the rule of law (Dressel, 2018). Political instability resurfaced, culminating in a military coup in 2006, although civilian rule was restored in 2007. Military rule then returned in 2014. Since 2019, there has been a return to electoral government. Political freedoms remain limited, however, and civic space continues to be constrained (Freedom House, 2022). At the same time, expectations about democracy, electoral contest and rights have changed over time, and across generations, expressed through moments of political protest, especially since the 1990s.

To summarise, Thailand's political history has been characterised by systemic uncertainty since 1932, reflected in the remarkable number of coups and changes in government. Second, securing stability for the protection of elite interests has prevailed over principles of constitutionally limited government. The priority has been to ensure law and order at the service of elite interests, even as successive elite coalitions in government have been unstable. Rule of law, understood as effective constraints on government and rights-based rule, has been neither a priority nor has it featured as a prominent

narrative of political legitimacy (Wise, 2019). Third, a strong culture of legalism, by contrast, is an important feature of Thai politics and political authority. Thailand's 20 constitutions since 1932, with the most recent text since 2017, all include a constitutional monarchy. Apart from this, diverse arrangements of separation of powers, government branches and mechanisms of checks and balances (for instance anti-corruption legislation, policy and implementation bodies) have been gradually established, sometimes more oriented towards liberal democracy and rule of law, and sometimes (and mostly) more explicitly protective of elite interests, in which representative politics and rights protection have been secondary. At each turn of political change, alternating ruling coalitions have reflected the shifting balance of power between elite actors. But importantly, legalism and the principle of rule *by* law have remained central to narratives of political authority and governance.

Fourth, this attachment to legalism, the law as a source of authority, and the ensuing proliferation of legal and constitutional reforms, and a state bureaucracy with technical capacity, have co-existed with a sophisticated system of *informal rules* and a logic of network politics and clientelism. This established system of *informal rules* dictates the practice and art of political negotiation and patronage politics defining the division of spoils among different elite groups, and more broadly the logic by which political loyalties are secured (Chambers, 2020; Wise, 2019; Sen and Tyce 2017; Farrelly, 2013).

3.2 Key features of economic and social development

In contrast to Thailand's political instability, since the 1960s the country has experienced very fast economic growth and a reduction of poverty, albeit not at the same rate in all sectors. This has been premised on export-led growth reliant on foreign and domestic investment, and a privileging of private-sector interests. In 2011 Thailand became an upper-middle income country (UMIC) according to the World Bank income-based categories (World Bank, 2021a; World Bank, 2020).

Between 1960 and 1996 the economy grew at an average of 7.5%, enabled by the liberalisation of trade and finance drawing in foreign investment, which helped to accelerate industrialisation and urbanisation. Between 1999 and 2006, the average growth rate fell to 5% in the wake of the Asian financial crisis (Sen and Tyce, 2017), and down to 1.5% in 2021.³ Economic and social transformation has involved the shift from being a primarily rural society to one where just over half the population is now urban; and growth was achieved by moving from an agriculture-centred industrial base towards a more urban-based manufacturing and service-based economy (UNODC, 2017). These transformations have not altered the fact that these remain labour-intensive, low-skilled industries, which are poorly paid.

³ World Bank data, accessed 5 May 2023.

These jobs have increasingly been filled by labour migrants from the region (UNODC, 2017).

Significantly, Thailand, unlike neighbouring countries, never deviated from its capitalist trajectory. At the same time, the model of export-led growth has been punctuated by economic crises over the decades, contributing to political instability. At the same time, there has been significant progress in terms of human, social, and economic development. As noted earlier, Thailand achieved remarkable progress in reducing poverty from 65.2% of the population in 1988 to 7.21% in 2015 (World Bank, 2019). Thus, a significant proportion of the Thai population has experienced rapid upward social mobility in the last 30 years, and significant improvement in their quality of life.

While rapid growth helped poverty reduction, inequality remains a problem, and poverty has risen in more recent years (World Bank, 2020). Poverty remains high in rural areas and among labour migrants. Although most migrants are poor, they are not captured in the data on poverty and inequality, and irregular migrants obviously do not feature in the statistics (Rigg, 2016).

More recently, as stated above, the Thai economy has entered a period of decline, and the impact of COVID-19 pandemic has added to existing longer-term socio-economic and employment challenges. Many workers, particularly those in service and contact-intensive sectors, have become vulnerable to job losses, reduced working hours, and wage inequality. The pandemic has exacerbated Thailand's already declining trend in terms of poverty and inequality more broadly.

Finally, as noted above, a feature of Thailand's development history is a degree of state capacity to provide basic services, contributing to achievements in human development indicators (Wise, 2021). Educational attainment has been important in contributing to social mobility (UNODC, 2017), despite continuing disparities in its provision and quality, including in terms of equipping the future labour force with the necessary skills to manage the digitalisation of the global economy and other technological advances (OECD, 2021). Notably, UHC has been in place since 2001, including the rural population, representing an important achievement in welfare provision for Thai citizens.

This capacity of the Thai state to provide services has been important in poverty reduction. This, combined with higher income levels and quality of life supported by Thailand's fast growth trajectory, meant that Thais were less willing to take on the low-paid jobs and poor working conditions in fisheries, manufacturing, domestic work and agriculture. Since there is still a high demand for labour in these sectors, migrants have increasingly filled these 'dirty, dangerous and difficult' jobs, which are low-skilled, badly paid and offer poor working conditions (Harkins, 2019; Rigg, 2016).

3.3 Formal rules

In keeping with the legalist approach to addressing governance and policy problems, Thailand has a comprehensive body of law and measures on anti-trafficking. It has adopted a multi-disciplinary approach to addressing TIP (US Department of State, 2021; and interviews). This is in principle an integrated approach to working across different legal and policy frameworks and jurisdictions, involving coordination across different ministries, government agencies, judicial and law-enforcement actors to address TIP. The multidisciplinary approach suggests a formal recognition that trafficking and labour exploitation issues are multidimensional. The relevant legal and policy measures currently in place also span a broad spectrum of measures that have gradually included more protective measures and the possibility of a more coordinated approach to addressing labour exploitation that migrant workers face.

From the perspective of formal rules, at least three areas of legislation, policy and response strategies are relevant to the experience of labour migrants. These include law and policy frameworks on anti-trafficking, labour migration and labour rights. There is overlap across these, but in practice interviewees described coordination across different areas of law and jurisdiction as poor.

Moreover, the prevailing approach to addressing the vulnerabilities of migrant workers arriving in Thailand has been through the lens of the anti-trafficking legal and policy framework. While victim-centred measures within this have gained ground, the focus is still on criminal justice indicators of prosecution and conviction of traffickers, and less on the protection of labour migrants from conditions of exploitation (RTG, 2020; interviews).

In sum, although Thailand has made legal and policy changes across this spectrum of policy areas, an integrated approach to improving the protection of labour migrants has not fully materialised.

3.3.1 Anti-trafficking legal and policy framework

Thailand's legal and policy framework on anti-trafficking is comprehensive, and is in keeping with international anti-trafficking norms. There is a strong focus on criminal justice and prosecution. While the severity of penalties has increased over time it has also increasingly integrated more victim-centred elements on protection and prevention (Liberty Asia, 2017).

With regard to international norms on TIP, Thailand is a signatory to the Protocol of 2000 to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). At the regional level, Thailand ratified the 2015 ASEAN Convention against Trafficking in Persons, especially Women and Children. This is an important regional milestone, which

has the dual aim of combating the criminal element of trafficking and addressing the rights of victims of trafficking, including through partnerships with relevant non-state actors. Thailand also engages in regional cooperation efforts with ASEAN including the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) and the Bali Process to combat trafficking and smuggling of migrants.

Domestic anti-trafficking legislation includes primarily the following. There is the Anti-Trafficking in Persons Act B.E. 2551 (2008) and its amendments in 2015, 2017 and 2019 (US Department of State, 2021; Liberty Asia, 2017), and which adopts the legal definition from the Palermo Protocol.⁴ It also broadens the definition to include labour exploitation, forced labour and trafficking offences committed against male victims (previously it referred only to women and children). With the amendments of 2015 and 2017 the Act increased punitive severity as well as more victim-centred protections. The 2015 amendment included additional provisions by which the operations of business associated with TIP can be closed or interrupted. It also provides protection to whistle-blowers from both civil and criminal liability. The 2017 amendment states that ‘victims cannot be prosecuted for illegal entry or stay, providing false information, document related offences, prostitution related offences or work-related offences, unless the Ministry of Justice grants permission in writing’ (McAdam, 2022). It appears, however, that although amendments have reduced the risk of prosecution for victims of trafficking, the practice of prosecution has not ended. Moreover, the non-punishment principle applies only to victims who have been formally identified by a competent official, allowing for significant discretion on this point (McAdams, 2022).

Most recently, the 2019 amendment of the Act, alongside the ratification of the Forced Labour Protocol, integrates forced labour as a stand-alone offence.⁵ This is an important change in the legislation advancing the protection of labour migrants.

The criminal procedure for trafficking cases is governed by the Human Trafficking Criminal Procedure Act B.E. 2559 (2016) (HTCP). This is an important development in setting out special procedures for the prosecuting cases of TIP. It has notably increased flexibility during hearings and trials, for instance, allowing hearings to be conducted via video-conference, with the aim of better protecting victims. It also establishes different channels for potential victims of trafficking to access remedies through civil and criminal proceedings. In addition, it sets out a protection system for witnesses and victims and recognises their right to anonymity. The HTCP is thus an

⁴ This is: the act of ‘procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person by means of threat or use of force, abduction, fraud, deception, abuse of power, or by giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control “for the purpose of “exploitation”’.

⁵ Anti-trafficking efforts are further reflected in the *Criminal Code* which criminalises slavery under and prescribes other offences linked to forced labour, namely extortion, confinement and detention, bodily harm, death and destruction of documents.

important milestone in advancing protection measures in the criminal justice process.

Migrant workers still need to be identified as victims in order to be protected, and it appears that there continue to be important capacity and attitudinal issues in this respect among relevant law-enforcement actors.

This reflects several ongoing challenges: uneven interpretation and application of the amendments; the fact that investigating police are still incentivised to prosecute victims in relation to different charges; that for victims not to be prosecuted they need to have been identified as victims of TIP; and finally, that some victims have been reported as preferring to accept criminal status and pay the corresponding fine rather than engaging in the complex process of identification. Other issues that have been identified include capacity issues among frontline police and other officials who may encounter a victim of trafficking. Whereas it seems that in cases of children who have been trafficked or a person has been subjected to violence they have more experience and capacity in victim identification, where trafficking is more subtle, capacity for victim identification is weaker (McAdam, 2022). An important deterrent to victims coming forward is that there are cases of employers countersuing labour migrants who report cases of labour violations and possible forced labour.

Of note is the formal establishment of Multi-Disciplinary Teams (MDTs), which are designed to improve the screening and identification of victims of trafficking through a standard nationwide process. The police maintain the formal responsibility for identifying victims of trafficking, but the MDT approach means that they should do this with other relevant officials, departments and NGOs (Harkins et al., 2019).

Finally, Thailand has developed specific policy strategies to address TIP: the *1st National Policy, Strategies and Measures to Prevent and Suppress Trafficking in Persons (2011–2016)* and the *Second National Policy, Strategies and Measures to Prevent and Suppress Trafficking in Persons (2017–2021)*, coordinated by the Ministry of Social Development and Human Security (MSDHS). In theory, the evolution of the national strategies signals a broadening of efforts beyond the approach to trafficking focused on criminal justice and prosecution. This includes language on protective measures, with special mention of women and children (MSDHS, 2017; MSDHS, 2011).

