

# Towards a Shared Responsibility Framework on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand

Premjai Vungsiriphisal, Pyone Myat Thu, Suthep Benjapakeesakul and Waranya Jitpong

Asian Research Centre for Migration (ARCM-CE),  
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First published 2021

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Printed in Thailand

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## Foreword

Migration is a defining feature of the global economy and migrant workers are an important part of the working population around the world. However, several studies conducted in the last years have revealed the challenges migrant workers commonly face during the recruitment process, as well as difficult working and living conditions in the destination country.

Achieving an ethical recruitment means hiring workers lawfully, and in a fair and transparent manner that respects and protect their dignity and human rights. This requires information sharing among employers, recruitment agencies and governments, simple recruitment procedures, employment terms and conditions that are explained clearly before departure, and close monitoring that these conditions are met. In addition, emergency response preparedness is key to migrant protection, for instance during the recent coronavirus disease pandemic (COVID-19), or other emergencies, such as natural disasters. Therefore, in order to recover from the COVID-19 crisis, migrant workers should be offered skills development and reskilling opportunities to adjust to the post-pandemic labour markets.

This Shared Responsibility Framework on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand is aimed at creating minimum standards that are in line with Thai laws for fair and ethical recruitment, decent work conditions and skills development. It is designed to support the key stakeholders in the labour migration process who play decisive roles in enhancing migrant workers' protections and in maximizing the positive development impact of migration.

This guidance has been developed based on relevant national and international laws, regulations and standards and in close consultation with relevant stakeholders in six target areas in Thailand that host a high number of migrant workers. The consultations involved employers in the service, construction and manufacturing sectors, government officials, civil society and migrant worker organizations in Bangkok, Chiangmai, Chonburi, Nakhon Ratchasima, Phuket and Samut Sakhon. The framework also compiles good practices and initiatives from Thailand and other countries.

Only the shared commitment and concerted efforts among employers, recruitment agencies, skills development providers, civil society organizations and Governments can help remove existing barriers and achieve full potential of labour migration as a source of poverty reduction, economic growth and resilience. We hope this Shared Framework can serve as a starting point for the key stakeholders to work collaboratively to ensure ethical recruitment, decent employment and skills development for migrant workers.

**Ms. Geraldine Ansart**

Chief of Mission  
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# Acknowledgments

This study was developed under the International Organization for Migration’s (IOM) Programme “Poverty Reduction through Safe Migration, Skills Development and Enhanced Job Placement in Cambodia, Lao PDR, Myanmar and Thailand (PROMISE).” The Asian Research Center for Migration (ARCM-CE) of Institute of Asian Studies, Chulalongkorn University has carried out the study with funding from the Government of Switzerland through the Swiss Agency for Development and Cooperation. Premjai Vungsiriphisal led the research team – Pyone Myat Thu, Suthep Benjapakeesakul and Waranya Jitpong.

The research team would like to express its appreciation to Suthasinee Kaewlhekhlai, Migrant Worker Rights Network, for her cooperation and networking with migrant workers. The team would also like to acknowledge the invaluable cooperation of the following partner organizations for their contribution to the study and framework development:

- Department of Employment and Department of Labour Protection and Welfare, Ministry of Labour;
- The provincial labour offices in Bangkok, Chonburi, Chiangmai, Nakhon Ratchasima, Phuket, Samutskorn, and Samutskorn Social Development and Human Security Office;
- Recruitment agencies in Bangkok, Chonburi, Chiangmai, Nakhon Ratchasima, Phuket and Samutskorn provinces;
- Chonburi Industrial Council, Samutskorn Industrial Council and Samutskorn Chamber of Commerce;
- Employers’ Confederation of Thailand and the Group of Entrepreneurs with Foreign Workers (GEFW); and
- Representatives of migrant workers.

This study would not have been completed without the participants’ contribution in stakeholder consultations, including the Public–Private Steering Committee on Migrant Employment of the PROMISE programme. The committee members shared their experiences and ideas to help develop the framework into the Shared Responsibility Framework on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand. We are also grateful to the peer-review team – Sally Barber, Aleksandra Lasota, Nissara Spence, Pukchanok Pattanatabud and Benjamas Penboon, IOM Thailand Country Office, and Nansiri Iamsuk and Saranya Chittangwong, UN Women Regional Office for Asia and the Pacific.



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## List of Acronyms

<b>ACMW</b>	ASEAN Committee for Migrant Workers
<b>AFML</b>	ASEAN Forum on Migrant Labour
<b>AQRF</b>	ASEAN Qualifications Reference Framework
<b>ARCM</b>	Asian Research Center for Migration (ARCM-CE)
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CSO</b>	Civil Society Organization
<b>CLM</b>	Cambodia, Lao People's Democratic Republic and Myanmar
<b>GCM</b>	Global Compact for Safe, Orderly and Regular Migration
<b>IOM</b>	International Organization for Migration
<b>ILO</b>	International Labour Organization
<b>IRIS</b>	International Recruitment Integrity System
<b>KFSB</b>	Korea Federation of Small Businesses
<b>LPA</b>	Labour Protection Act
<b>MFA</b>	Ministry of Foreign Affairs
<b>MICIC</b>	Migrants in Countries in Crisis
<b>MOU</b>	Memoranda of Understanding
<b>MRA</b> s	Mutual Recognition Arrangements
<b>MWAC</b>	Migrant Worker Assistance Centre
<b>MROH</b>	Ministerial Regulation for the Administration and Management of Occupational Safety, Health and Environment
<b>NV</b>	National Verification
<b>OG</b>	General Principles and Operation Guidelines on Fair Recruitment
<b>OSHEA</b>	Occupational Safety, Health and Environment Act
<b>PPE</b>	Personal Protective Equipment
<b>PROMISE</b>	Poverty Reduction through Safe Migration, Skills Development and Enhanced Job Placement in Cambodia, Lao PDR, Myanmar and Thailand



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on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand

<b>ROMMW</b>	Royal Ordinance on the Management of Migrant Workers
<b>RTG</b>	Royal Thai Government
<b>SDG</b>	Sustainable Development Goal
<b>SDF</b>	Skills Development Fund
<b>SDL</b>	Skills Development Levy
<b>SDPA</b>	Skill Development Promotion Act
<b>SSA</b>	Skills-Future Singapore Agency
<b>SSF</b>	Social Security Fund
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>WASH</b>	Water, Sanitation and Hygiene



# Introduction

The International Organization for Migration's (IOM) Poverty Reduction through Safe Migration, Skills Development and Enhanced Job Placement in Cambodia, Lao PDR, Myanmar and Thailand (PROMISE) programme seeks to secure better employment opportunities and working conditions for migrants, especially women. PROMISE has supported the establishment of the Public-Private Steering Committee on Migrant Employment to serve as a platform for both public and private sector partners to collaborate to strengthen skills development, decent employment and ethical recruitment for migrant workers in Thailand (IOM Thailand 2020).

The main objective of this Framework is to define shared responsibilities on ethical recruitment, decent employment and skills development in partnership with the private sector, training institutions, civil society and the Royal Thai Government (IOM Thailand 2020). Increased commitments, particularly from the private sector in Thailand towards a shared responsibility framework for migrant workers, will lead to positive outcomes in three ways: 1) Workers, recruiters and employers have a clear, fact-based understanding of standards and requirements of ethical recruitment and understand the conditions, risks and opportunities that exist across relevant labour migration corridors and how to tackle them. Workers are empowered with the knowledge they need to migrate safely and access jobs (through information available in their home country, pre-departure, and post-arrival training); 2) expanding career opportunities for migrants who frequently drop out from specific job sectors by creating a revised incentive structure that can be communicated to migrant communities based on a better understanding of skills development and career paths, and 3) strengthening the Royal Thai Government's policies and practices to be more responsive to the needs of migrant workers and the private sector, which can guarantee their protection and facilitate job placements of better skilled migrant workers (IOM Thailand 2020).



# Methodology

To develop a shared responsibility framework for migrant workers in Thailand, particularly one which is rights based and gender responsive, the Asian Research Center for Migration (ARCM) at Chulalongkorn University conducted a literature review to gain an overview of international standards on ethical recruitment, decent employment and skills development for migrant workers. These international standards and best practices, based on international human rights including labour rights, were taken as aspirational benchmarks for discussion with relevant stakeholders in Thailand to derive nationally accepted standards and practices (**Figure 1**). To achieve this, ARCM conducted Focus Group Discussions (FGDs) through several consultative meetings in six provinces from four regions in Thailand and interviews with key stakeholders in Thailand including the Royal Thai government, employers, migrant workers, non-governmental organizations and civil society. Participants in focus group discussion-consultative meetings include 77 employers from three sectors (construction, hospitality and manufacturing), 26 representatives from recruiting companies, 2 Myanmar migrant workers, also representative of organizations working with migrants, 14 government officers from the Ministry of Labour (Department of Employment, Department of Labour Protection and Welfare, Social Security Office), Ministry of Social Development and Human Security, and five Civil Society Organizations (Annex 1).

**Figure 1: Conceptual Framework on a Shared Responsibility Framework on Ethical Recruitment, Decent Employment and Skills Development.**



The following section provides an overview of the international norms and instruments on ethical recruitment, decent employment and skills development for migrant workers in addition to Thailand’s key national laws and regulations relevant to migrant workers. Thailand’s current status as a destination country for migrant workers and how its labour migration laws, policies and programmes measure up against international benchmarks is then examined. As we undertook this literature review, the COVID-19 spread globally. Its health and socioeconomic effects have become more evident in Thailand, including among the migrant worker populations. Hence, we have identified emerging issues concerning migrant workers’ rights and welfare that have emerged from this pandemic, as well as potential policy response measures to address similar emergency and crisis situations in the future.



## Thailand National Laws and Regulations

Thailand has accommodated migrant workers to work in the country for three decades and issued several ad hoc or short-term policies to address the situation. To manage the recruitment of migrant workers efficiently and orderly, Thailand has issued the Royal Ordinance on the Management of Migrant Workers Employment in B.E.2560, amended in B.E. 2561. The decree aims to achieve orderly, efficient recruitment procedures and contains certain provisions to support the regularization of migrant workers. The Royal Ordinance covers the roles and responsibilities of all relevant stakeholders involved in recruitment procedures. This ordinance has established the regulation of private recruitment agencies that play a significant role in facilitating in-bound recruitment procedures, to be licensed through payment of 5 million Thai Bahts (THB) guarantee deposit against possible regulatory violations (Grimwade & Newmann, 2019). With this Royal Ordinance, migrant workers have the opportunity to change their employers under certain conditions, withholding of migrants' identification documents is prohibited and worker-borne recruitment fees are eliminated, closely adhering to the International Labour Organization (ILO) General Principles and Operational Guidelines for Fair Recruitment (ILO, 2016). The roles and responsibilities of employers, penalty in recruiting undocumented migrants or migrants working without a work permit are also indicated (See details under "Thailand as a Country of Destination"). Migrants recruited under Memoranda of Understanding (MoU) Schemes, as well as migrants recruited from the border areas to work as seasonal workers are included in the Royal Ordinance. In addition, migrant workers working in Thailand are protected by the Labour Protection Act (B.E. 2541), a key law concerning labour protection of workers which states that all workers, including migrant workers, are entitled to protection, regardless of their work permit and documentation status, Social Security Act (B.E. 2558) the same as Thai workers, Anti-Human Trafficking in Persons Act (B.E. 2551). These acts are key but not all legislation mechanisms are relevant to migrant workers' fair recruitment in Thailand.



The Labour Protection Act, B.E. 2541, with its latest amendment B.E. 2555, contains important benefits and welfare that migrant workers can enjoy similarly to Thai workers. The Labour Protection Act covers topics such as general employment provisions including working hours, wages, payment of wages, overtime pay, holidays, sick leave, employers' fair treatment, compensation and penalties for employers' malpractice or workers' exploitation and equal treatment to both men and women workers; and specifies labour coverage for women workers from dangerous and risky jobs although there are different stipulations and flexibility regarding certain occupations such as domestic work, hospitality, fisheries etc.

Social Security Act (B.E. 2533 and its latest amendment in B.E. 2558) has been set up with the objective to provide assistance for its members. The Social Security Fund (SSF) is contributed by the employee, employer and the Royal Thai Government. An insured is entitled to receive the following benefits: 1) Health care and disease prevention 2) Maternity benefits 3) Disability support 4) Death insurance 5) Child benefits 6) Old age benefits 7) Unemployment support. Regular migrant workers are required to join the SSF scheme and are entitled to receive the same benefits as other members. The SSF is available to all MoU workers except for those employed in short-term agriculture, forestry and domestic work.

Anti-Trafficking in Persons Act (B.E.2551) has been drafted to protect those who fall under a broader definition of victims of trafficking – not only women and children but also men, including trading of labour, which makes many migrant workers victims of trafficking for cheap labour. The Act addresses the victims' protection, based on human rights principles and covering their physical and psychological wellbeing as well as recovery. This Act contemplates punishments for the perpetrators.



# Skills Development for Migrant Workers

Labour migration can lead to “triple win” development outcomes through migrant workers’ positive contributions to the host country’s economy and labour market, as well as remittances and skills acquired by the origin country and migrants’ families (Ra, Chin and Liu 2015). The importance of continued learning and skills development is embedded in SDG 4, which calls for inclusive and equitable quality education and promotion of lifelong learning opportunities for all. Furthermore, with globalization, technological advances and regional integration in Asia, there is increased labour mobility and shifts in demand and supply for labour, occupational profile and skills (Ra, Chin and Liu 2015, pp.37-38). Yet migrant workers often face under-utilization of skills, lack of access to quality education and training opportunities, lack of access to information, and lack of recognition of qualifications and skills (ILO 2017). Skills development oriented for the future of work therefore requires identifying what skills are needed to meet labour market demands but also who and how to gain access to skills training (ILO 2018). As highlighted above, women migrant workers in Southeast Asia are over-represented in the informal sector. Their skills are undervalued and they frequently systematically earn less than men. Specifically, women migrant workers are often exposed to multiple intersections of discrimination and violence, including gender-based violence and harassment during their migration journey. With the informal sector expected to shrink with the aforementioned drivers of change, improving access for women migrant workers to skills development opportunities and qualifications that are recognized and standardized across the region will ensure they do not fall behind (ILO 2015).

In seeking to promote lifelong learning and skills development for migrant workers, governments should adopt bilateral and multilateral mutual recognition of foreign qualifications, competencies and skills in order to address brain waste, mismatched job placements and de-skilling (ILO 2019 Principle 4; GCM Principle 18). To achieve economic integration in ASEAN, the ASEAN Qualifications Reference Framework (AQR) sets up a regional qualifications reference framework for all education and training sectors to compare national qualifications across Member States, characterized by varying levels of economic development to achieve harmonization and standardization of skills and qualifications in the region (ASEAN 2020, p.6). In a similar vein, the ASEAN Mutual Recognition Arrangements (MRAs) in the services sector seeks to foster regional cohesion and facilitate trade by establishing a framework for skilled professionals who are authorized, licensed or certified by national authorities to be mutually recognized by Member States who are signatories to the MRAs (ASEAN 2015). Occupations covered under the MRAs include engineering, nursing, architectural, medical, dental, accountancy and tourism professionals.



# Bilateral Memoranda of Understanding (MoUs)

Thailand has signed Memoranda of Understanding (MOU) with four neighbouring countries: Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam to cooperate in solving Thailand's labour shortage and regularizing workers from these four countries to work in Thailand. The four MoUs cover cooperation between Thailand and each of the four countries of origin regarding recruitment procedures and labour protection. The MoU channel provides an avenue for the recruitment of workers either directly by the Thai employer or through licensed recruiters in Thailand and licensed recruiters in the workers' country of origin.

## International Standards and Best Practices on Ethical Recruitment, Decent Employment and Skills Development

Migration is now recognized as a global multi-dimensional phenomenon with positive contributions made by migrant workers towards inclusive and sustainable development in both countries of origin and destination (UN 2015). International best standards on ethical recruitment, decent employment and skills development for migrant workers are enshrined in the United Nations' (UN) Transforming our World: the 2030 Agenda for Sustainable Development and the 2018 Global Compact for Safe, Orderly and Regular Migration (GCM). All the principles embedded in the sustainable development goals (SDGs) and GCM are in accordance with international human rights standards.

Several SDGs are directly relevant to safeguarding the rights and welfare of migrant workers throughout the migration cycle. For example, SDG 10.7 calls for states to facilitate orderly, safe, regular and responsible migration and people's mobility, including through the implementation of planned and well-managed migration policies. SDG 10.c. recognizes the need to reduce to less than 3 per cent the transaction costs of migrant remittances and to eliminate remittance corridors with costs higher than 5 per cent. SDG 8.8 sets out the need to protect all workers, including migrant workers, particularly women migrants. In advancing women's rights, SDG 5.2 seeks to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking. SDG 5.c recommends that policies should be developed and implemented for the promotion of gender equality and the empowerment of all women and girls at all levels. States should additionally take immediate and effective measures to eradicate forced labour and human trafficking (SDG 8.7). SDG 4.3 further recognizes the need for all to have access to vocational training and affordable education throughout one's life course.

Guided by the 2030 Agenda for Sustainable Development, the GCM presents a framework for international cooperation on migrants and human mobility. Although the GCM is non-binding, it was endorsed by the UN General Assembly in 2018, including by the Royal Thai Government, and is considered the most comprehensive framework on managing migration issues through a whole-of-government, whole-of-society and gender-responsive approach (UN General Assembly 2018). The GCM focuses on achieving safe, orderly and regular migration through 23 objectives. These include facilitating fair and ethical recruitment, safeguarding conditions that ensure decent work, investment in skills development and mutual recognition of skills, qualifications and competencies of migrant workers, and facilitating safe and dignified return and readmission,





as well as sustainable reintegration (UN General Assembly 2018, pp.5-6). The GCM marked a monumental shift in the way migration issues have been historically addressed and managed through moving towards a tripartite approach that addresses challenges at every stage of the migration process.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) sets out to eliminate all forms of discrimination and human rights violations, in addition to ensuring the full and equal participation and enjoyment of all rights by women in all spheres of socioeconomic, civil and political life (UN Women 2012). CEDAW is a legally binding Convention which applies to all women, including women migrants, and was ratified by the Royal Thai Government in 1985. Article 11 of the Convention guarantees the rights of women to work; to have the same employment opportunities and conditions; to receive vocational training; to equal remuneration including benefits; to social security; and to protection of health and safety at work. The Convention further compels State Parties to eliminate discrimination against women workers, including migrant workers, on the basis of marriage or maternity.

The CEDAW Committee's General Recommendation No.26 enshrines the core principle of protecting women migrant workers' rights against sexual and gender-based discrimination in origin, transit and destination countries (CEDAW 2008, p.2). General Recommendation No. 26 recognizes specific vulnerabilities and risks faced by women migrant workers and identifies three categories of women migrants – which may be fluid and overlapping: (1) women migrant workers who migrate independently; (2) women migrants who join their spouses or other members of their families who are also workers; (3) undocumented women migrant workers who may fall into any of the above categories (CEDAW 2008, p.3). In the ASEAN region, women migrant workers outnumber men in the informal sector as a result of gender stereotyping of traditionally “female” occupations, such as in domestic work, hospitality, entertainment, care services, agriculture, cleaning and sex work. Women migrants are typically young, poor and have low literacy and education, which increases risk of gender-based violence, including sexual harassment, forced labour and trafficking, and hinders their access to safe migration pathways. Consequently, the sectors in which women are overrepresented are generally considered low-skilled, are largely unregulated, lack legal wage protection, decent working conditions, social benefits and health insurance (ILO 2015; UN Women 2015). The undervaluing of women's work means that there are less opportunities for women migrants to upskill (ILO and UN Women 2015).