At the formal level, therefore, Thailand has a comprehensive anti-trafficking framework in keeping with its regional and international commitments, and with some movement towards integrating a more victim-centred orientation, which echoes wider global trends in relation to addressing TIP.

3.3.2 Labour rights, law and policy

Increasingly there is recognition of the importance of labour law and labour justice and complaints mechanisms in advancing the protection of migrant workers from risks of labour exploitation in Thailand.

Thailand has ratified seven of the ten ILO fundamental Conventions covering issues of elimination of child labour (C.138), and of worst forms of child labour (C.182), forced labour (C.29, C.105 and P.29), equal remuneration (C.100), discrimination at work (C.111) and occupational health and safety (C.187) – the latest fundamental labour right.

Notably, some key international conventions on labour rights have yet to be approved, namely ILO 87 (1948) on the Freedom of Association and Protection of the Right to Organise and ILO 98 (1949) on the Right to Organise and Collective Bargaining.

In domestic law, the following constitute the main legal instruments for the protection of labour migrants.

The Labour Protection Act B.E. 2541 (1998) establishes provisions on the rights and responsibilities of the employer and employee. This includes minimum standards relating to wages, working hours, breaks, holidays, child and female labour, benefits, and safety at work sites. Importantly, this established that workers are all entitled to equal conditions and protections regarding minimum wage, working hours, paid leave and non-discrimination, unless otherwise specified in related law, and regardless of nationality and legal status. However, this protects only those fully employed in the formal sector, which excludes domestic work, agriculture and fishing. These are covered only by partial protection set out in secondary legislation (ILO, 2020b).

Additional relevant law and policy include the Social Security Act B.E. 2533 (1990), which establishes access to social protection, including social security benefits for regular migrants. Employers' responsibility to uphold and provide occupational safety and health protections are stipulated in the Occupational Safety, Health and Environment Act, which governs employers' obligations in this regard, and establishes the right of workers to lodge complaints, regardless of nationality and migration status (ILO, 2022; Harkin and Ahlberg, 2017). Workers also have rights to compensation under the Workmen Compensation Fund B.E. 2537 (1994), which confers some compensation rights depending on the sector and their legal status. For instance, domestic workers have no rights to social security benefits, and are not protected by occupational health and safety provisions.

With respect to union law, the Labour Relations Act B.E. 2518 (1975) allows labour migrants to join unions, but only Thai nationals can be appointed as union leaders or committee members. This means that

migrants' capacity for collective organisation is very limited (Marks and Olsen, 2015).

There is a substantive body of legislation, therefore, which offers formal protection to labour migrants and access to services, although Thai workers as well as migrants in the informal economy are to some extent excluded from the formal labour protection, and migrant workers also tend to avoid the complaints and legal recourse mechanisms.

3.3.3 Migration law and policies

Migration law and policy in Thailand until more recently had largely not been oriented to addressing the protection of labour migrants and their rights. The purpose of the labour migration legal framework has been to reduce irregular labour migration, and to regulate labour migration. This includes, for instance, tying employment visas to specific jobs, which means that workers cannot easily change employment.

As Thailand increasingly recognised the need for labour migrants for its economic development, the migration policy structure has come to include two options for securing regular migration. First, there has been a process by which memoranda of understanding (MOUs) have been agreed with countries in the region to regulate labour migration flows. Second, there is the nationality-verification process (NV) by which undocumented migrants can regularise their situation. This involves registration of the labour migrant by the Royal Thai Government and the verification of migrant's nationality in the country of origin (Harkins, 2019; Martin, 2017). In practice, since 1992 there have also been ad hoc amnesty periods (mostly twice a year) during which migrant workers can regularise their status.

Between 2003 and 2004, Thailand signed MOUs on employment cooperation with the governments of Cambodia, Lao PDR and Myanmar (and, more recently, with Vietnam), to establish a channel for regular and legal labour migration into the country (Chantanavich and Vungisiriphisal, 2012). The legal framework, developed between 2016 and 2018, supplemented the MOU processes adding new elements of cooperation on labour issues, including skills development and social protection.

MOUs have not, however, resulted in entirely frictionless relations with neighbouring countries on matters related to the abuses that some labour migrants experience in Thailand because of the gaps in implementation. This happens even when labour migrants have gone through the formal channels (Cambodia Country Study, 2022; Harkins, 2019).

The 2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers, revised in 2018, governs labour migration into Thailand. It regulates recruitment and employment

practice, and labour migration. The punitive element of the Ordinance initially included penalties ranging from fines to imprisonment for workers, and fines for employers. Migrant workers who enter Thailand irregularly or work without a permit also risk being deported. When the Royal Ordinance was announced there was an initial flight of workers (as in 2014), but subsequent amendments were made to reduce imprisonment to situations with repeat complicity with the use of undocumented workers, and reduced the level of the fines both for workers and employers (Harkins, 2019; Verité, 2019).

The Royal Ordinance further outlines protective principles for migrant workers' labour rights, such as protection from abusive practices during recruitment and employment; fraudulent practices by employers, recruiters or brokers; the option to change employer under a restricted set of conditions is possible; issuing workers with a written employment contract in a language they understand is included (if not necessarily practised). The Royal Ordinance sets the principle of zero recruitment fees for migrant workers, although the wording on this is not very clear (ILO, 2020b; Verité, 2019).

In practice, the Thai government has combined two approaches to labour migration governance. This includes recurrent efforts to crack down on irregular migrants, and (as mentioned) amnesty processes aimed at regularising undocumented labour migrants. This has sometimes been in response to pressure from employers, given the high demand for foreign labour (Harkins, 2019). But mostly what is perceived to prevail is an ad hoc approach to labour migration governance. For labour migrants, this exacerbates the risks of deportation and detention, vulnerability to exploitation and trafficking, and increases their situation of economic precarity.

From the perspective of migrant workers aiming to work in Thailand, this governance regime is complex, slow and expensive. While the legislation and policy framework has improved in terms of advancing migrant workers' protection and access to social services, including labour laws, since the regular route to migration continues to be perceived as expensive, cumbersome and lengthy, most labour migrants continue to opt for the irregular route (Harkins, 2019; Rigg, 2016; interviews).

In sum, Thailand's tradition of legalism is manifested in the sophisticated legal and policy frameworks across these three areas relevant for addressing the experience of labour migrants – regular and irregular. This sits alongside the practice of uneven or non-enforcement of legislation, including in relation to prevailing *informal* rules and practices discussed below.

Some key points to note include the following. First, there has been a proliferation of legislation, policy measures and directives that seek to address various issues relating to labour migrants, their status, their vulnerability to exploitation and to trafficking. This is especially so in relation to how the legal framework on trafficking has evolved,

including in response to the US TIP reports produced by the US State Department that the Thai government has taken such action. Several interviewees remarked that this proliferation has resulted in some respects in more confusion than clarity, especially regarding the objective of improving the protection, voice and agency of migrant workers.

Second, the implementation gaps, especially with regard to the protective and prevention aspects of trafficking and labour exploitation, remain significant (Harkins, 2017; interviews). This is both within these areas of law and policy and at their intersection. In interviews, for instance it was suggested that there is a need to advance on the practice of supporting compensation for labour migrants both for the experience of being trafficked as well as in response to labour conditions that are exploitative and that flout labour rights.

Third, despite this growing body of norms across these policy issues advancing the protection aspects of victims of labour exploitation, interviewees suggested a lack of effective coordination across these policy frameworks, and their implementation. Moreover, the principles and objectives underpinning these areas of policy are not always aligned, with some measures exacerbating vulnerabilities (such as migration crackdown measures) and others aimed at advancing protection measures.

Fourth, a recurrent theme in the literature, echoed in the KII, is that labour migrants remain reluctant to engage with state agencies and formal processes. Migrants still use irregular channels in their migration journey as the 'least bad' option. This means that opportunity structures which may be created within the legal frameworks across these three thematic areas to advance their protection from abuse and exploitation, and improve their access to services, continue to be under-used.

Fifth, and relatedly, according to key informants, the implementation gap is not only (or even primarily) a capacity or information problem. Rather, it derives from the wider political economy of the interests underpinning Thailand's economic development, and the political settlement that sustains it. These interests benefit from the continuation of poorly paid and irregular practices that lead to exploitation among migrant workers.

Finally, collaborative efforts at the regional and global level, such as the ACTIP and COMMIT, may gain traction and political visibility to the point of being effective, alongside other regional and global processes. But implementation is poor, and what prevails among national governments is the logic of non-intervention in other countries' affairs.

3.4 Informal rules and systems

In practice, the formal normative framework across areas of law and policy intended to address practices of labour exploitation and abuses does not effectively regulate the conduct of the relevant actors along the migrant worker's journey. The complex interest structures that stand to gain from labour exploitation undermine the potential of legal and policy advances aimed at protecting workers' rights, at holding other stakeholders to account for ongoing impunity, and for practices of abuse, collusion and self-enrichment.

Instead, what prevails at different stages of labour migrants' journey, and in their working conditions, are informal rules of the game that trump the intention of the law. These informal rules may be obvious only to the relevant stakeholders, to whom they may be familiar. For many of these, the informal rules of engagement are very well known and predictable – albeit not necessarily to labour migrants coerced or deceived into situations of abuse and exploitation. This includes informal rules about how to navigate and evade existing regulatory systems. These are part of the routinised elements of labour migration routes into work, including in encounters with informal brokers and recruitment agencies on both sides of the border, officials at the border and en route to their place of work (ILO, 2015). Informal rules and practices also dominate the relationship between workers and employers across different sectors (Boll, 2019; Farrelly, 2012; interviews). The result is ongoing practices of labour exploitation.

These systems of informal rules and practices that shape the decisions and outcomes affecting the experience of labour migrants are both embedded in and arise from the wider political economy of rapid export-led growth enmeshed in a political settlement of network politics and clientelist logics, as discussed above. These play out in different ways depending on the institutional level – at the national and provincial level, across different sectors and at different stages of the migrant's journey. Moreover, as indicated in the other country studies, informal rules are also experienced and negotiated differently by different nationalities, across different sectors, and in gendered ways (Cambodia, Lao PDR and Vietnam Country Studies; Plank et al., 2020; UNODC, 2017; Rigg, 2016).

There are three key points to underline here. First, to the extent that labour migrants choose to travel through irregular routes in search of work means that some of the informal rules of labour migration serve their purposes. This does not diminish the fact of labour exploitation. But given that laws are not enforced nor rights protected, then understanding and navigating the informal rules system may offer the labour migrant some space for agency and choice.

Second, it appears that officials across the various state agencies in charge of specific aspects of formal regulatory frameworks of anti-trafficking, forced labour and labour exploitation and migration may

have different understandings of, or not even be familiar with, the regulations and policy frameworks (Farrelly, 2012; interviews). Hence, formal legal frameworks do not provide certainty regarding the protection of labour migrants' rights. In practice, access to justice, services or compensation are not available in accordance with the law, including as a result of prejudice and negative attitude towards migrants, and discriminatory practices among relevant government agencies, and migrant workers' limited understanding of the formal rules and often of Thai language.