The key United Nations agencies including the International Labour Organization (ILO), the International Organization for Migration (IOM), and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) are working alongside governments, employers' and workers' organizations, the private sector and other partners to translate and implement international standards on labour migration embedded in the SDGs, GCM, CEDAW, as well as a wide range of other international conventions and treaties into legislations, policies and programmes. IOM seeks to promote inter-governmental cooperation in labour migration management through high-level national dialogues to facilitate the development of migration policies; implement programmes that improve migrants' access to basic social services and assistance; foster cooperation and common understanding of migrant issues among relevant stakeholders, provide men and women migrants access to improved employment opportunities and conditions (in host and origin countries) and engage with the private sector to promote fair labour and ethical recruitment. ILO plays a complementary role in setting international labour standards to promote decent employment, enhance social protection and strengthen rights at work for all women and men, including migrant workers. UN Women leads in advocating the links between gender and migration and in doing so, promoting human rights and reducing inequalities for women migrant workers.



The section below provides a summary of the international and regional standards on ethical recruitment, decent work and skills development for migrant workers which are mutually reinforcing. The details of these principles and standards are provided in the attached shared responsibility framework for migrant workers in Thailand.

## Ethical Recruitment of Migrant Workers

Research in Asia Pacific highlights migrant workers frequently experience exploitation, forced labour, high recruitment costs and migration-related fees and debt bondage for recruitment and travel in both origin and destination countries (The Minderoo Foundation 2018; UN Thematic Working Group on Migration in Thailand 2019). In 2016, an estimated 24.9 million men, women, and children were victims of modern slavery in the Asia Pacific region. The Asia Pacific also recorded the highest prevalence of forced labour (four out of 1,000 people); (The Minderoo Foundation 2018). Furthermore, migrant workers who choose regular channels may face higher costs, barriers and restrictions than those who choose irregular channels (UN Thematic Working Group on Migration in Thailand 2019).

To address such issues, international standards for the ethical recruitment of migrant workers are established in ILO's (2019) General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs as follows:

### General Principles:

1. Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
2. Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages or working conditions, or to otherwise undermine decent work.
3. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
4. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
5. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspector and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be implemented effectively.



7. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
8. The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.
9. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.

Additionally, IOM's International Recruitment Integrity System (IRIS Principles), outlines that when recruiting migrant workers, recruiters and employers should ensure:

- Respect for Laws, Fundamental Principles and Rights at Work
- Respect for Ethical and Professional Conduct
- Prohibition of Recruitment Fees to Jobseekers
- Respect for Freedom of Movement
- Respect for Transparency of Terms and Conditions of Employment
- Respect for Confidentiality and Data Protection
- Respect for Access to Remedy

IRIS principles target labour recruiters and employers, prohibits the charging of recruitment fees and related costs to migrant workers, irrespective of where or how they are recruited and for temporary or permanent job placement or employment (IRIS Principle 1, see IOM 2020). Labour recruiters must not require migrant workers or their family members to provide a monetary deposit or other collateral as a condition of employment, and must not withhold, destroy or confiscate documents, wages, or other personal belongings, or otherwise limit freedom of movement (IRIS Principle 2). Migrant workers should have effective access to remedy, without fear of recrimination, reprisal or dismissal, such as internal grievance procedures of the labour recruiter and/or the employer and to those remedies provided by law in the country of origin and destination, in relation to their recruitment activities (IRIS Principle 5).



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## Pre-Departure Training and Post-Arrival Orientation

To reduce migrant worker exploitation, detailed and accurate information concerning all costs, immigration processes, and working and living conditions should be provided prior to deployment and upon arrival in destination countries. The Comprehensive Information and Orientation Programmes (CIOP) developed under the 2018 Abu Dhabi Dialogue provide guidelines for pre-employment, pre-departure and post-arrival orientation programmes. Whether conducted by government, employers, trade unions or civil society, these programmes should be mandatory and at no cost for migrant workers (ILO 2015). These programmes are now considered an important tool for the protection of migrant workers, to empower them to make well-informed decisions, understand their rights and obligations, and smoothen the transition to working overseas through better understanding of socio-cultural norms and practices in the countries of destination (Abu Dhabi Dialogue 2018; Hertog 2019). Best standards on pre-departure orientation include job-specific training and accurate information on the rights and obligations related to emigration and immigration, the terms and conditions of the employment contract, job responsibilities, information on the working and living conditions in the selected sector as well as grievance mechanisms (IRIS Criterion 3.6; ILO 2015).

Post-arrival orientations should reinforce information covered in pre-departure trainings and allow migrant workers to access country-specific information, such as laws, basic language, cultural orientation, local services and resources etc., and build relationships between workers and relevant government institutions, migrant group networks and CSOs in destination countries (ILO 2015). Furthermore, a gender-sensitive approach should be applied to both pre-departure and post-arrival orientations. The orientation programmes should discuss possible risks and vulnerabilities that migrant workers, especially women may face, such as trafficking in persons, labour exploitation, and sexual and gender-based violence and how to access help and essential services. Involvement of returned/experienced migrant workers in these programmes where first-hand experiences can be imparted is equally important, as is the cooperation of host country personnel to share country profiles (Asis and Mensoza 2012).



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## Employment Contracts

Best standards in employment contracts call for governments of countries of origin and destination to take steps to ensure that the migrant workers of all employment sectors are aware of and informed about the terms and conditions of employment in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national legislations, regulations and policies of the receiving states (see, for example, ASEAN Consensus 2017 Principles 14, 22, 36). Employment contracts should be clear and transparent, and should inform the workers of the location, requirements and roles and responsibilities of the job for which they are being recruited. Written contracts should be in a language that the migrant worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable (ILO 2019 Principle 8). Migrant workers should have the right to file a complaint against termination of employment or breach of an employment contract in the receiving state and, subject to the national laws, regulations and policies relating to immigration, be allowed to continue staying in the receiving state until a decision is made on the case (ASEAN Consensus Principle 19). The labour recruiters must ensure that the worker's written consent is obtained without coercion. The written contracts should detail the terms and conditions of employment including but not limited to the nature of work undertaken, rates of pay and pay arrangements, working hours, vacation and other leave, and all other lawful deductions from pay and benefits of employment in accordance with national law (IRIS Principle 3). In addition, the employment contract signed by the worker is not substituted for another employment contract unless for better living and working conditions and agreed upon with the migrant worker (IRIS Principle 3, Criterion 3.5). Special attention should be made to informal sector where the majority of women migrant workers are employed including domestic work where women are overrepresented. Informal employment is associated with limited access to welfare and employment related benefits. Migrant workers' personal data should be obtained with informed consent, protected, treated strictly confidential and shall not be communicated to any third party without the prior written informed consent of the worker or workers' representative, unless required by law (IRIS Principle 4).



## Decent Work for Migrant Workers

Decent work is defined by ILO (2021) as “work that is productive, delivers a fair income with security and social protection, safeguards basic rights, offers equality of opportunity and treatment, prospects for personal development and the chance for recognition and to have [one’s] voice heard”. ILO’s Decent Work Agenda forms an integral component of the SDGs, since decent work underpins efforts to reduce poverty and inequalities to achieve inclusive and sustainable development (ILO 2021). To this end, ILO has developed a benchmark to monitor progress to attain decent work through a set of recommended indicators and statistics, including for the Asia and Pacific region (see ILO 2008). This Agenda builds on ILO’s (1998) Declaration on Fundamental Principles and Rights at Work, which promotes and protects rights associated with freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

Decent working conditions require that migrant workers be given fair and appropriate employment protection, payment of wages and adequate access to decent working and living conditions, working hours, rest periods, holidays, gender equality, health and welfare, occupational safety, freedom of movement, collective bargain and union and complaint/grievance mechanisms (IRIS Criterion 2.3, 3.1 and 5.3; Cebu Declaration Principle 8). To address workplace grievances and emergencies, migrant workers should have access to resources and remedies through information, training and education, access to justice and social welfare services as appropriate and in accordance with the legislation of the receiving state (ILO 2019 Principle 8; IRIS Principle 5; Cebu Declaration Principle 7). Migrant workers who may be victims of discrimination, abuse, exploitation and violence should have adequate access to the legal and judicial system of the receiving states, without fear of reprisal or dismissal (Cebu Declaration Principle 9). To assist migrant workers in need, receiving states should facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin (Cebu Declaration Principle 9). Migrant workers should be given emergency numbers, such as the police, ambulance, legal aid and social support services. They should also be provided with clear instructions on how to contact their embassy, consulates and labour attachés (GCM Principle 14).



## Skills Development for Migrant Workers

Labour migration can lead to “triple win” development outcomes through migrant workers’ positive contributions to the host country’s economy and labour market, as well as remittances and skills acquired by the origin country and migrants’ families (Ra, Chin and Liu 2015). The importance of continued learning and skills development is embedded in SDG 4, which calls for inclusive and equitable quality education and promotion of lifelong learning opportunities for all. Furthermore, with globalization, technological advances and regional integration in Asia, there is increased labour mobility and shifts in demand and supply for labour, occupational profile and skills (Ra, Chin and Liu 2015, pp.37-38). Yet migrant workers often face under-utilization of skills, lack of access to quality education and training opportunities, lack of access to information, and lack of recognition of qualifications and skills (ILO 2017). Skills development oriented for the future of work therefore requires identifying what skills are needed to meet labour market demands but also who and how to gain access to skills training (ILO 2018). As highlighted above, women migrant workers in Southeast Asia are over-represented in the informal sector. Their skills are undervalued and they frequently systematically earn less than men. Specifically, women migrant workers are often exposed to multiple intersections of discrimination and violence, including gender-based violence and harassment during their migration journey. With the informal sector expected to shrink with the aforementioned drivers of change, improving access for women migrant workers to skills development opportunities and qualifications that are recognized and standardized across the region will ensure they do not fall behind (ILO 2015).

In seeking to promote lifelong learning and skills development for migrant workers, governments should adopt bilateral and multilateral mutual recognition of foreign qualifications, competencies and skills in order to address brain waste, mismatched job placements and de-skilling (ILO 2019 Principle 4; GCM Principle 18). To achieve economic integration in ASEAN, the ASEAN Qualifications Reference Framework (AQRF) sets up a regional qualifications reference framework for all education and training sectors to compare national qualifications across Member States, characterized by varying levels of economic development to achieve harmonization and standardization of skills and qualifications in the region (ASEAN 2020, p.6). In a similar vein, the ASEAN Mutual Recognition Arrangements (MRAs) in the services sector seeks to foster regional cohesion and facilitate trade by establishing a framework for skilled professionals who are authorized, licensed or certified by national authorities to be mutually recognized by Member States who are signatories to the MRAs (ASEAN 2015). Occupations covered under the MRAs include engineering, nursing, architectural, medical, dental, accountancy and tourism professionals.





## Thailand as a Country of Destination

Migrant workers have played a pivotal role in supporting Thailand's export-oriented economy for the past two decades. Within the ASEAN region, Thailand hosts the largest number of foreign migrant workers, with an estimated 2.8 million documented migrant workers mostly from the neighbouring lower-income countries of Cambodia, Lao People's Democratic Republic and Myanmar (CLM);(ILO 2020a). These workers are mainly employed in low-waged jobs in agriculture, construction, manufacturing, fisheries, domestic work and hospitality. Sectors that are dominated by women migrant workers, such as hospitality and food services, agriculture and domestic work, typically lack formalization and legal protections, leading to exploitative and discriminatory practices (Harkins, Lindgren, and Suravoranon 2017). On the other hand, in sectors that are traditionally "male" dominated such as construction, women migrant workers earn lower wages due to the undervaluing of their tasks as "lower skilled". Research in Thailand has also shown negative public discourses on migrant populations and that the Thai general public holds negative attitudes towards migrant workers (Niyomsilpa and Sunpuwan 2014; UN Thematic Working Group on Migration in Thailand 2019). To this end, Thailand has been making efforts to improve its labour migration governance and enhance migrant rights and welfare.

At the international level, Thailand has joined international conventions concerning the employment of foreign workers, their rights and protection. Thailand recognizes that there is a clear link between cases of human trafficking of migrant workers for forced labour and labour exploitation, and has therefore ratified the latest international labour conventions such as the Work in Fishing Convention, Protocol of the 2014 to the Forced Labour Convention and Discrimination Employment and Occupation Convention<sup>1</sup>. In December 2018, Thailand adopted the GCM, showing the government's recognition that labour migration governance and migrant workers' protection are complex issues that require international cooperation, and that national policies and procedures should involve multiple stakeholders (MFA Thailand 2018a). Thailand has moreover ratified CEDAW, demonstrating its commitment to achieving gender equality in all spheres of life, including protecting the rights of women migrant workers.

Regionally, Thailand and other Member States adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. The Declaration outlines obligations for receiving and sending states to uphold the human dignity of migrant workers and their family members, including promoting decent working and living conditions, as well as facilitating access to justice and social welfare services (ASEAN 2012). A year later, the ASEAN Committee for Migrant Workers (ACMW) was established to implement the provisions set out in the Declaration as well as to work towards a legally binding instrument to protect and promote the rights of all migrant workers. The ASEAN Forum on Migrant Labour (AFML) was also established as a tripartite forum, held annually to discuss and share experiences among governments, international organizations, employers, employees and civil society to build consensus on migrant worker issues committed under the Declaration (2014). In 2017, Thailand signed up to the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers to strengthen the protection and promotion

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1 For the full list of international labour conventions and protocols signed by Thailand, please refer to: [/www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID:102843](http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102843).





of the rights of migrant workers. The ASEAN Consensus seeks to develop comprehensive migration policies related to social protection, access to justice, humane and fair treatment, and access to health services for migrant workers by stipulating fundamental rights of migrant workers and their family members, specific rights of migrant workers, and obligations and commitments of ASEAN Member States (ASEAN 2017).

At the national level, Thailand has taken concrete measures to develop national legislations and regulations to manage labour migration. Since 2016, Thailand has established two formal labour migration channels, 1) the MOU process and the 2) border employment scheme. The Royal Thai Government furthermore provided a period for irregular migrant workers to become regularized through the national verification (NV) process. However, navigating these formal channels remains complicated, expensive and lengthy for migrant workers as compared to other channels (UN Thematic Working Group on Migration in Thailand 2019; ILO 2020a).

In 2018, based on consultations with relevant ministries and government agencies, international organizations, employers, employees and civil society, Thailand amended the Royal Ordinance on the Management of Foreign Workers Employment to improve labour migration management (IOM, 2019). The Royal Ordinance establishes the following main revisions: 1) elimination of worker-borne recruitment fees; 2) increased freedom to change employment (notification system); 3) establishment of a guarantee deposit and clearer licensing requirements for private recruitment agencies for in-bound recruitment; 4) creation of a fund to assist migrant workers while employed in Thailand; 5) forbidding the withholding of migrant worker identification documents; 6) establishment of a tripartite committee to oversee the development of migration policies; 7) reduction of the maximum fine and removal of imprisonment terms for migrant workers who work without work permits; 8) establishment of a fine for employers who hire undocumented migrant workers, of THB 10,000–100,000 per employee. A repeated offence committed by the same employer will result in an imprisonment term of up to one year and/or a fine of THB 50,000–200,000 per employee. The said employer will also be forbidden from hiring migrant workers for three years; and 9) the removal of restrictions on accommodation zoning of migrant workers (MFA Thailand 2018b; UN Thematic Working Group on Migration in Thailand 2019, p.XI).

Revisions have also been made to the Immigration Act, B.E. 2522 (1979) to allow migrant workers to work as labourers or be hired to do physical work and low-skilled work (MFA Thailand 2018b). In addition to these legislative amendments, Migrant Worker Assistance Centres (MWACs) were established to provide migrant workers with information and assistance, particularly concerning labour rights violations (UN Thematic Working Group on Migration in Thailand 2019, p. XI).

In October 2019, Thailand adopted the first National Action Plan (NAP) on Business and Human Rights (BHR) for the period 2019–2022. The overall goal of the NAP is to implement the UN Guiding Principles on BHR at the national level, in virtue of which the State has the duty to protect human rights, and businesses have the responsibility to respect human rights; both actors have the duty to provide effective remedy to those whose rights are violated by business activities. If effectively implemented, the NAP has the capacity to be transformative for workers, including migrant workers, in Thailand. Section two of Thailand's NAP on Labour regarding Pillar II of the UN Guiding Principles on the responsibilities of businesses in respecting human rights states that “State enterprises and the business sector that use migrant workers should be responsible for the costs of recruiting labour and other expenses in accordance with the Employer Pays Principle.” Therefore, ensuring that recruiters and employers have the capacity to adhere to ethical recruitment and employment standards across their activities is highly important.



# Challenges and Issues in Migrant Worker Recruitment and Protection in Thailand

The latest labour migration assessment undertaken by ILO highlights several gaps in the enforcement of Thailand's legal framework on foreign worker recruitment and protection. Despite the revisions made to the Royal Ordinance on the Management of Foreign Workers Employment, in practice, migrant workers continue to incur high recruitment fees and migration-related costs, averaging 461 United States dollars (ILO 2020a, p.82). Specifically, migrant workers in construction, domestic work and agriculture incur the highest recruitment fees. Work visa fees for migrant workers under the MoU process have also increased from THB 500 for a two-year work visa to THB 1,900 per year for the same type of visa between 2016 and 2018 (ILO, 2020a, p.9). Migrant workers who arrive through regular channels incur the highest recruitment costs compared to those who choose irregular routes (ILO 2020a, p.33) to benefit from a two-year work contract and full legal and social protection. The high costs associated with regular recruitment channels to work in Thailand are linked to the use of recruitment agencies and brokers, with migrant workers faced with service charges, sometimes both in their home countries and destination (ILO 2020a). To align with the ILO 2019 General Principles for Fair Recruitment, Thailand should consider reducing or eliminating worker-borne recruitment fees and related costs (ILO 2020a, p.83).

In addition, the MoU recruitment system is deemed to be security-driven, paying more attention to admission procedures and discouraging irregular migration, but placing attention on migrant workers' labour rights and social protection. Thailand subsequently sought to address gaps by revising MoUs with Cambodia, the Lao PDR and Myanmar to enhance labour cooperation, skills development and social protection (UN Thematic Working Group on Migration in Thailand 2019, p.31). Migrant workers who are recruited through the MoU system are given full protection and rights under relevant Thai national labour laws; however, in practice migrant workers reportedly do not necessarily experience significant changes in working conditions compared to irregular migrants (UN Thematic Working Group on Migration in Thailand 2019, p.16). Furthermore, although the establishment of MWACs is a positive step towards providing migrant-friendly information and assistance, institutional capacity still needs strengthening in terms of staff training and government-civil society partnership (UN Thematic Working Group on Migration in Thailand 2019). Last, Thai labour and social protection laws that regulate working hour limitations, overtime compensation, maternity leave and minimum wage do not cover migrant workers in all sectors of work, as they exclude domestic workers, sex workers, seasonal agricultural labourers and those in the informal economy – many of whom are women migrants (UN Thematic Working Group on Migration in Thailand 2019).