And third, as informal rules and practices override formal legal frameworks to the detriment of the rights of migrant workers, it is important to understand the incentives and interest structures that sustain these practices, despite the progress signalled above. This case study highlights some of these, but there is a need for more research on what underpins the resilience of informal rules and practices that facilitate labour exploitation and trafficking of persons.

3.5 Key actors

There are several key stakeholders in relation to the relevant policy areas regarding the problem of labour exploitation and trafficking and to the experience of labour migrants. Their respective functions, interests and incentives need to be understood in the context of wider political economy conditions.

3.5.1 Government and state agencies

There are various ministries, state agencies and law and justice actors that lead on the implementation of the policy areas discussed above.

The Ministry of Social Development and Human Security (MSDHS) coordinates anti-trafficking efforts. This includes coordination of inter-agency committees and sub-committees established under the Anti-Trafficking in Persons Act. It is responsible for leading on the prevention of TIP and for providing assistance and protection to victims. It is also tasked with coordinating with law enforcement during trials and with other state and non-state organisations engaged in victim protection (such as CSOs). As the anti-trafficking framework has evolved, there has also been a significant expansion of committees and sub-committees tasked with implementing various aspects of policy and law enforcement. This underlines the wider deference to legalism in form, but which does not necessarily translate into effective practice (The Asia Foundation, 2021)

The Anti-Human Trafficking Division of Royal Thai Police (RTP) leads on the law enforcement, investigation and identification of cases of trafficking in persons; and on conducting raids aimed at cracking down on irregular migrants. The Immigration Bureau leads on the immigration laws and regulations; it monitors all foreign workers entering and leaving the country, and has the mandate to arrest and

deport unregistered migrant workers. The Ministry of the Interior leads on local administration, including through the Department of Provincial administration, and aspects of internal security and law enforcement.

The Department of Special Investigation (DSI) was established in 2002 and works independently of the RTP. It coordinates an anti-trafficking division which handles anti-trafficking cases. The DSI's Human Trafficking Crimes Bureau under the Ministry of Justice (MOJ) is responsible for the investigation of human trafficking cases and pursuing those deemed as 'special cases'. This includes the following instances, when: '(a) It is a complex criminal case that requires special inquiry, investigation and special collection of evidence. (b) It is a criminal case which has or might have a serious effect upon public order and moral, national security, international relations or the country's economy or finance. (c) It is a criminal case which is a serious transnational crime or committed by organized criminal group'.⁶

Within the Ministry of Labour (MOL) there are various relevant departments. The Department of Employment (DOE) leads on registering, regulating, and monitoring the employment of all migrant workers in Thailand, issuing and renewing work permits, granting permission to change employment, and inspecting worksites for undocumented workers; and accepting and investigating recruitment-related complaints. The Department of Labour Protection and Welfare (DLPW) leads on the enforcement of the Labour Protection Act, and Ministerial Regulations on labour protection and conditions of work, occupational safety and health protection (OSH). Labour inspectors are tasked with monitoring any enterprise that employs one or more workers. The Social Security Office of the MOL is responsible for administering the provisions of the Social Security Act and the Workers' Compensation Act.

From the perspective of addressing trafficking cases and access to justice, the Office of Attorney-General (OAG) is responsible for prosecuting criminal cases, and the Department of Trafficking in Persons Litigation focuses on human trafficking cases.

The Courts of Justice (COJ) adjudicate cases as specified by the Constitution and the legal framework on justice, rights protection and dispute resolution. Human trafficking cases are adjudicated in the criminal justice system. Labour disputes are administered through the labour courts, and cases may be channelled or administered through the labour inspectorate, or directly through the labour courts. Criminal justice issues regarding labour abuses are supposed to be referred to the criminal justice system.

In 2016 Migrant Workers Assistance Centres (MWACs) were set up through a Cabinet Resolution. These are government centres aimed

⁶ The Special Case Investigations Act of 2004, B.E. 2547.

at addressing the reality of labour migrants' lack of access to justice. They are mandated to protect and promote the rights of migrant workers by facilitating access to justice and different complaints mechanisms. The DOE within the MOL administers the MWACs (ILO, 2020a; Harkins, 2019; ILO, 2017).

The MWACs operate at the provincial level and only in some provinces. Their tasks include 'provision of counselling, advice and assistance to migrant workers regarding working and employment conditions; provision of emergency shelters for migrant workers who are awaiting the outcome of a legal dispute; coordination and collaboration for assistance or case referral among concerned agencies; reporting of MWAC operations to the Director-General, Permanent Secretary or the Minister' (ILO, 2020). Interviewees reported that these are still relatively new and under-used.

There is also a range of task forces and units across the different ministries focusing on different aspects of the anti-trafficking policy or labour legislation, or on different target groups. For instance, the 'Thailand Internet Crime Against Children Task Force' (TICAC) was set up in 2015, becoming a permanent agency in 2020 (Hoque, 2022).

These different official bodies operate at the national and provincial level. Levels of coordination among them are reported to be mixed, including in the degree to which relations between national and sub-national agencies' roles are clearly demarcated. Moreover, in many cases the efficacy of coordination and relationships among these various entities are affected by the pervasive informal network politics and potentially conflicting political loyalties in the logic of patronage dynamics described above (The Asia Foundation, 2021; Farrelly, 2012; interviews).

3.5.2 International organisations, regional bodies and bilateral donors

Several international organisations work on issues of anti-trafficking, migration and labour exploitation. They provide technical assistance, and in some cases work directly with CSOs engaging with migrant workers and victims of exploitation. They develop policy and practice-oriented research and data on trafficking and on labour exploitation.

In the United Nations system, the ILO works with several government ministries, notably the MOL, including to support policy development. The ILO also works with employers' organisations, employees' associations and trade unions, and collaborates with CSOs (such as Migrant Worker Resource Centres (MRCs), NGOs, think tanks, universities and academic institutions (ILO, n.d.). UNODC works with Thai law and justice actors to strengthen the criminal justice response to human trafficking and other transnational organised crimes. The International Organization for Migration (IOM) focuses on migration, including work on labour migration, counter trafficking,

technical support for institution building, border management, research and private-sector collaboration. Other relevant UN agencies include the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the Office of the High Commissioner on Human Rights (OHCHR), UN Women and UNICEF. Bilateral funding and regional programmes such as the Australian-funded ASEAN-Australia Counter Trafficking Program (ASEAN-ACT) and the US-funded CTIP Asia contribute to different aspects of TIP, labour migration and displacement policy, practice and research.

Multilateral regional bodies, such as the European Union (EU), can be – and have indeed been – influential. This was evident when the EU established a ‘Yellow Card’ to address concerns about the practices of ‘illegal, unregulated and unreported’ fishing. This was put in place in 2015, and lifted in 2019, at which point the EU Commission accepted that Thailand had undertaken sufficient measures to address their concerns (EU, 2019). It is important to underline that the yellow card was principally focused on illegal, unreported and unregulated (IUU) fishing and not trafficking or forced labour more generally, although there was some implicit understanding that these issues are connected. Further, the experience has shown that such measures can contribute to changing the sector’s regulatory framework, and in employers’ practices. The visibility of the issue created reputational costs for Thailand not only associated with the fishing industry, but with the wider problem of systemic labour exploitation across different sectors.

ASEAN itself is relevant, although the consensus among members to maintain its non-interventionist approach in the event of a political crisis or human rights abuses in member countries means that it is unlikely to take any action for the foreseeable future (The Economist, 30 October 2021).

The weight of bilateral relations with donor countries is undoubtedly important, mostly reflecting the economic and political influence of their governments on the Thai government and various policy choices. In particular, US influence in driving the anti-trafficking agenda is hugely important in Thailand. This is most evident through the annual publication of global Trafficking in Persons (TIP) Reports, which include a summary of trafficking issues at a country level, assess the government’s response measures and ranks countries accordingly. The TIP Reports focus on criminal justice and prosecution indicators (Gallagher, 2011). For Thailand, its ranking has a significant impact, and the government invests heavily in demonstrating effort and improvement on anti-trafficking measures. The TIP ranking is not only a reputational issue, since it also has potential trade, aid and economic implications in the relationship with the US. Thailand is currently a Tier 2 country, having been downgraded to Tier 3 in 2014. This downgrading was in the context

of findings on trafficking and labour exploitation conditions in the seafood industry and other sectors, through the work of various international NGOs, CSOs, and international and national media reports (Robinson et al., 2016).

Notwithstanding their limitations, the TIP Reports show the value of mobilising efforts which make visible the situation of labour exploitation and trafficking in Thailand to different audiences, nationally and internationally.

Finally, it is important to note that regional and global geo-political trends are shifting the dynamics of strategic relations with different countries, and on various issues. This, combined with the current democratic backsliding globally, as well as its particular form in Southeast Asia, means that the political leverage from international relations concerning human rights issues generally, and labour migrants' rights and protection in particular, may be on the decline (interviews).

3.5.3 International and national NGOs and CSOs

A wide range of international and national NGOs and CSOs work on different areas of protection, support for labour migrants and victims of TIP. Their work includes awareness raising and advocacy on safe migration and trafficking, running shelters, working with victims of trafficking or detainees on different aspects of legal assistance, providing legal support, support for complaints mechanisms, and more generally support for the human rights of victims of trafficking and labour migrants.⁷

Some organisations focus on particular target groups, such as the Human Rights and Development Foundation (HRDF), which works on the rights of victims of trafficking, and has extensive experience of seafood and fisheries workers. LPN works across a range of issues relating to the lives of migrant workers in Thailand including protection support during raids, rescue and victim assistance, and providing temporary and long-term shelter. It also runs a migrant education centre for children, provides or coordinates access to other services, and undertakes advocacy work.

Migrant Worker Resource Centres (MRCs) operate in Thailand and contribute to providing training on safe migration and acting as a source of information for migrant workers and their families. The MRCs are funded by the ILO with bilateral funding from Canada and Australia, and work on departure and in destination countries as well as on return (Marks and Olsen, 2015; ILO, 2013).

Some NGOs have focused support to 'specific nationalities such as the Migrant Workers Rights Network (MWRN). This is a membership-based organisation established in 2009 mainly to support workers

⁷ ASEAN-Act has a comprehensive directory of stakeholders relevant to the work on different aspects of support and anti-trafficking efforts in relation to labour migrants.

from Myanmar in Thailand, but now also supports victims from Lao PDR and Cambodia (ILRF, 2020). This includes engaging in rights protection, awareness raising and support with access to justice and engagement with employers and officials. Its work makes up for the fact that labour migrants cannot form their own unions and have limited capacity for collective bargaining. Another example is the Solidarity Center, which advocates for the rights of migrant workers to join labour unions.

The role of trade unions is not negligible, even if it is poorly developed from the perspective of support to labour migrants. Interviewees underlined that there could be more work with trade unions in Thailand to support labour migrants, although noting that unions are not influential, including due to 'restrictive laws, resistance from employers and lack of enforcement of workers' rights that in the end also weakens trade unions' capacities to represent workers effectively' (ILO, 2018).

Political constraints and policy measures aimed at closing civic space (such as the *Draft Act on the Operations of Not-for-Profit Organizations*, in discussion until 2022), as well as resourcing constraints – and declining funding – affect the work of INGOs and CSOs.

Finally, a web of informal networks of workers, relatives and community organisations among labour migrants provide support and information to fellow nationals on various issues. This includes information on employment and employers, on rights and benefits, and also on how informal rules function. It was noted in interviews that different nationalities organise themselves in quite distinct ways, in addition to variation across sectors.