# COVID-19 Effects on Migrant Workers in Thailand

As of late March 2020, the Royal Thai Government declared a state of emergency in response to the outbreak of COVID-19, quickly imposing strict restrictions on internal and cross-border movements along with business closures. At the outset, international organizations, the Royal Thai Government and civil society swiftly responded by disseminating public health information in the languages understood by migrant worker populations (see for example, [www.mitrthai.com](http://www.mitrthai.com)).

Fear of income losses, layoffs, uncertainty about losing both income and work, fear of contracting COVID-19, and near-expiring work permits and visas prompted tens of thousands of migrant workers from CLM countries to leave Thailand between March and June 2020 (ILO 2020b, p.3). With the mass and unplanned exodus of migrant workers from Thailand, governments of the origin countries were unprepared to set up appropriate screening and quarantine facilities (ILO 2020b). For example, only since May 2020, are Myanmar nationals who return from abroad placed in 21-day mandatory quarantine at quarantine centres in their respective townships by regional and State governments (Salai Thant Zin 2020). The unexpected outflow of migrant workers heightened risks of migrant workers spreading or contracting the virus in their countries of origin (Bismonte 2020).

An estimated 10 per cent of migrant workers (based on the total number of documented migrant workers) left Thailand, but the majority of migrant workers remained during the lockdown period (ILO 2020b, p.3). Many of those who remained have faced reduced working hours, temporary suspension of work and retrenchment without advanced notification of employment termination; with the resurgence of COVID-19 cases in late 2020, increased stigmatization and discrimination. This situation has been compounded by unpaid wages, and delays in receiving or exclusion from Government subsidies and social protection measures. There have also been cases of employers who did not allow their employees to change jobs and of migrant workers who were unable to find new employment, which led to several months of livelihood hardships for migrant workers (for example, lack of income to pay rent or purchase food and other necessities). Consequently, migrant workers have had to rely on food aid from civil society organizations (CSOs) and financial loans and assistance from within their social networks, including relatives in their home countries. In sectors that continued to operate during the lockdown, such as construction, migrant workers reported inadequate personal protective equipment (PPE), inability to refuse work, harassment and abuse, and some had their personal documents kept by employers (ILO 2020b, p.6).

COVID-19 effects are gendered, since women and men experience different patterns of risk and help-seeking behaviours (ILO 2020c, p.2). Women migrant workers are concentrated in sectors that are characterized by temporary, informal or unprotected work. Therefore, women migrants are more vulnerable during crises to harassment, abuse, exploitation, retrenchment and exclusion from unemployment benefits, social security and protection and trafficking in persons. Women migrant workers face increased risks of sexual and other forms of violence in accommodation, workplaces and quarantine facilities (ILO 2020b, pp.7-8). Emerging evidence further shows that restrictions on movement, economic and livelihood disruptions can increase risks of violence against women and girls (including by employers and partners) and isolate them from support services (UN Women 2020).



## TOWARDS A SHARED RESPONSIBILITY FRAMEWORK

on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand

By July 2020, Thailand entered the “New Normal” phase, ending restrictions on inter-provincial movements and reopening businesses. The Royal Thai government initiated automatic visa extensions for non-Thai nationals holding all types of visas to remain in Thailand, which ended on 31 July 2020. Following this period, the Royal Thai government issued a Cabinet Resolution on 10 November 2020, giving migrant workers the opportunity to renew their work permits and visas, and at the time of writing, a special round of registration for migrant workers and dependents who are unregistered (IOM 2020c). These steps prevented migrant workers from losing their regular status and importantly, if they are sick with COVID-19 symptoms, they can seek necessary health services, rather than be fearful of detention or deportation.

Although Thailand’s international borders remain largely closed to non-Thai nationals, there has been official repatriation of migrant workers across land borders. For example, up to 1500 Myanmar migrant workers are entering daily through Mae Sot and Ranong check points (ILO 2020b, p.3). However, borders are porous, and there continues to be migrant workers, jobseekers and other crossers entering Thailand irregularly, giving rise to the risk of additional waves of COVID-19 infections.<sup>2,3</sup> Thailand has experienced a second wave of COVID-19 infections since December 2020, which began in a shrimp market in Samut Sakhon, where large numbers of migrant workers, particularly from Myanmar, are employed. This surge in infection cases, along with disinformation, have led to increased stigmatization and discrimination against migrant workers who are presumed to be virus carriers (Ramasoota 2020). Fear of discrimination and harassment may in turn deter migrant workers to come forward for testing and treatment.



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2 Bangkok Post, 31 August 2020. Moei river patrols increased against illegal border crossers. Available from: [www.bangkokpost.com/thailand/general/1977387#cxrecs\\_s](http://www.bangkokpost.com/thailand/general/1977387#cxrecs_s).

3 Bangkok Post, 1 September 2020. Covid scare closes border schools. Available from: [www.bangkokpost.com/learning/easy/1978155/covid-scare-closes-border-schools?cx\\_placement=related#cxrecs\\_s](http://www.bangkokpost.com/learning/easy/1978155/covid-scare-closes-border-schools?cx_placement=related#cxrecs_s).



# Potential Policy Response to COVID-19 and Other Emergency and Crisis Situations

As the effects of the COVID-19 pandemic become protracted and continue to evolve in Thailand and elsewhere, migrant workers may face prolonged economic hardship, health issues, stress and isolation. IOM has outlined a set of guidelines for employers and businesses to enhance migrant worker protection during the current health crisis in the workplace and workers' accommodation, along with economic, health and psycho-social support (see IOM 2020d for more details). Migrant workers tend to be engaged in low-wage employment and are among the first to lose their income and employment as businesses are forced to lay off staff or shut down due to public health concerns and financial losses. Employers should consult with the labour department and relevant authorities to identify practical measures to financially support migrant workers, such as furloughing workers and reimbursing recruitment-related fees before resorting to termination of employment (IOM 2020d, p.6). Migrant workers should have access to critical information (including access to translators) and legal remedies in cases of unfair dismissal from work, unpaid wages and exploitative conditions (ILO 2020c, p.5).

Governments and employers should provide migrant workers with adequate accommodation that permit social distancing, sufficient food and water, electricity, health and sanitation facilities during lockdowns and quarantine (ILO 2020c, p.4). Workers' living arrangements can be adapted to meet the requirements of social distancing, such as reducing the number of employees sharing the same room and staggering the use of dormitory bathrooms, kitchens or canteens (IOM 2020d, p.4). Access to internet services in workers' accommodations can help migrant workers to maintain regular contact with family members and friends at home, which can reduce isolation and stress related to COVID-19 (IOM 2020d, p.3). The safety of women migrant workers during lockdowns, quarantine and employer-provided accommodations, as well as providing them access to shelters and support services in cases of sexual and gender-based violence, should also be included in policy responses (ILO 2020c, p.2). In preparing for future pandemics, the Royal Thai Government should collect sex-disaggregated data to design evidence-based and gender-responsive policies and interventions for migrant workers. Women migrants often do not have access to gender-responsive social protection mechanisms such as maternity protection, sexual and reproductive health care and other benefits. This is particularly the case for those working in informal employment, especially domestic and caretaking services. In pandemic situations such as that of COVID-19, women migrant workers could face more difficulties in accessing social protection due to tightened travel and movement restrictions. Gender-responsive interventions including provision of essential emergency needs such as food, medical treatment, and water, sanitation and hygiene (WASH) including sanitary products for migrant populations, especially women and girls, should be ensured.<sup>4</sup>

Income insecurity may compel migrant workers to work while sick. Furthermore, lack of health insurance and fear of stigmatization or discrimination may prevent migrant workers from seeking medical assistance when needed (ILO 2020c). This in turn increases public health risks through undetected transmission of COVID-19. In cases where the worker or family members become ill with COVID-19, employers should consider

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4 UN Women. 2020. Guidance Note for Action: Addressing the Emerging Impacts of the COVID-19 Pandemic on Migrant Women in Asia and the Pacific for a Gender-Responsive Recovery. Available from : <https://asiapacific.unwomen.org/en/digital-library/publications/2020/04/guidance-for-action-addressing-the-emerging-impacts-of-the-covid-19-pandemic-gender-responsive-recovery>.



guaranteeing and extending paid sick leave, particularly for women, who are often primary caregivers (IOM 2020d, p.6). Since Thailand has already taken steps at the initial outbreak of COVID-19, public health awareness education together with other essential information should continue to be disseminated in migrant workers' languages to ensure they have equitable access to prevention, treatment and other necessary support. COVID-19 testing and treatment programmes must be migrant-inclusive, regardless of migration status (IOM 2020d, p.3). The Royal Thai government and employers can also take steps to reduce stigmatization and discrimination against migrant workers by addressing disinformation and establishing mechanisms to report incidents of harassment and discriminatory behaviours without any further negative repercussions on migrant workers (IOM 2020d, p.7).

During the outbreak of COVID-19 in Thailand, many migrant workers faced the potential of becoming irregular in status due to layoffs, expiring visas and work permits. To ensure migrant workers maintain a regular status during times of crisis, as best practice, governments should facilitate renewal and extensions of visa and work permits to enable migrant workers to have access to essential services and resume work when it is safe to do so (ILO 2020c, p.4). In this regard, Thailand has already taken significant measures by waiving regulations, lifting penalties and extending the period of renewals for migrant workers with expiring or expired work-related documents. Between 17 August and 31 October 2020, employers of migrant workers with expired work permits due to reasons including having completed the four-year employment period under the MoUs, incomplete extension process from the previous round of registration and change of employers, could submit applications to the Department of Employment, Ministry of Labour for a renewal of migrant workers' work permit. The new permit is valid until 31 March 2022 although a visa is issued on a yearly basis and migrant workers are still required to report themselves at the Immigration Offices every 90 days (see IOM 2020b; 2020c for more details). The four migrant worker categories eligible to extend their work permits include 1) MoU workers who have completed four years of employment, 2) MoU workers who have changed or are changing employers, 3) pink card holders who had not yet registered on Name Lists, and 4) cross-border seasonal workers with an expired Border Pass (IOM 2020c). Thailand extended the State of Emergency Order from 1 December 2020 to 15 January 2021 in response to the current resurgence of COVID-19.