Country studies for Cambodia, Lao PDR and Vietnam for this study look in more detail at how labour migrants exchange information during the migration journey, and challenges they face. For Laotians, linguistic similarities to Thai make it easier to integrate into the local community and obtain access to information. This is more complicated for Cambodian labour migrants where linguistic and cultural barriers can contribute to intensifying vulnerabilities to exploitation, and impede access to information and knowledge about entitlements – although interviews illustrated some ability to communicate in Thai. Migrants from Myanmar are by far the largest non-Thai nationality in the country. They are also linguistically and ethnically diverse. One study underlines that longstanding migrants from Myanmar can communicate in Thai (Chantanavich and Vungisiriphisal, 2012). In interviews it was noted that some workers from Myanmar have been in Thailand for up to 20 years and have settled there. The push factors for migrants from Myanmar are more diverse. The motivation includes the search for work, but also as refugees and political exiles. These categories are fluid in the case of migrants from Myanmar. In the Cambodia and Lao PDR country

studies, as well as interviews undertaken for this study, the importance of migrant networks was underlined as a key source of information. This information includes sharing knowledge about routes, jobs, labour conditions (including which are the better employers), and about informal rules of interaction with local authorities.

3.5.4 Private recruitment agencies and informal brokers

These two sets of actors operate in both countries of origin and destination countries.

Private Recruitment Agencies (PRAs) are private companies that recruit workers either in the countries of origin or in Thailand. As noted, these are subject to legislation that regulates their activities. But how PRAs work in practice deviates considerably from the formal rules, including in the sending countries.

Informal brokers are individuals who engage in helping or recruiting labour migrants to gain employment but do so informally. Many informal brokers had also previously been labour migrants.

3.5.5 Private Sector

The private sector is crucial for advancing change in the conditions of work of labour migrants in Thailand. As noted, it is politically influential, and has been a key player in shaping the political and economic trajectory of Thailand since the 1940s. It is also very diverse, as businesses and private-sector interests are heterogeneous. They vary in terms of size, the nature of their labour relations, how they are connected to wider global supply chains, and the degree of compliance with evolving norms and regulations in a context of weak rule of law (Harkins, 2019; interviews).

The problems of labour exploitation of migrant workers touch all sectors in Thailand. The economic gain derived from low-paid work remains an incentive to maintain the status quo. But the status quo is not clear-cut, and business interests also benefit from a lax migration regime that enables access to migrant workers in order to meet their demand for readily available cheap labour. Some business actors have also been able to exercise pressure on the government to refrain from ad hoc policy decisions, for instance, on cracking down on irregular migrants. Importantly this does not reflect strategic action among private-sector actors to address exploitative practices. Rather mobilisation is the result of short-term reactive pressures in the face of ad hoc government measures that disrupt the ready supply of low-paid migrant workers. In Thailand, since much of the private sector that draws on labour migrants is in the lower tiers of global supply chains, there are fewer prospects of incentivising businesses to lead on strengthening accountability for exploitative employment practices. At the same time, the reputational costs of exploitation, made visible through new measures and investigative reporting by

NGOs or the media (as in the fisheries sector) can contribute to eventually shifting some incentives in private-sector practices.

The private sector needs to be part of the solution. This involves identifying how incentive structures can be shifted to enhance both its constructive buy-in, and its investment in reducing conditions of labour exploitation. This includes working with incentives associated with international compliance pressures, such as improving regulations and standards and raising the cost of exploitative practice through law and policy and their enforcement. In a context of poor implementation – given the nature of patronage politics and the wider political settlement – it would also entail increasing businesses' reputational costs of continuing with exploitative practices, and collusion with trafficking. Finally, it includes engaging in the processes of political and institutional change aimed at altering the unequal power relations between employers and labour migrants.

4 Labour migration to Thailand and labour exploitation

4.1 Scale of labour migration to Thailand

Labour migration has played an important role in the Thai economy, especially since the 1980s, when the country entered a period of rapid economic growth, reliant on low-paid and low-skilled labour. The demand for migrant labour has become structurally embedded in Thailand's economy, especially in labour-intensive sectors (Martin, 2007). One report calculates that labour migrants contribute between 4.3% and 6.6% of Thailand's gross domestic product (GDP) (OECD/ILO, 2017), but stresses that these estimates do not account for economic gains derived from irregular migrant workers (Harkins, 2019).

Migrant workers made up at least 5.2% of Thailand's population in 2019, up from only 2% in 2000 (ILO, 2022). Of these, as stated earlier, the vast majority come from Cambodia, Lao PDR, Myanmar and to a much lesser degree Vietnam. Myanmar is by far the main country of origin (UNODC, 2017), and the number of migrants has swelled following the political crisis since 2021.

It is difficult to obtain accurate numbers of labour migrants, and sources vary. For this report we draw on DOE data and on data cited by the UN (Harkins, 2019).

Statistics from 2018 show the non-Thai population in Thailand as approximately 4.9 million. Of these, an estimated 3.9 million labour migrants come from Cambodia, Lao PDR, Myanmar and a smaller number from Vietnam, including an estimated 1 million undocumented migrants from neighbouring countries. Overall, migrant workers are calculated to represent over 10% of Thailand's labour force of 38.7 million (Harkins, 2019).

MOL figures in 2017 calculated that 2,062,807 migrants held work permits (42% women and 58% men) (Harkins, 2019). It has also been noted that the higher proportion of women among irregular migrants is related to having fewer options for employment in the formal economy (ILO and UN Women, 2015, cited in Harkins, 2019).

Labour migrants from Myanmar alone account for 69% of low-skilled migrant workers holding work permits in 2017.

DOE labour migration data in September 2022 reported that 2,229,236 migrants were granted work permits, of whom 48% were women and 52% were men (DOE, 2022a, 2022b, 2022c). The official figures have fallen, as some migrants may have left, or have chosen or been forced to become irregular/ undocumented workers.

The population of labour migrants also fluctuates in response to crackdown measures, or periods of political change in Thailand. For instance, following the 2014 coup many irregular labour migrants left the country fearful of detention and deportation; COVID-19 also had a major impact. More recently the political crisis in Myanmar has swollen the number of people moving to Thailand, motivated by political as well as economic reasons.

4.2 Key factors explaining migration flows

Many factors explain the scale and nature of labour migration to Thailand from Cambodia, Lao PDR, Myanmar and (to a much lesser extent) Vietnam.

The wage differentials between Thailand and countries of origin is a pull factor for labour migration from poorer countries in the region that have higher poverty levels and have not experienced Thailand's economic growth rates. In practice, the wages may not be so different as workers often receive less than was agreed or advertised by brokers or recruitment agencies (ILO, 2015). This is confirmed in FGDs with migrant workers, who underlined that they are often paid less than the minimum wage or work more than eight hours a day to earn the minimum wage.

The economic needs of labour migrants in these four countries is an important 'push' factor. Labour migrants largely choose to travel in search of work. Deception may feature strongly in the experience of migration, and the risk of forced labour or entering into conditions of labour exploitation is high for labour migrants. But the decision is often made by personal choice, or by family or community members. It appears that labour migrants entering the fishing sector are increasingly aware of the risks of exploitation, through the work of CSOs, and information transmitted through informal networks as well as through social media (HRW, 2018). Most participants in FGDs noted that they were aware of the risks, and that they had some information and advice on how to avoid the most serious abusive practices – although such practices persist. In any case, even if there is consent, this does not detract from the fact of exploitation.

Political conditions and situations of conflict in the country of origin may also motivate migration since there are obviously fewer employment opportunities in such circumstances than in Thailand and other destination countries.

The high demand for low-paid, low-skilled workers in labour-intensive sectors remains a constant factor. This is enabled by the business-friendly conditions in Thailand which in practice allow labour migrants to be recruited through various regular and irregular channels. This is further made possible by a migration policy focused on controlling labour migration into the country which is both highly complex and also lax in its implementation.

The layers of complicity and collusion by law-enforcement and recruitment actors along the migrant workers' journey allow them to negotiate their way through checkpoints, inspections or to bypass formal channels. The prevailing logic of informal network politics serves different interests at every stage, although migrants pay the highest price through various forms of labour exploitation relative to what they gain. The informal rules of the game at different stages of the journey set the price and frame engagement in various encounters. It is important to underline that the evidence base here remains underdeveloped.

Finally, the fact of a porous border and migrants' calculation that irregular entry into Thailand is a cheaper, less cumbersome option, further explains the high levels of irregular migration.

4.3 Sector-specific conditions

Key sectors which draw labour migrants from the region include textiles and manufacturing, agriculture, fishing and seafood processing, construction, domestic work, the services sector, and sex work. There are diverse forms of labour exploitation across Thailand. There is variation in terms of its visibility, the forms of deception and abuse, the degree and nature of exploitation and labour migrants' room for voice and agency across these sectors, either to negotiate the terms of labour and exit, or to resort to complaints mechanisms. As seen earlier, the Thai legal framework is not uniform across all sectors. For instance, seasonal workers in agriculture, sea fisheries and domestic work are largely excluded from the protections and rights under the Labour Protection Act, but there are some sector-specific regulations, such as the Ministerial Regulation on the Protection of Sea Fishers of 2014 (Chantanavich et al., 2016). Domestic and construction work, for instance, are less regulated in terms of labour rights. Sex work is criminalised, is addressed only through anti-trafficking measures, and not from the perspective of labour rights and labour law (Harkins, 2019; UNODC, 2017).

Common to all these sectors is that they are based on labour-intensive, low-skilled, poorly-paid work that is often characterised by exploitation. Here we give a brief overview of the main features of labour conditions and vulnerability to trafficking and exploitation in three sectors – fisheries, agriculture and domestic work. This also underscores the variation in terms of the types of exploitation, and recourse to complaints or other forms or remedy in each sector.

Importantly, there are sector-specific manifestations of labour exploitation. Factors such as isolation (some agricultural work and domestic work), remoteness (fishing), and invisibility (domestic work and fishing) may exacerbate vulnerabilities to various forms of exploitation or trafficking.

Interviewees also underlined that the systemic drivers of exploitation are fundamentally rooted in the same set of structural inequalities and economic interests that benefit from exploitative practices. To a degree, it is important to develop responses at the sector-specific level in order to take account of the specific conditions of labour exploitation and vulnerabilities to which workers are exposed, and to tailor support measures accordingly. This is also important in terms of identifying sector specific gaps in protective measures and adapting regulations and protective measures to ensure that these are appropriate. Understanding sector-specific ways in which labour rights are being abused can help to strengthen a victim-centred approach that focuses on prevention and protection, and that brings to the surface the power imbalances that result in exploitative systems and practices. While it is important to focus on sector- and business-specific conditions, it is also critical not to lose sight of the wider political economy drivers of exploitative practices.

4.3.1 Fisheries

Fishing and fisheries attracted major attention following extensive investigative reporting and NGO work that exposed the highly abusive working conditions and trafficking in the sector, notably since the early 2010s when these began to be documented (HRW, 2018; UNDOC, 2017; Chantavanich et al., 2016; EJF, 2014; ILO, 2014).