Due to the second wave of COVID-19 infections in December 2020, the Royal Thai Government approved another round of special registration for migrant workers and their dependents between 15 January and 13 February 2021 to reduce labour shortage in the country and provide migrant workers and their families with an option to continue living and working in Thailand while the borders remain closed and travel movements are restricted. However, this round of registration requires migrant workers to undergo COVID-19 tests. Only those who test negative for the disease will be granted a two-year work permit until 13 February 2023 but with restriction of inter-provincial movements.



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Among the ASEAN member states, Thailand has a global reputation for its public health system. Complacency and premature relaxation of control measures can nonetheless result in new waves of infections, which can overwhelm the health system and human resources (Aldis, 2020). Comparatively, the CLM countries, which are primarily countries of origin, have limited health facilities and resources. The porous land borders with CLM countries pose additional risks when jobseekers and returning migrant workers enter Thailand. The circulation of migrant workers between origin, transit and destination countries can be better managed through bilateral and regional cooperation and coordination, including information sharing, screening and quarantine measures (ILO 2020c). Jobseekers and migrant workers should be able to move safely through repatriation assistance, free-of-charge quarantine measures, visa waivers and exceptions, should they wish to return to their origin countries (MICIC 2016, p. 33; ILO 2020c). Employers are encouraged to coordinate with labour recruiters and CSOs to organize and pay for all related travel costs for migrant workers to return to their origin countries, including explaining safety procedures to follow during and after travel (for instance mandatory quarantine upon arrival), informing migrant workers that they will not be penalised for departing, as well as providing hygienic travel kits (IOM 2020d, p.8).

IOM's Migrants in Countries in Crisis (MICIC) Initiative recommends protective measures for migrant workers during crisis situations that are applicable in the current pandemic. The MICIC calls on transit and countries of destination to communicate effectively with migrants and incorporate them in prevention, preparedness and emergency response systems to meet migrants' needs and capacities (MICIC 2016). During times of crises and emergencies, migrants should be provided with humanitarian assistance without discrimination, relocated and evacuated to safety and provided with information to access help (MICIC 2016). Communication should be effective, frequent and targeted by using languages understood by migrants to keep them up to date on local conditions and sources of assistance (MICIC 2016, p.33). Finally, migrant workers' immediate needs should also be addressed during post-crisis, including support to rebuild livelihoods (MICIC 2016).



## Conclusion

The economic consequences of the COVID-19 pandemic will continue to affect the employment and livelihoods of both Thai citizens and migrant workers in the foreseeable future. Between 158 million to 242 million people are expected to lose their employment globally, with 70 per cent of job losses in Asia and the Pacific (ADB 2020). Thailand's economy is expected to shrink by 5 per cent in 2020 and take more than two years to return to pre-COVID-19 GDP output levels (The World Bank 2020). Tourism, which contributes to 15 per cent of GDP in Thailand, is falling sharply as a result of restrictions on in-bound international travelers. Exports are projected to decline by 6.3 per cent in 2020 due to reduced global demand and trade and supply chain disruptions (The World Bank 2020).

Within this global climate of economic recession, progress towards putting into action the international principles enshrined in the 2030 Agenda for Sustainable Development, in particular those concerning migrants' rights and protections, are likely to be paused, with states looking inward to prevent additional outbreaks of COVID-19 and prioritizing national interests (Kainz 2020). The continued imposition of various forms of border security and restrictions on movement will in turn have repercussions for migrant workers, including by increasing the risk of unethical recruitment. Likewise, and especially given the high reliance of key growth and export sectors on migrant workers, the ability of Thai businesses and the overall economy to recover from the pandemic will depend on having a safe, orderly and efficient system to retain and recruit foreign labour migrants. Working towards a shared responsibility framework for migrant workers becomes more pertinent to sustain the positive achievements made to date and to continue to strengthen migration governance and promote decent working conditions and career development opportunities for migrants.





## Conclusion of Thailand, Regional and International Standards and Goals to draft the framework

International, Regional and National Standards	Relevant Articles and Sections
Thailand Royal Ordinance on the Management of Migrant Workers B.E.2560 Amendment B.E. 2061 (Thailand RO MMW 60/61)	Article 46, 49, 51,52
Thailand Labour Protection Act B.E. 2541 Amend B.E. 2562 (Thailand LPA)	Article 4, 5, 11, 109
Thailand Social Security Act B.E. 2558 (Thailand SSA)	Article 54
Thailand Memorandum of Understanding with Cambodia, Lao PDR, Myanmar	MoU
Thailand Occupational Safety, Health and Environment Act, B.E. 2554 (Thailand OSHA)	
Thailand Skill Development Promotion Act B.E. 2545 (2nd edition B.E. 2557) ;(Thailand SDPA)	Section 29
Ministerial Regulation for the Administration and Management of Occupational Safety, Health and Environment (MROSH) (B.E. 2549)	
ASEAN Declaration on the Protection & Promotion of The Rights of Migrant Workers - Cebu Declaration 2008	Principles 1 - 20
ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017 (ASEAN Consensus)	
ASEAN Forum on Migrant Labour (AFML), 13th AFML	
The Global Compact for Safe, Orderly and Regular Migration -GCM 2018 Policies and Practice: A Guide to Gender-Responsive Implementation of the GCM	GCM 2018 1, 3, 6-7, 9-22
International Labour Organization (ILO) - Decent Work Agenda (DWA)	
International Labour Organization (ILO) (2019) General Principles and Operation Guidelines on Fair Recruitment (OG)	OG 1-6, 13-14, 21-23
International Organization for Migration-IOM IRIS Principles, and Criterion and Principles	IOM IRIS Criterion
United Nations (UN)- Guiding Principles on Business and Human Rights 2011	
Sustainable and Development Goal- SDG	SDG 1, 4, 5, 8, 10, 12,16, 17
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Article 1, 2, 3, 11 and General recommendation on women migrant workers No. 26



## **Shared Responsibility Framework for Migrant Workers**

(Based on Selected International Frameworks, Standards on Labour Migration and Stakeholder discussions)

Inclusive and Sustainable Development

SDG 1: End poverty in all its forms everywhere

SDG 5: Achieve gender equality and empower all women and girls

SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

SDG 10: Reduce inequality within and among countries

SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective,

accountable and inclusive institutions at all levels

SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development



1.Ethical Recruitment	Stakeholders	Details	Acceptable standards		Thailand, ASEAN and International Standards (details in Notes & references)
			Minimum standards as per Thai laws	Best practices/Good examples	
1.1 Job placements and worker selection	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Recruiter</li> <li>• Migrant worker</li> <li>• Governments in Thailand and CLMV</li> </ul>	<ul style="list-style-type: none"> <li>• Information on Job Placements, types of work</li> <li>• Exchange labour market information between Thailand and countries of origin, to identify current jobs placement and emerging skills requirements</li> </ul>	<p>Accurate terms and conditions of recruitment, description of jobs and employment in migrant worker’s language.</p> <ul style="list-style-type: none"> <li>• Specify criteria for basic skill required for particular position</li> <li>• No discriminatory hiring preferences including gender preferences, are included in vacancy announcements unless required by applicable laws</li> </ul>	<p>Visual media or photo demonstration of actual roles responsibilities and working conditions (Thailand)</p> <ul style="list-style-type: none"> <li>• Allow worker to try actual work at country of origin</li> <li>• Skills test/certified by authorized agency (See Note 1)</li> <li>• Criteria for specific skills required by employers (See Note 2.1) or benefit for employers’ consideration (See Note 2.2)</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand RO MMW B.E.2560-2561</li> <li>• MOU A.5</li> <li>• GCM Principles 3, 12, 19</li> <li>• ILO 2019 OG 6, 16, 17, 22, 23</li> <li>• IOM IRIS Principles A.1, A.3</li> <li>• IOM Criterion A.6</li> <li>• Cebu Declaration Principles 16, 18</li> <li>• SDG 4</li> <li>• ASEAN Consensus: 13, 14, 25, 33, 34, 36, 49, 50, 53, 54</li> <li>• 10th AFML: Theme 5(5.8)</li> <li>• 13th AFML: 9, 11</li> <li>• CEDAW Article 1, 11</li> </ul> <p>General recommendation on women migrant workers No. 26: 24(b)(ii)</p>



<p>1.2 Recruitment fees and migration related cost</p>	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Recruiting agency</li> <li>• Migrant worker</li> <li>• Government of sending and receiving countries</li> </ul>	<ul style="list-style-type: none"> <li>• Migration expense and recruitment fees</li> </ul>	<ul style="list-style-type: none"> <li>• No charging of recruitment fee to migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>• Employer responsible for migrant travel expenses in country of origin and other costs, e.g. migrant’s travel insurance (See Note 4)</li> <li>• No recruitment fees and costs charged to migrant worker, employer responsible for the fees and costs</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand RO MMW B.E. 2561 Section 49, 51,52</li> </ul>
<p>1.3 Employment contracts</p>	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Recruiting agency</li> <li>• Migrant worker</li> <li>• Government of sending countries</li> </ul>	<ul style="list-style-type: none"> <li>• Written contract, cover all relevant terms and conditions of employment and job requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Written in simple language and available in a language that migrant workers understand, contain all relevant details about employment terms and conditions.</li> <li>• The worker’s roles and responsibilities to be clearly stated</li> <li>• Contract is agreed and signed by migrant workers without coercion</li> <li>• Provide migrant workers with a signed copy of the executed employment contract signed at the origin country</li> </ul>	<ul style="list-style-type: none"> <li>• Provide details on scope and nature of work as well as conditions when the contract terminates</li> <li>• Ensure that the initial employment contract signed by the migrant worker prior to departure is not substituted for another employment contract unless for better living and working</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand RO MMW B.E. 2561 Section 23, 46, 49, 51, 52</li> <li>• MOU A.7</li> <li>• IOM IRIS Criterion 2.3, 3.1, 3.2, 3.3, 3.4, 3.5</li> <li>• ILO 2019 OG 7, 26</li> <li>• Cebu Declaration Principles 8, 13, 14</li> <li>• ASEAN Consensus: 13, 14, 22, 36,46</li> <li>• 13th AFML: 6, 9</li> <li>• CEDAW Article 2, 3, 11</li> <li>• General Recommendation on women migrant workers No. 26: 24(b)(i), 24(f)</li> </ul>