It has been estimated that 75% of workers in fisheries sector are labour migrants (UNODC, 2017). Deception and coercion in recruitment practices are widespread (HRW, 2018; Boll, 2017). Deception takes the form of misinformation regarding working conditions and the sector, and from recruitment to the exchange with informal brokers. The ILO's research on the 2019 Ship to Shore project documents that 14% of fishers are in conditions of forced labour on fishing boats, and 7% of seafood-processing workers among those surveyed. The former is down from 17% in the 2013 survey of the fishing sector (ILO, 2020b). On the boats, hours are excessive – anything up to 20 hours a day; violence and abuse are allegedly common; and there are reported experiences of torture and even being thrown overboard (Boll, 2017). There is little freedom of movement, and identity documents may be confiscated (HRW, 2018). There are also reports of workers being sold (UNODC, 2017). Physical abuse includes lack of adequate food and water (Chantavanich et al., 2016). Migrant workers have severely limited space for agency in this sector in view of the physical conditions of working on the boats.

At the same time, there have since been important changes in regulations and inspection systems to overhaul these practices after the increased visibility through investigative reporting as a result of the EU Yellow Card measures and through the TIP Reports. Multinational companies higher up in the supply chain have also contributed to some change. While new regulatory and inspection systems are important, it is unclear whether the changes in policy, regulation and monitoring efforts since 2015 have led to significant improvements in working conditions (Boll, 2019; Harkins, 2019; UNODC, 2017).

4.3.2 Agriculture

Agriculture remains important to Thailand's economy. In 2017, the country was the world's largest exporter of natural rubber, along with other mainly export crops such as rice, sugar, cassava and palm oil. Smallholder farmers dominate the agricultural sector, many of whom cannot afford agricultural machinery. This, combined with the nature of production of fruit and vegetables, means that manual labour is still hugely important in agriculture (Harkins, 2019; UNODC, 2017). It is estimated to be the single largest employer of migrant workers in Thailand, both regular and irregular.

Agricultural working conditions vary. Few migrant workers use recruitment agencies or brokers for working on farms, and 31% said they did not have an employment contract before going to Thailand. Many are short-term migrants who commute across the border on a daily basis, or stay in Thailand only for a few days. This is especially so among Cambodian agricultural migrants, who spend only short periods in Thailand. Migrants from Myanmar were the mostly likely to be irregular, Laotians most likely to have full documentation, and Cambodians were likely to have entered through a regular channel, but not necessarily with the correct paperwork related to the border agreement between Thailand and Cambodia for the specific jobs they undertake.

Migrants often incur debts to cover various expenses, including 'costs and fees paid by migrant workers related to travel, temporary lodging, broker and agency fees, and documentation such as passports, visas, border passes, work, permits, health exams, and various formal and informal registration fees' (ILO, 2022). This results in being indebted to brokers and employers.

Large wage differences have been reported. There is no overtime pay, and across the sample interviewed in the ILO study, 95% reported that they were working well over eight hours a day, with 12-hour days not being unusual (ILO, 2022). Accommodation is precarious – mostly provided by employers and offering limited sanitary facilities (UNODC, 2017). Official figures suggest that women represent half of labour migrants, but it is reported that there are likely to be more men than women among undocumented

migrant workers, and that women are systematically paid less than Thai nationals or male migrants (Harkins, 2019).

Conditions of forced labour and deception include 'abusive overtime requirements, restrictions on mobility, living in degrading conditions, indebtedness to employer or broker/recruiter, withholding of identification documents, and fear of being excluded from other job opportunities and/or risk of arrest or deportation' (ILO, 2022).

Migrants rarely have recourse to complaints mechanisms, and mainly through NGOs rather than formal channels, with the aim of seeking mediation. Irregular workers largely avoid complaints processes due to fear of detention or deportation. Linguistic barriers are cited as a major obstacle for migrant workers to access complaints mechanisms, or indeed have access to social benefits and compensation to which they may be entitled (ILO, 2022).

At the same time labour migrants have more room for agency and negotiation in their relationship with employers, and their terms and conditions. Workers can leave and move on to other employers with a reputation for fairness (interviews). However, indebtedness and economic precarity discourage workers from acting on situations of labour exploitation.

4.3.3 Domestic work

Domestic workers are highly vulnerable to exploitation and trafficking. Domestic work is defined in Thai law as informal employment, which means that domestic workers have less access to social security and other protection. For instance, employers of domestic workers have no responsibilities regarding occupational health and safety (ILO, 2020). Of course, this is also true of agricultural work which is also largely informal, as is the fisheries work.. However, the prospects for collective organisation and pressure on employers are much weaker for domestic workers.

Indeed, many of the vulnerabilities that domestic workers experience relate to the invisible nature of the work. It is reported that they are expected to work long hours with no leave, and may be subjected to physical and sexual abuse. There is often deception regarding pay and conditions and the employer or recruitment agency may withhold the worker's passport and identification papers. Debt incurred with recruitment agencies may be deducted from wages (UNODC, 2017; ILO, 2014). At the same time, some countries of origin have requested some regulation on domestic work, which is now included in the MOU between Lao PDR and Thailand.

4.4 Vulnerabilities experienced by labour migrants

Looking across the spectrum of vulnerabilities along the migration journey shows a complex and multidimensional picture of the risks facing labour migrants of trafficking and labour exploitation.

A recurrent theme which gives rise to vulnerabilities is directly related to the poor, or non-implementation of relevant laws and policies. This is especially relevant in relation to the aspects related to addressing the protection of labour migrants and to working conditions. It is beyond the scope of this paper to examine all the aspects of non-compliance or non-implementation of the expanding normative framework summarised in Section 3. But numerous examples of non-compliance with the legal framework arose both from the literature review and in the interviews conducted for this study. On the government side this reflected both issues of capacity and disincentives associated with the benefits from non-compliance for various actors in state bodies, law enforcement, and the private sector.

4.4.1 Border crossing and onward travel

Crossing the border into Thailand itself involves risks for labour migrants. These include risks associated with their documents and migration status, which can result in detention, deportation, or paying the necessary bribe to officials on either side of the border.

There may also be physical risks for those who enter through irregular channels. Along the border with Cambodia, for instance, the presence of landmines dating back to the civil conflict poses a potentially lethal risk for migrants.

‘During COVID-19, we travelled via a natural border during the night time, we need to be very careful of the landmines by following other footsteps. Our kids were very quiet as they were afraid of being caught by the authority in Cambodia. We only took some little money with us as we were afraid of being robbed by the authority, if we got caught, they will conduct a search.’ (Key informant)

Migrants who enter through irregular routes often do so by negotiating support from informal brokers, with varying costs and exposure to exploitation (HRW, 2018). Workers may have to go through different brokers before they reach their place of work, adding cost and layers of vulnerability to the risk of deception and extortion. Women are at greater risk of physical and sexual abuse, and of being robbed during the journey (UNODC, 2017). In interviews, migrant workers also underlined the support of networks and family in helping to mitigate the level of risk.

Importantly, the closure of international borders during COVID-19 led to greater reliance on brokers to facilitate movement (Buckley et al., 2022; Khemaniythathai, 2021; McAdam, 2020), who seemed to take

advantage by charging more for their services. Increased costs likely to have reflected also officials demanding more due to increased expenses, taking longer routes to avoid authorities or needing to use more people.

4.4.2 Recruitment

The recruitment process in the countries of origin is described in the country reports on Cambodia, Lao DPR and Vietnam.

As noted above, the legal and policy framework is evolving in Thailand. In accordance with the Royal Ordinance of 2017, neither employers nor recruitment agencies should charge a recruitment fee to migrant workers. As in other areas, however, implementation is ineffective. While the legal framework is moving in the right direction, it is not clear whether the rules are widely known, nor does legal change seem to be improving the relationship between employers and labour migrants. Interviews confirmed that migrant workers continue to pay recruitment fees and all their migration-related costs. Very few employers contribute to such fees, in full or in part (ILO, 2020c).

Rather, the informal rules of recruitment prevail, and mostly in ways that lead to concrete losses for workers, and with little if any channel for recourse. As most labour migrants continue to enter the country irregularly, many also use recruitment agencies and informal brokers in Thailand. One study based on a survey of migrant workers found that 40% entered the country without having secured employment; and 25% had no contract. While 51% of respondents had found their job directly through an employer, 87% had paid a recruitment agency or informal broker, and 43% had only paid a Thai agency or brokers. Others had also paid for costs associated with their recruitment in the country of origin (ILO, 2020c).

The process of recruitment and nature of the relationship with employers can be the source of several vulnerabilities for labour migrants.

Paying the costs of recruitment agencies and informal brokers results in greater indebtedness, and contributes to the risks of debt bondage. These costs are not limited to the country of origin and often continue in Thailand (ILO, 2020; Harkins, 2017).

Regular labour migrants who have been directly recruited into their jobs can still be vulnerable to exploitative employers and poor working conditions. Work visas may be tied to a particular employer, making labour migrants vulnerable to deportation if they complain about pay or conditions or decide to leave. Legislation in Thailand is improving, but in practice labour migrants are unlikely to use existing complaints mechanisms to the recruitment agency that facilitated their employment.

Regular labour migrants in Thailand still face the risk of employers or recruitment agencies confiscating and keeping their documentation, which limits their freedom of movement, and ability to physically access assistance.

4.4.3 Migration status

The emphasis of the labour migration regime is on preventing irregular migration and employment, and repatriating irregular migrant workers (ILO, 2015). Although legislative changes have improved protection issues, in practice implementation is weak, and the protection of labour migrants is not perceived as a priority. Indeed, it is claimed that efforts at regularisation are more about meeting the demand for low-skilled labour in the country rather than increasing protection and certainty for labour migrants.

The migration regime continues to be associated with a number of risks.

First, the bureaucratic complexity and expense of entry through regular channels means that there continues to be a very high proportion of migrant workers who opt for irregular migration. The fact of irregularity brings with it risks related to recurrent cycles of crackdowns and deportation. This contributes to greater uncertainty and precarity, exacerbating migrants' fear of deportation, which means they are unlikely to claim their rights and social security entitlements (Harkins 2019; HRW, 2018; interviews).

Second, the uncertainty that comes with the irregular status makes it easier for border and other officials to threaten to apply the rules for rent-seeking purposes, either through periodic raids, or through ad hoc interpretation of changing rules and policy in order to extract bribes, abusing their position of authority, including in relation to migrant workers whose situation may not be regularised, but are trying to get their papers in order (interviews). (interviews). Some informants said that migrants worked out that it was cheaper to remain irregular and 'under the radar' from officialdom. However, the threat of deportation creates fear and anxiety. Employers can use the threat of denouncing them to pay less and keep migrant workers submissive.

Myanmar workers in Mae Sot have sought to navigate documentation through multiple documents, but noted both the confusing aspect of the rules, and the different charges – formal and informal – that they have encountered:

'I made many documents to ensure that I won't get caught. I have my border pass, which is now expired. I will have my pink card and work permit which I am currently applying for. During this time, my employer got me the village card so that we won't have any trouble. I pay for the village card THB 150. However, the fee varies depending on the area. It is very confusing about the

documentation. I am not sure after I get my pink card what is the next step. I had to earn more to pay off the broker fee. In Mae Sot, it is very complicated, we were not able to cross the border at Myawaddy Bridge. If we want to go home, we have to cross the border elsewhere. It is not safe to cross the border right now, [I'd] rather stay here and I miss home a lot.'

In interviews, migrant workers said that in the face of unclear rules, complex mechanisms and paperwork, they find protection in the form of 'a villager card/ the protection card' issued by local authorities. It can be paid for at the local level as an informal but effective protection document in Thailand with which migrants are familiar. As one migrant worker put it:

'[I'd] rather prefer to pay for the protection card than the registration which is yet unclear and costly ... I think I am better protected by a villager card but in exchange of my freedom of movement to elsewhere.' (interview)

This local protection card appears to take precedence over other paperwork within the sphere of the issuing authority. It is accepted as such by local law-enforcement actors, including checkpoints.

Irregular migrants, even if they are legally entitled to social protection, face additional hurdles in terms of the paperwork that they need to produce (ILO, 2019). Linguistic barriers also make it far harder for migrant workers to navigate officialdom in order to access social welfare and protection rights.

The CSO representatives interviewed for this study pointed out that while the Thai government has made important efforts to demonstrate its commitment to countering trafficking and labour abuse, the benefits have not translated into practice owing to the lived experience of the migration regime:

'Today I witness more and more regular migrant workers have quasi/irregular status, as a result of the recent Government's regressive actions towards the labour migration governance. This leaves many migrant lives at risk of being exploitative. Many of those who wish to come forward to register will end up with high cost/ possible debts to pay off this most expensive migration process at the price of low/unskilled migrant workers.' (interview)

Entering with regular status does not eliminate migrants' vulnerabilities, as noted earlier.

4.4.4 Attitudes towards labour migrants

The fact that a significant proportion of the Thai population is prejudiced against labour migrants adds to their vulnerability. This prejudice and negative attitudes take different forms (ILO, 2019; HRW, 2018; interviews). First, some people believe that labour migrants are a burden on Thai society and social services. Second, and in times of economic crisis, some argue that labour migrants are

keeping Thais out of jobs, and depressing wages to the detriment of Thai workers. Such views have been voiced in previous economic crises (in 1997, 2008, and the recent economic downturn aggravated by COVID-19). Third, labour migrants are allegedly associated with gangs and crime.

This means that some of the Thai population subject labour migrants to discrimination and hostility, contributing to their experience of feeling unsafe and at risk of being denounced and deported. Recent research suggests that there has been no decline in hostility towards labour migrants in Thailand (ILO, 2019).

4.4.5 Exploitative labour conditions

As shown earlier, many labour migrants are exploited and in low-paid jobs. In addition, migrant workers may be exposed to physical threats and physical and sexual abuse, especially in less visible sectors. Women and children are especially vulnerable (UNODC, 2017).

Employers may confiscate workers' migration-related documentation as a means to maintain control over their movement, which adds to their stress and anxiety. Even migrants whose status is regular are disempowered when their paperwork is confiscated, which is the evidence they need, including for access to social benefits, and exposes them to detention and arrest when they are not at their place of employment (HRW, 2018). Until the Royal Ordinance of 2017 employers' control of workers was further protected by the fact that work permits were tied to employers and specific jobs. This has improved with the new regime (Harkins, 2019), and it is now easier for labour migrants to move to new employers. Interviews suggest this may be easier in agricultural sectors.

Debt bondage is a frequent consequence of the debts that migrant workers incur as they look for jobs. Women in sex work seem especially exposed to debts which they struggle to pay off because of the extortionate costs of accommodation, clothing and goods (UNODC, 2017).

Wage theft is also reported, such as employers paying less than had been agreed; paying less than the minimum wage; no overtime pay; or arbitrarily deducting recruitment costs from their wages (Harkins, 2020; Chantanavich et al., 2016). Irregular workers are more vulnerable to threats of being reported to the authorities if they demand the agreed fee. An estimated 29.8% of irregular workers are never paid (UNODC, 2017). A key factor in wage theft is that employers have far more power as the latter have limited capacity to challenge them or lodge complaints about exploitative practices.

The changing legal framework is addressing some of this. But without robust enforcement and implementation, the power imbalance and structural inequalities in Thailand are stacked against labour migrants.

4.4.6 Fear of officialdom, informal networks, patronage and corruption

The complexities of informal networks of patronage, bribery and outright corruption, that have been reported as enabling exploitation and low wages, need more research. There are different vulnerabilities associated with labour migrants engaging with the authorities, irrespective of whether they are regular or irregular.

First, there are multiple levels of collusion and complicity by officials, without which the exploitation of migrant workers would not be as widespread as it is in Thailand. The US TIP Reports note that there are enough reliable sources to confirm that corruption and complicity by state officials characterise the networks and practices of labour exploitation and trafficking in the country. This is further recognised in government reports and national strategies on trafficking (US State Department, 2022; RTG, 2021; MSDHS, 2017). Cases have been investigated and are underway of officials' alleged involvement in "extortion and selling immigrants, who are vulnerable to fall victims of commercial sex, forced labour and debt bondage at the hands of traffickers", (MSDHS, 2017: 28). Independent research on the levels of complicity and capture of officials is obviously difficult, but in interviews it was made clear that such involvement is a necessary factor in enabling ongoing practices of trafficking and labour exploitation. The different informal payment structures allow for practices of irregular recruitment once labour migrants are in Thailand. Payments are extorted at the different levels of entry into the country, checkpoints (roads, and ports), and inspections.

This creates vulnerabilities for labour migrants at different stages of the journey. They accept the rules of the game and the associated costs, as otherwise they may face the threat of detention and deportation.

Second, irregular migrants will seek to avoid any kind of officialdom. They are unlikely to seek protection from state officials that are perceived to be part of network of informal practices that sustain the current system of employment of migrant workers.

Third, this mistrust is also based on the perception that the monitoring systems are weak and ineffectual. For instance, one study found that inspection frameworks are not effective in capturing practices of 'deception regarding key terms of employment; retention of identity documents; wage withholding; recruitment linked to debt; excessive work hours; and obstruction of workers' freedom to change employers' (HRW, 2018). This is the result, claims the report, of inadequate consultation with workers, and assumptions that it is only irregular workers who are victims of exploitation.

Fourth, the system for identifying victims of trafficking itself is fraught with risks for victims. The most recent US TIP Report highlights that the risk of being re-victimised continues to be a problem, including in the implementation of counter-trafficking efforts (US State Department, 2022).

With reference to the Myanmar–Thai corridor, even before the current crisis in Myanmar, Farrelly (2012) showed that there were powerful incentives for the authorities’ inaction on both sides of the border. On the Thai side, there is still a demand for labour migrants to do the low-paid jobs for which there is shortage of workers. He further notes that influential networks ‘reputed to involve senior Thai military, police and political figures working in conjunction with informal alliances of local gangsters, entrepreneurs and traders – organised to prevent disruption by law-enforcement’ (Farrelly, 2012: 137) stand to gain from the rent-seeking opportunities from poorly regulated labour migration and inherently exploitative work. The incentives to sustain the weak rule of law and rights protection for labour migrants remain powerful.

4.5 Key points

This brief summary of labour migration into Thailand highlights its complexities. This underlines the fact that responses and measures to reduce labour migrants’ vulnerabilities need to engage with this complexity.

Prevailing response measures have focused on the anti-trafficking objectives of prosecution of traffickers. This does little to address labour migrants’ vulnerabilities, advance their protection or contribute to their empowerment. There is a need to clarify the objectives of measures aimed at addressing vulnerabilities and enhancing migrant workers’ voice and agency, in order to advance a more victim-centred approach to addressing trafficking and labour exploitation.

It is also the case that insufficient state capacity is not the only or even the principal issue contributing to the status quo. Progressive legislation is largely in place. While there are capacity issues and implementation and coordination gaps (see Section 3), the Thai government appears to have the capacity to implement policies when the incentives of key actors involved in anti-trafficking align with political will among elite actors. There is a need to understand incentive structures that undermine the implementation of progressive laws and policies. Finally, it is important to cultivate buy-in from the private sector, but it is unlikely that this can be limited to measures in Thailand. While national legal change and regulatory capacity are important, it is also critical to ensure that there are appropriate joining up measures throughout the entire supply chain. Unless the private sector has different incentives, it is unlikely that recruitment and employment practices will change.

4.6 Impact of COVID-19

The impact of COVID-19 on the situation of migrant workers is still the subject of research, but there is already some evidence on how the lockdown and border closures exacerbated workers' existing vulnerabilities (Buckley et al., 2022).

Among other issues, given their overall invisibility and distance from their home countries, lockdowns left migrant workers stranded, with limited access to communication or ability to send remittances to their families. The border routes became more perilous as labour migrants resorted to smugglers rather than risk being caught by officials. Where migrants were working in confined spaces with little mobility, they were at greater risk of exposure to the virus at an early stage of the pandemic, exacerbated by their limited access to health services; irregular workers were more likely to be detained by officials, or threatened by traffickers; and local political economies associated with stricter border controls, with no drop in the demand for labour, made labour migrants even more exposed to detention, deportation and exploitation. COVID-19 thus exacerbated existing vulnerabilities for labour migrants in Thailand (Buckley et al., 2022).

Often, migration documents expired:

'I used to have my passport and work permit for work but during COVID, such documents have expired. I don't know how I can proceed with, or renew these documents; the procedures are quite complicated. I could not read and write Thai but all information is written in Thai. I have no way to undergo all the registration process myself and my employer helped me find the broker who demanded that I cover the cost of THB 12,000 for the whole process.'

(interview with a migrant from Shan State in Chiang Mai)

A Cambodian worker who was interviewed said:

'We worked in the border between Aranya Prathet and Cambodia. We could not go home since COVID-19, therefore we lived in this employer's orchard. We used our previous work documents, and they are all expired whereas my kids don't have documents. Normally, we came to Thailand through the custom border which only allowed goods to be transported; prospect employers were waiting for the recruitment of Cambodian workers at the gate. The employer paid the money to the authority there; I can't remember how much it was.' (KII)

The COVID-19 pandemic thus undermined efforts in Thailand to address labour exploitation. Not only did it have a severe impact the country's economy, but it also reversed some of the progress made in Thailand's labour migration regime. Many regular migrant workers became quasi/irregular migrant workers as passports or other identification documents could not be retrieved (where they had been confiscated) or renewed because of border closures and other political factors, such as political unrest in Myanmar.

5 Response measures, and protective possibilities

While Thailand has adopted more victim-centred measures, the focus of anti-trafficking efforts continues to be on criminal justice. However, two developments suggest the growing recognition of the need to broaden response efforts beyond criminal justice focused on anti-trafficking in order to strengthen a victim-centred and rights-based approach to the exploitation of migrant workers in Thailand.

First, the emerging consensus in Thailand that the spectrum of labour exploitation includes and goes beyond the experience of trafficking – as articulated in anti-trafficking legal frameworks – indicates the need to invest resources beyond criminal justice to include other entry points to address workers’ vulnerabilities. This is somewhat reflected in the evolving multi-disciplinary approach to TIP in the country, which involves actors beyond the prosecution of traffickers, and a growing focus on victim rights and protection.

Second, a focus on victims’ experiences of different forms of labour exploitation highlights a broad range of vulnerabilities that migrant workers (regular and irregular) face. While the legal and regulatory framework is improving, in practice, migrant workers in Thailand have to navigate different informal rules and practices at different stages of their journey to employment, and in their workplace, including negotiating to earn a just salary. Developing effective response and protective measures therefore depends on understanding the informal rules and mechanisms that migrant workers navigate, and the power dynamics of the different relationships they encounter in the workplace. This will help to identify and work with existing opportunity structures to better support their capacity for voice and agency in negotiating better outcomes for themselves.