<p>1.4 Pre-departure orientation</p>	<ul style="list-style-type: none"> <li>• Civil Society Organization</li> <li>• Government agencies in sending country</li> <li>• Recruitment agency</li> <li>• Migrant worker</li> <li>• Skill training agencies</li> <li>• Employers</li> </ul>	<ul style="list-style-type: none"> <li>• Orientation to provide information to migrant workers on the terms and conditions of employment, their rights and responsibilities, and living conditions at the country of destination</li> </ul>	<ul style="list-style-type: none"> <li>• Language training for basic communication (optional and free of charge) The training can continue in the country of destination</li> <li>• Information on migrants' rights, employment duties and responsibilities, immigration regulations and procedure prior departure as well as how to seek assistance and access grievance mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• Language training provided by Civil Society Organization or Government agency (See Note 2.1)</li> <li>• Provide skill training for particular jobs (See Note 2.1, 3)</li> <li>• Provide company-specific orientation regarding the employment terms and conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• IOM IRIS Criterion 3.6, 4.1, 4.2, 4.3, 4.4, 5.2, 5.3</li> <li>• Cebu Declaration Principle 13</li> <li>• ASEAN Consensus: 13, 21, 22, 23, 34, 38</li> <li>• GCM:3(e),16(b),18(k)</li> <li>• 10th AFML, Theme 5(5.8)</li> <li>• 13th AFML: 6</li> <li>• CEDAW Article 3, 11</li> </ul> <p>General Recommendation on women migrant workers No. 26: 24(b)(i), 24(b)(iii)</p>
<p>1.5 Travel and immigration procedures</p>	<ul style="list-style-type: none"> <li>• Recruiting agency</li> <li>• Employer</li> <li>• Migrant worker</li> </ul>	<ul style="list-style-type: none"> <li>• Transport</li> <li>• Immigration rules and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Safe transportation arrangement by recruiter or employer in the recruitment and employment process</li> </ul>	<ul style="list-style-type: none"> <li>• Employer covers migrants' travel cost from original country (See Note 4)</li> </ul>	<ul style="list-style-type: none"> <li>• MOU A. 4, A. 7</li> <li>• GCM Principle 4, 5, 11, 12, 13, 14, 21</li> <li>• IOM IRIS Criterion 2.1, 2.2, 4.1</li> <li>• Cebu Declaration Principle 17</li> <li>• SDG 10.7</li> <li>• ASEAN Consensus: 12, 23, 24, 25, 29, 36, 50, 51, 52, 57</li> <li>• 13th AFML: 1, 4, 6, 9, 11</li> <li>• CEDAW General Recommendation on women migrant workers: 24(a), 24(e)</li> </ul>

<p>1.6 Post arrival orientation</p>	<ul style="list-style-type: none"> <li>• Government agencies in the country of destination</li> <li>• Employers/ Employer’s association</li> <li>• Migrant worker</li> </ul>	<ul style="list-style-type: none"> <li>• Provide information on labour rights, protection, employment terms and conditions</li> <li>• Skill preparation training</li> </ul>	<ul style="list-style-type: none"> <li>• Provide timely information on migrants’ rights, duties and responsibilities, protection, complaint mechanism, available grievance, remedy mechanism, immigration rules and regulations in the languages that migrant workers understand, preferably in their native languages</li> </ul>	<ul style="list-style-type: none"> <li>• Orientation on social security network, local cultural and social norms</li> <li>• Language training programme continues upon arrival in the country of destination</li> <li>• Set up migrant workers assistance network</li> <li>• Provide emergency hotline in migrants’ languages</li> <li>• Actual-work preparation training prior starting to work (See Note 5)</li> </ul>	<ul style="list-style-type: none"> <li>• GCM Principle 6, 7, 9 and 12</li> <li>• ILO 2019 Operational Guidelines 5, 6</li> <li>• ASEAN Consensus: 13, 14, 15, 19, 21, 30, 31, 34, 35, 39</li> <li>• 13th AFML: 6</li> <li>• CEDAW Article 3</li> </ul> <p>General Recommendation on women migrant workers: 26(g)</p>
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2. Decent Work	Stakeholders	Details	Minimum standards as per Thai laws	Best Practices/Good Examples	Thailand, ASEAN and International Standards (details in reference)
2.1 Workplace environment: orientation, procedures and safety	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Migrant worker</li> </ul>	<ul style="list-style-type: none"> <li>• Orientation provided to cover working procedures and safety precautions, including protection against sexual exploitation and abuse (PSEA)</li> </ul>	<ul style="list-style-type: none"> <li>• Information on health and safety precautions provided and personal safety protection</li> <li>• Safety protection equipment provided to migrant workers on duty free-of-charge</li> <li>• Equal opportunity and treatment, including equal wages, benefits and opportunities for women and men migrants regardless of nationality</li> <li>• No discrimination in the workplace and no tolerance towards harassment</li> </ul>	<ul style="list-style-type: none"> <li>• Safety protection equipment provided for all workers free of charge (instead of for workers on duty only)</li> <li>• Annual training on PSEA for all workers in migrant workers' languages</li> <li>• Occupational Health Safety committee (at the workplace)</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand LPA B.E.2541, 2562 A.8, 16</li> <li>• Thailand OSHA B.E.2549 section 16, 22</li> <li>• MROH B.E.2549 Clause 23</li> <li>• MOU A.17, 18</li> <li>• Cebu Declaration Principle 5, 8</li> <li>• GCM Principles 6, 15, 22</li> <li>• ILO 2019 OG 24</li> <li>• ILO DWA</li> <li>• SDG 1.3, 5.2</li> <li>• ASEAN Consensus: 15, 17, 30, 31, 32, 40, 45</li> <li>• 13th AFML: 2,3,6</li> <li>• CEDAW Article 3, 11</li> </ul> <p>General Recommendation on women migrant workers: 26(b), 26(c)(i), 26(h)</p>



<p>2.2 Changing workplace or shifting to another job</p>	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Migrant worker</li> <li>• Labour inspector</li> </ul>	<ul style="list-style-type: none"> <li>• Migrants work in several working conditions and places</li> </ul>	<ul style="list-style-type: none"> <li>• Changing employment or working sectors, and conditions or workers' roles/responsibilities must be made voluntarily by mutual agreement, according to the MOL laws and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Changes of employment conditions or roles and responsibilities must be voluntarily agreed in writing, including in language understood by migrant worker</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand LPA B.E.2541, 2562 A.16</li> <li>• ILO OG 24</li> <li>• SDG 8</li> <li>• Cebu Declaration Principle 5</li> <li>• ASEAN Consensus: 12,15,17(b)</li> <li>• 13th AFML: 1,3,5</li> </ul>
<p>2.3 Workplace conditions inspection</p>	<ul style="list-style-type: none"> <li>• Labour inspector</li> <li>• Labour Attaché (origin country)</li> <li>• Employer</li> </ul>	<ul style="list-style-type: none"> <li>• Regular inspection by authorized officer</li> </ul>	<ul style="list-style-type: none"> <li>• Labour inspectors must be regularly trained by government-run programmes to stay updated with state regulations and laws</li> </ul>	<ul style="list-style-type: none"> <li>• Regulate appropriate number of trained inspectors and lead by authorized labour officer</li> </ul>	<ul style="list-style-type: none"> <li>• MOU Myanmar A.17</li> <li>• Thailand RO MMW B.E.2560-2561 Section 98 (2)(3)</li> <li>• GCM Principle 15, 22</li> <li>• Cebu Declaration Principle 15</li> <li>• ASEAN Consensus: 15,32,35</li> <li>• 13th AFML: 2</li> <li>• CEDAW Article 2, 11</li> <li>General Recommendation on women migrant workers: 26(b)</li> </ul>