5.1 Protection and the justice system

5.1.1 Anti-trafficking and the criminal justice system

As noted, developments in the legal framework aimed at addressing trafficking through the criminal justice system reflect the Thai government’s firm commitment to the agenda. The government has made greater efforts to respond to the indicators by which counter-trafficking efforts are measured in the US TIP Report. This commitment to improving transparency is further demonstrated in the production of the RTG Annual Country Reports on Anti-Human

Trafficking Efforts. In this respect, the RTG 2021 Report notes the following indicators of progress: an increase in funding for anti-trafficking efforts; in 2021, 182 human trafficking cases were initiated, 36.8% more than in 2020; 356 human trafficking offenders were arrested, an increase of 89.36% from the previous year; more severe penalties were reported; proactive investigation of officials allegedly complicit with human trafficking; investment in multidisciplinary teams and in partnerships with NGOs, including to enhance the protection of victims; and investment in capacity development regarding victim-centred approaches to prosecution and law enforcement of anti-trafficking efforts (RTG, 2021). This illustrates an ongoing commitment to strengthening the formal justice component of anti-trafficking efforts.

Developments in the legal and policy arenas to improve the framework on counter-trafficking and protection of migrant workers were described in Section 3. These changes, insofar as they have integrated more protective elements, are important, and in principle help to enable a more victim-centred approach to addressing labour migrants' vulnerabilities (HRDF, 2019; Liberty Asia, 2017). However, how this translates in practice into better protection for victims through the criminal justice system is limited. As a rule, labour migrants avoid the criminal justice system as a route to protection. A number of obstacles were identified in the literature review and in interviews for this study on the effectiveness of the criminal justice system.

First, are the issues of capability and implementation. There is uneven normative knowledge among police and labour inspectors at the frontline of victim identification across the different areas of law (interviews). At the same time, if labour migrants do resort to the formal system, the police or labour inspectors are the first point of contact (interviews) It was also reported that the multidisciplinary approach – while promising – is not yet fully operational, and that there is a lack of coordination across the different agencies and functions. This also relates to the complexity and successive layering of different laws, policies, guidance documents and operating procedures that create confusion about the roles and functions of different agencies and actors and undermine the potential effectiveness of the multidisciplinary approach. The complexity of building strong cases has also been noted as a deterrent to actively pursuing investigations on TIP.

Second, there are no clear incentives to support a victim-centred approach. There are attitudinal issues relating to how labour migrants are considered, so that protecting their rights is still not a key priority at the frontline of investigations. To the extent that the justice system is designed to investigate cases, this is driven more by performance indicators associated with numbers of arrests and convictions than by concerns about the safety of victims and protection of their rights. The weight of performance indicators appears, moreover, to have

different motivational impact on different law-enforcement actors regarding TIP investigations (for instance, the DSI appear to be considered as less susceptible to collusion and capture than the RTP) (The Asia Foundation, 2021).

Third, law-enforcement and justice actors along the criminal justice chain, albeit inconsistently, are considered to be more or less susceptible to collusion and complicity with the informal networks and practices that facilitate trafficking and labour exploitation. It has been alleged that the effectiveness of the criminal justice response is affected by practices of collusion, as well as solidarity among law-enforcement actors (The Asia Foundation, 2021).

In practice, given the scale of labour exploitation, there have been very few successful cases of TIP through the criminal justice system.

This is relevant for the web of actors involved in facilitating the journey and in practices of deception, collusion or complicity that lead to labour exploitation. Mostly it is informal brokers who are investigated or prosecuted. Although there have been a few cases of high-level officials being investigated, these ‘big fish’ are rarely connected to cases that end up in the criminal justice system. In interviews, this was also explained by the fact that they are well removed from the trafficking process, even though they gain the most from situations of exploitation that workers experience.

For law-enforcement actors, it is far from clear that the capacity and incentives for applying due process and a victim-centred approach are embedded in the system. There is relatively little evidence on the ways in which incentives and informal rules shape the conduct of law-enforcement actors, but some factors have been noted in the literature (The Asia Foundation, 2021). Performance-related rewards may be relevant, but these are mainly focused on arrests and punitive action, and not especially targeting trafficking or forced labour cases (The Asia Foundation, 2021). Moreover, principles of due process and concern for the protection and safety of victims are not a priority. It appears that the MDT approach remains under-developed, and its effectiveness is undermined by the labyrinthine complexity of systems, policy, and actors involved. Nor is it clear that coordination and working across law-enforcement agencies is indeed rewarded, and it is in any case undermined by the different forms of patronage, bribery and systems of collusion and complicity with labour exploitation. Low salaries, for instance, combined with informal systems of career promotion that depend on paying into the systems of patronage, and weak checks and balances, contribute to the ineffective implementation of improved laws and policies on anti-trafficking. (The Asia Foundation, 2021). In addition, little is known about specific features of law-enforcement practices in relation to anti-trafficking.

Unsurprisingly, it is still the case that victims of labour exploitation prefer to avoid engagement with the criminal justice chain, (interviews with labour migrants).

5.1.2 Labour justice system

As the previous section illustrates, justice for victims of trafficking and labour exploitation remains elusive in the criminal justice system, although other laws do provide protection options for complaints and legal voice for migrant workers. Key informants from across the justice chain underlined the need to connect counter-trafficking efforts with the labour justice system, and recourse to the administrative channels for remedy and compensation.

The labour justice system does therefore provide an important means for protecting the rights of labour migrants. This mostly involves administrative processes, where the onus is on the migrant to provide the relevant documents and evidence. Labour migrants can submit wage-related complaints to labour inspectors or file a case to the labour court directly (in writing or verbally). Some violations of the Labour Protection Act carry criminal penalties, including fines and/or imprisonment. Labour inspectors can order employers to pay a fine, but when cases involve human trafficking for forced labour under the Human Trafficking Act, labour inspectors must report these to the police to have the case inspected within the guidelines of criminal proceedings.

In practice, the system is weighted against the labour migrant. Decisions by the labour inspectors on unpaid fines can be challenged by either the worker or the employer, in which case mediation is sought, and a trial proceeds only if no agreement is reached. It is reported that employers often challenge decisions as a tactic to intimidate the worker to accept a lower settlement, or to threaten retaliatory legal action (HRDF, 2019).

When remedies have been obtained, one study found that the majority of cases involved returning their documents to migrant workers (Harkins and Ahlberg, 2017). Financial compensation was the next most cited remedy. However, this has been reported as involving money owed for unpaid wages rather than compensation for harms suffered or as punitive remedies, and is extremely rare (Harkins and Ahlberg, 2017). At the same time, financial compensation is reportedly the preferred outcome of any complaint process for victims of labour exploitation (interviews).

Changes in the legal framework have enhanced protective measures and provided more channels for workers to seek redress or compensation. This is important as it creates a broader range of options beyond the anti-trafficking criminal justice process by which to hold states and employers to account and seek remedy for situations of labour exploitation. Formally, the legal framework on labour protection sets standards against which labour practices can

be judged, and labour rights advanced. While the formal protection of labour migrants' rights is uneven across sectors, such progress in law and policy change are clearly important.

As we have seen earlier, the vast majority of labour migrants do not resort to complaints mechanisms. Frequently cited obstacles to using available justice and complaints mechanisms include linguistic barriers, lack of knowledge of rights and entitlements, the complexity of procedures, fear of reprisals and lack of trust in the justice chain, and in official channels for justice and compensation (ILO, 2020; HRDF, 2019; Harkins and Ahlberg, 2017). Crucially these barriers reflect wider structural inequalities and power imbalances that legislative changes alone cannot fix.

5.2 Protective possibilities and labour migrants' voice and agency

Despite the challenges, there are opportunity structures and support networks which provide the basis for voice and agency among migrant workers. These should not be overstated, however, in a context of often diminishing civic space and given the weight of structural barriers to addressing their vulnerabilities. Nevertheless, they present opportunities to strengthen migrant workers' capacity for agency.

Protective measures include a range of mechanisms by which to secure safety for victims of trafficking and labour exploitation. Here we underline the following.

5.2.1 Legal voice and agency

The establishment of the MWACs in 2016 through a Cabinet Resolution appears to be a promising space for providing advice and information to labour migrants. They are government agencies run from the Department of Employment. They also provide support and information on complaint mechanisms, emergency shelters for migrant workers awaiting the outcome of a legal dispute, and coordinate assistance or case referral among relevant agencies (ILO, 2020). There is a need for more research on their effectiveness, but an early ILO assessment finds that labour migrants are beginning to see them as a source of information and advice. Across the ten MWACs in existence at the provincial level between 2016 and 2019 it is calculated that services were provided to 124,515 labour migrants (ILO, 2020).

Mostly, to the extent that labour migrants exercise legal voice and agency, it is through recourse to NGOs and CSOs (such as HRDF or LPN) and trade unions that provide legal advice and legal assistance. There is a consensus among these that migrants need to have recourse to administrative channels and labour law, as the anti-trafficking legal framework is inadequate from a protection perspective. Legal support from civil society therefore includes

strategic engagement across anti-trafficking criminal justice and labour justice with the aim of enhancing workers' legal protection and capacity to use complaints mechanisms (interviews).

One such example is the MRCs, which have been established across the Mekong region to provide legal advice to labour migrants. In Thailand and in Malaysia – two destination countries – they are run both by CSOs and by trade unions (Marks and Olsen, 2014; ILO, 2013), with support from the ILO and donor funding. In practice, their support goes beyond offering legal advice, and includes providing information across a range of issues both in destination countries and in countries of origin.

Linguistic barriers continue to be very problematic and act as a major disincentive for workers to engage with state or non-state actors or to lodge complaints (Winrock International 2020; interviews), as foreigners often find it hard to understand complex processes and complete forms. Investing in workers' legal voice includes improving the capacity of interpreters involved in complaints processes, and rights protection. This can be both through support to the relevant government agencies responsible for different administrative and complaints mechanisms who recruit translators and interpreters, and for NGOs and CSOs working with labour migrants.

Financial compensation for non-payment of wages or work-related accidents seems to be a priority for workers, and mediation, given current political economy conditions, seems the most likely to provide results in this regard – although there has been only limited success in securing remedy and protection (HRDF, 2019).

5.2.2 Labour migrants and civil society

Working with NGOs and CSOs is thus a key entry point to enhancing migrant's legal voice, in a context of weak rule of law, and where workers distrust formal justice mechanisms. More generally NGOs and CSOs are important intermediaries between labour migrants, employers and legal systems.

For victims of labour exploitation, engaging with CSOs and NGOs is much easier, with fewer barriers to establishing trust. They are a source of information, and also in some cases a place of safety and shelter. This was especially important during the COVID-19 pandemic.

Trade unions have been understudied in relation to labour migrants' protection, although historically they have not been politically strong in Thailand. It is a context of low union density. It is estimated that only 2% of the Thai labour force is organised in trade unions (ILO, 2018), and only 34 of 76 provinces even have established trade unions.

Country-specific factors that contribute to unions' limited presence and effectiveness include restrictive laws, and lack of capacity to

ensure the enforcement of workers' rights. This weakens their capacity to represent workers effectively (ILO, 2018). It was also noted that Thai workers show little solidarity with migrant workers, whom they often regard as undercutting wages and labour conditions, alongside wider discriminatory sentiment (Marks and Olsen, 2015; interviews). Legal barriers include the fact that although migrant workers can join Thai unions, they cannot take on leadership roles as union leaders, which limits their capacity for active involvement, nor are they permitted to create their own unions.

Even so, unions constitute a potentially strategic space to advance the protection of labour migrants. There may also be room for better collaboration between unions from the region following some recent developments. Thai unions are becoming more active in supporting labour migrants' rights, and there are promising developments such as the MOUs signed between Thai and Cambodian unions and more recently discussions are underway with Lao unions (ILO, 2022).

The development of the Migrant Workers Rights Network (MWRN) in Thailand is an interesting experience of a union-like structure – while not formally recognised – which has achieved piecemeal results through sustained activism that promotes self-organisation and collective action (ILRF, 2020). This has included working through strategic alliances with Thai unions, as well as constant direct engagement with labour migrants in the workplace. Achievements are limited by the restrictive legal space for collective bargaining and union-like activism for migrant workers.

Finally, the informal networks that bring together migrant workers to share information and support each other should not be underestimated. These are mostly organised around nationality or employment sector and provide an especially important safety net for labour migrants. These networks are key sites for information on survival strategies, and navigating the informal practices and systems discussed above. Given the wider political economy constraints, this information sharing is key in supporting migrant workers' capacity for individual, familial and collective agency (Derks, 2013). Interviews underlined the value of these informal networks, but there is a need for more research on how donors and NGOs can better engage with them to understand the specific conditions and experience of migrant workers regarding labour exploitation and trafficking.

Notably, one study noted that while Thailand has a good network of NGOs on labour migrant issues, interviews undertaken for that study noted that 'the network is dominated by international organizations, which leave the local NGOs less space to talk about more practical strategies. The INGOs [international NGOs] always mention about international standards and laws that are not that relevant in Cambodia yet' (Verité, 2019: 33). Rather than focusing on international standards, therefore, it is recommended to focus more on what safe migration means in the existing conditions, and to invest

in raising the awareness of migrant workers to conditions of labour exploitation so that they can recognise it (Verité, 2019).

6 Key findings and Recommendations

6.1 Key findings

6.1.1 Challenges

The widespread exploitation of labour migrants in Thailand is the outcome of the particular political and economic history of export-led growth, situated within a context of limited political and civic space for accountability, rule of law and rights protection. The nature of the political settlement favours an elite bargain that privileges business interests, the military and state bureaucracy interests and limits the space for political contestation. Although political instability has resulted in rotation at the government level, elite interests have fundamentally remained constant.

Rapid growth has supported improvements in poverty reduction and human development indicators, but Thailand remains a deeply unequal society. The economic model has come to rely on low-skilled, low-paid labour migration. Weak rule of law and rights protection, and a socio-normative context that favours hierarchy and personal networks as the basis of social organisation, result in poor implementation of the legal and policy framework on anti-trafficking and labour protection. The features of this weak governance contribute to undermining labour protection and compliance with the legal and policy framework. Besides anti-trafficking measures, there is insufficient investment in the capabilities of, or action by, labour protection authorities.

Relatedly, there is also limited capacity among the relevant state bodies charged with implementing an evolving legal and policy framework on anti-trafficking, labour law and labour migration. These include ongoing coordination challenges across these, uneven understanding of a rapidly changing policy framework, and the fact that in the response efforts on labour exploitation the prevailing mindset is to focus on prosecution of traffickers (mostly not achieving high-level convictions, but rather targeting small-scale brokers), and less on a victim-centred focus that addresses vulnerability to labour exploitation.

Two other structural constraints include, first, that too many stakeholders gain from poor implementation of relevant law and policy. This does not likely amount to a fully coordinated effort to

subvert the law across the justice and law-enforcement chains and among sector- specific stakeholders. But enough specific interests and incentive structures at different stages of the migrant's journey stand to gain from the status quo. Second, discriminatory attitudes towards migrant workers contribute to sustaining practices of labour exploitation.

Migrant workers' capacity to counter labour exploitation is undermined by insufficient knowledge of rights and protective measures, linguistic barriers, (understandable) distrust of a government-provided protective system and the weight of structural inequalities – all of which conspire to put them at a huge disadvantage in their interactions with employers and state officials.

6.1.2 Opportunities for change

While the structural issues that sustain practices of labour exploitation and trafficking remain formidable, the fieldwork and existing literature signal various opportunities to invest in change. Supporting these could contribute to altering – even if modestly – some of the power imbalances that are an important part of the problem.

In the context of Thailand's commitment to invest in anti-trafficking efforts and associated legal change, such processes are themselves a site of engagement through which to strengthen commitments on protection measures. CSOs and NGOs have played an important role in pushing for legislative and policy change.

There seems also to be some momentum to work across jurisdictional areas, in ways that could enhance a victim-centred approach. It is important to situate anti-trafficking measures within the broader context of widespread practices of labour abuse and labour exploitation. Working more strategically to connect anti-trafficking law and labour law could help to ensure that a broader understanding of labour rights and labour exploitation is the basis on which to develop response mechanisms that go beyond the anti-trafficking criminal justice chain.

Relatedly, investing in cross-departmental coordination and collaboration is now made more possible by the adoption of an explicit multidisciplinary approach, noting the formidable challenges that remain in this respect. It is therefore important to support still greater inter-organisational linkages.

In this respect, some strategic networks and coalitions have emerged as clear opportunities for future engagement. First, as stated above, there is space to improve exchange and collaboration across different government, jurisdictional and law-enforcement bodies. Second, there is the opportunity to develop further interactions and coalitions among government agencies, (I)NGOs and civil society, and unions. Third, there is the chance to optimise regional and

international exchanges across these categories of stakeholders, noting the regional dynamics of limited commitment to accountability on achieving meaningful progress regarding trafficking and labour exploitation.

There are also opportunities to strengthen protection for migrant workers related to the existing informal networks and support mechanisms. There is a need to better understand how the information and capabilities of these networks can be harnessed to strengthen both protective capacities and voice and agency of labour migrants. It is also important to invest in their capacity to act as an entry point to address the power imbalances that shape the relationship between migrant workers and employers, and migrant workers and the state. These networks are mainly organised around nationality and employment sector, but little is known about how they work in practice.

Finally, it is critical to recognise that migrant workers do have some agency. In the face of huge inequalities, they make choices, and have scope to exercise agency. A victim-centred approach depends on having a better understanding of their capacity for action to seek remedy or contest situations of labour exploitation and rights violations, including through invoking the law and a rights-based approach. At the same time, focusing more on survivors of rights violations should avoid placing the burden of responsibility on them, precisely because they have little choice given the sub-national, national and global structural drivers of trafficking and labour exploitation.

6.2 Recommendations

Recommendations are aimed at both the domestic and international level, and should inform the policy, donor, (I)NGO and civil society communities of practice, as well as the research community. Recommendations should also inform ASEAN-ACT activities.

Invest in knowledge and analysis of how change happens to address victims' vulnerabilities to trafficking in persons and labour exploitation.

- It is important to base all work on an **understanding of the wider political economy of structural inequalities and global supply chains** that are at the root of the problem of trafficking in persons and labour exploitation. Engaging with complexity is a starting point, and requires constant analysis to identify specific interests and incentives-based blockages relating to justice and law-enforcement chain, and to the wider power dynamics that sustain labour exploitation. Analysis of the power imbalances, incentives and interest structures that shape the behaviour of different stakeholders against the backdrop of structural political, economic and socio-normative conditions should inform any practical

measures aimed at addressing vulnerabilities to trafficking and labour exploitation of labour migrants.

- Invest in **understanding the boundaries of what change is possible and realistic**, given political economy constraints. This means research and analysis that identifies emerging opportunities. Building this body of evidence can help direct resources to context-relevant activities that can realistically make a difference in shifting power imbalances and incentive structures. At the same time, it is important to remain clear-sighted about the wider regional and global political economies of trade relations and supply chains and evolving geopolitical context within which Thailand is nested, and its own political constraints.

Invest in integrated approaches across different policy domains.

This includes working beyond the anti-trafficking criminal justice system, to engage more proactively with labour justice and administrative channels through which to obtain remedy or compensation for labour migrants. The focus should be on what migrant workers consider to be justice and remedy priorities and protection issues, rather than assuming what these are in advance.

- Invest in the emerging multidisciplinary approach across different policy areas, to enable more strategic collaboration between labour protection, anti-trafficking, migration and social protection agencies whose work is relevant to reducing vulnerabilities to trafficking and labour exploitation. It also includes investing purposefully in protection and prevention capabilities, beyond the current focus on prosecution.
- Work *beyond* the anti-trafficking criminal justice system, to engage more proactively with labour justice and administrative channels through which to obtain remedy or compensation for labour migrants. Focus more on what migrant workers consider to be justice and remedy priorities and protection issues, as articulated in the context and in sector-specific ways rather than assuming what these are in advance. This also includes being aware of the nature of informal rules and practices that motivate different stakeholders in practice.
- Invest in legal change, continuing to support substantive change in the content of law and implementation processes across different jurisdictional domains relevant to addressing the experience of victims of labour exploitation.

Support capacity development of the justice sector, law-enforcement and other relevant state agencies with responsibility for labour rights and addressing vulnerabilities to trafficking and labour exploitation. This may include rethinking approaches to capacity development to focus more on facilitating exchange and collaboration across jurisdictional spheres.

- Invest in state agencies' technical and strategic knowledge and capabilities to apply an integrated approach across anti-trafficking measures, labour rights and labour conditions, and migration policies and practices, social protection measures and other relevant issues. This includes supporting better engagement between national and sub-national levels of policy implementation.
- Facilitate dialogue and strategic engagement between state actors and NGOs and CSOs to create ongoing exchange and building relationships and trust.
- Facilitate dialogue and strategic engagement among state actors, NGOs, CSOs and the private sector. This can help build trust.
- Invest in interpreters to ensure better access to information for migrant workers, and to support the work and capacity for organisation of community-based organisations, migrant networks and voice of labour migrants.

Invest in NGOs and CSOs capabilities in order to enhance protective responses, and legal migrants' voice and agency.

- Work with NGOs and CSOs – including CBOs and migrant networks – to build their capacity for improving legal voice and agency of migrant workers. This includes raising awareness and sharing information regarding the full spectrum of protective measures in law. It also includes working with NGOs and CSOs to facilitate migrant workers' access to support mechanisms and networks.
- Invest in civil society capacity to work across different jurisdictional domains relating to labour exploitation, including anti-trafficking and labour justice.
- Invest in interpreting and translation services which can improve communication and information sharing for direct engagement with migrant workers at risk of labour exploitation at the different stages of their journey and engagement with employers.
- Work with unions (including at a sub-national, national and regional level) to identify opportunities to build strategic coalitions with NGOs and CSOs.
- Work with NGOs and CSOs to learn from migrant networks on their experience of labour exploitation and abuse, in order to better tailor protective measures and support to supporting migrant workers' voice and agency.
- Support civil society engagement with informal networks of labour migrants on a sector and nationality basis.

Work with the private sector to better understand their incentives at sub-national and sector level, in order to identify blockages and entry points for innovative engagement that can contribute to changing

practices. Coordinated action and investment along global supply chains to improve regulatory capacity, punitive measures, and shifting consumer behaviours, continue to be critical to changing incentive structures.

Invest in ASEAN-level exchange of experiences, lessons and innovative practices. This includes supporting exchange that integrates the multi-thematic approach, working with government and state bureaucracies, as well as civil society. It also includes supporting ASEAN-level spaces for safe exchange for civil society actors.

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