<p>2.4 Health care and injury insurance</p>	<ul style="list-style-type: none"> <li>• Government Policy of destination country</li> <li>• Employer</li> <li>• Migrant worker</li> </ul>	<ul style="list-style-type: none"> <li>• Health check-up and health-care services, including maternity benefits, and reproductive health care</li> <li>• Accident insurance within and outside working hours</li> </ul>	<ul style="list-style-type: none"> <li>• Health-care insurance including accident/injury coverage</li> <li>• responsibility of worker not joining SSF</li> <li>• Equal access to the services and benefits provided by the SSF for all the insured regardless of nationality and gender</li> <li>• Employer arrange safe transportation from accommodation to workplace</li> </ul>	<ul style="list-style-type: none"> <li>• Provide immediate health protection after enrolled with the SSF or provide short-term insurance to fill the gap of 90 days before SSF protection</li> <li>• responsibility of employer</li> <li>• Interpreter provided in health-care institutions</li> <li>• Health-care services provided to all workers regardless of nationality and immigration status</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand RO MMW B.E.2560-2561 Section 64/1</li> <li>• MOU A. 7</li> <li>• GCM Principles 15, 22</li> <li>• Cebu Declaration Principles 11, 13</li> <li>• ASEAN Consensus: 34,36,40,41</li> <li>• 13th AFML: 2,4,6</li> <li>• CEDAW Article 2, 3, 11</li> </ul> <p>General Recommendation on women migrant workers: 26(b), 26(g), 26(i)</p>
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<p>2.5 Contract renewals or termination</p>	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Migrant worker</li> <li>• Recruiting agency</li> <li>• Government of destination and origin countries</li> </ul>	<ul style="list-style-type: none"> <li>• Renewal of contract</li> <li>• Termination of contract</li> <li>• Change of employer</li> </ul>	<ul style="list-style-type: none"> <li>• Migrant worker can change employers under circumstances specified by law: 1. Dismissal or death of the employer 2. Employer bankruptcy 3. Physical or mental abuse by the employer 4. Non-compliance by employer with the Labour Protection Act B.E. 2541 5. Exposure to dangerous workplace conditions that physically and/or mentally harm the worker including injuries and lack of hygiene</li> <li>• Employer can terminate the contract if the worker violates the company's policies or the terms and conditions of their employment contract, has received two written warnings concerning the same action within one year, and has still not complied with the first written warning (as long as the policies and/or terms and conditions of the contract comply with Thai law). In the case of a serious violation, the requirement to issue a written warning is waived</li> </ul>	<ul style="list-style-type: none"> <li>• Employer places worker into more appropriate work role</li> <li>• Migrant workers can choose to terminate employment contract without being forced to return to their country of origin</li> <li>• New employers compensate for recruitment costs already paid by former employers</li> <li>• Migrant workers are provided dismissal compensations or severance pay if the contract ceases before agreed date and not by their misconduct</li> <li>• Provide employment certificate to workers after completing their contract</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand RO MMW B.E.2560-2561 Section 53, 55</li> <li>• ILO 2019 GP 12</li> <li>• Cebu Declaration Principle 8</li> <li>• ASEAN Consensus: 17, 19, 40, 42, 43, 46</li> <li>• 13th AFML: 3, 5, 10</li> </ul>
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<p>2.6 Complaints and access to State-based grievance mechanisms</p>	<ul style="list-style-type: none"> <li>• Labour Protection Officer</li> <li>• Labour Attaché</li> <li>• Relevant ministries</li> <li>• Ministry of Justice, Ministry of Social Development and Human Security, and Royal Thai Police</li> <li>• Migrant worker</li> <li>• Employer</li> </ul>	<ul style="list-style-type: none"> <li>• Report/Complaint of migrants’ rights violation, breach of employment contract, and other forms violence and harassment at work</li> <li>• Access to remedy and compensations</li> </ul>	<ul style="list-style-type: none"> <li>• Hotline available 24/7 in migrants’ languages</li> <li>• Labour protection officer</li> <li>• Establishment of welfare committee in the workplace</li> <li>• Effective case referrals for protection and services to relevant agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Outreach visit by Labour Protection Officer/ Labour Attaché</li> <li>• Resolve complaints in a manner that is fair and follows a documented procedure for workers to report rights violations in the workplace and accommodation provided by employer</li> </ul>	<ul style="list-style-type: none"> <li>• MOU A. 19</li> <li>• ILO 2019 OG 8</li> <li>• GCM 16, 17</li> <li>• IOM IRIS Principle 5: Criterion 5.1-5.3</li> <li>• Cebu Declaration Principles 6, 10</li> <li>• SDG 5.2, 8.8.2,</li> <li>• ASEAN Consensus: 10, 11, 17, 19, 20 38, 42, 43, 48</li> <li>• 13th AFML: 3,5,6,8,10</li> <li>• CEDAW Article 2, 3, 11</li> </ul> <p>General Recommendation on women migrant workers: 24(b) (i), 24(l), 26(l)</p>
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<p>2.7 Support during emergency and crisis situations</p>	<ul style="list-style-type: none"> <li>• Government in receiving country</li> <li>• Origin country</li> <li>• Employer</li> <li>• Migrant workers</li> <li>• Civil society</li> </ul>	<ul style="list-style-type: none"> <li>• Urgent and necessary support</li> </ul>	<ul style="list-style-type: none"> <li>• Urgent support: Food and shelter provided in a gender-sensitive way (See Note 7)</li> <li>• Compensation for reduction of work or unemployment</li> <li>• Effective case referrals for protection and services to relevant agencies</li> </ul>	<ul style="list-style-type: none"> <li>• No lay off</li> </ul>	<ul style="list-style-type: none"> <li>• MOU A. 12</li> <li>• Thailand RD MMW B.E.2560-2561 Section 77</li> <li>• Thailand SSF B.E. 2558 A.24</li> <li>• Cebu Declaration Principles 2, 20</li> <li>• GCM 7, 8, 14, 21, 22, 23</li> <li>• ILO 2019 OG 12</li> <li>• ASEAN Consensus: 10, 16, 26, 28, 39, 42, 43, 53, 54, 55, 56, 57</li> <li>• 13th AFML: 1, 7, 8, 10, 12</li> <li>• CEDAW Article 3, 11</li> </ul> <p>General Recommendation on women migrant workers: 24(b)(i), 26(l)</p>
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3. Skills Development	Stakeholders	Details	Acceptable standards		Thailand, ASEAN and International Standards (details in Notes & references)
			Minimum standards as per Thai laws	Best practices/Good examples	
3.1 Basic skills 1) Language ability in communication recognition 2) Differentiated skill levels. Example: basic skill, advanced skill	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Migrant worker</li> <li>• Civil society organizations</li> <li>• Skills training institutes</li> </ul>	<ul style="list-style-type: none"> <li>• Classify jobs placements to different skill levels including language ability</li> </ul>	<ul style="list-style-type: none"> <li>• Provide language efficiency training</li> <li>• Provide regular on- the- job training within or outside working hours</li> </ul>	<ul style="list-style-type: none"> <li>• Employer provides additional income for migrants who acquire required or higher skills</li> <li>• Set up clear career development plans for worker having acquired higher skills and more responsibilities to be eligible to higher income and benefits</li> </ul>	<ul style="list-style-type: none"> <li>• SDG 8</li> <li>• GCM Principle 18, 19, 21</li> <li>• ASEAN Consensus: 26, 28, 47</li> <li>• 10th ASEAN AFML, Theme 5(5.8)</li> <li>• 13th AFML: 10,11</li> <li>• CEDAW Article 3</li> </ul> General Recommendation on women migrant workers: 26(l)
3.2 Recognition of skills and experiences migrants already obtained prior departure	<ul style="list-style-type: none"> <li>• Government of sending and receiving countries</li> <li>• Employer</li> <li>• Migrant worker</li> <li>• Skills training institutes</li> <li>• Professional qualification institutes/skill recognition institutes</li> </ul>	<ul style="list-style-type: none"> <li>• Recognition of migrant with particular skills</li> </ul>	<ul style="list-style-type: none"> <li>• Certify recognized skills obtained prior departure</li> </ul>	<ul style="list-style-type: none"> <li>• Allow migrant to change or shift to appropriate jobs of higher skill</li> <li>• Provide additional income or in kind compensation for migrants with recognition or certified skills</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand SDPA B.E 2557 Section 29</li> <li>• SDG 8</li> <li>• GCM Principle 18, 19, 21</li> <li>• Cebu Declaration Principles 1, 7</li> <li>• ASEAN Consensus: 26, 28, 47</li> <li>• 10th AFML, Theme 5(5.8)</li> <li>• 13th AFML: 10,11</li> </ul>



<p>3.3 Open access to skills training opportunities</p>	<ul style="list-style-type: none"> <li>• Government of receiving countries</li> <li>• Employer</li> <li>• Migrant worker</li> <li>• Skills training institutes</li> </ul>	<ul style="list-style-type: none"> <li>• Open opportunity for migrants' access to skill training</li> </ul>	<ul style="list-style-type: none"> <li>• Allow migrant to have access to training during or outside working hours at the same proportion as local workers (Redemption of Skill Development fund) (See Note 8, -4-)</li> </ul>	<ul style="list-style-type: none"> <li>• Employer supports or provides skill training within or outside working hours (See Note 8, -4-)</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand LPA B.E.2541, 2562 A. 36</li> <li>• Thailand SDPAB.E.2557 Section 29</li> <li>• GCM Principle 18, 19, 21</li> <li>• ILO 2019 GP 4</li> <li>• SDG 4, 5</li> <li>• ASEAN Consensus: 26, 28, 47, 53,54</li> <li>• 10th AFML Theme 5(5.8)</li> <li>• 13th AFML: 10,11</li> <li>• CEDAW Article 3</li> </ul> <p>General Recommendation on women migrant workers: 26(l)</p>
<p>3.4 Promotion of skills development</p>	<ul style="list-style-type: none"> <li>• Employer</li> <li>• Migrant worker</li> <li>• Skills training institutes</li> </ul>	<ul style="list-style-type: none"> <li>• Support migrant workers skills' development to new or higher skill level</li> </ul>	<ul style="list-style-type: none"> <li>• Promote migrant to higher skill level training</li> </ul>	<ul style="list-style-type: none"> <li>• Increase salary for migrant acquired higher/new skills</li> <li>• Shift migrants with higher/new skills to appropriate jobs/position (See Note 3)</li> </ul>	<ul style="list-style-type: none"> <li>• SDG 8</li> <li>• GCM Principle 18, 19, 21</li> <li>• ASEAN Consensus: 26, 28, 47</li> <li>• 10th AFML Theme 5(5.8)</li> <li>• 13th AFML: 10,11</li> <li>• CEDAW Article 3</li> </ul> <p>General Recommendation on women migrant workers: 26(l)</p>





<p>3.5 Recognition of higher / new skill and obtained in the destination country</p>	<ul style="list-style-type: none"> <li>• Government of receiving countries</li> <li>• Employer</li> <li>• Migrant worker</li> <li>• Professional qualification institute/skill recognition institute</li> </ul>	<ul style="list-style-type: none"> <li>• Recognition of migrant with new or higher skill level</li> </ul>	<ul style="list-style-type: none"> <li>• Certify working experience and/or skills obtained post arrival</li> </ul>	<ul style="list-style-type: none"> <li>• Promote migrant worker’s access to skills test and certification with authorized agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand SDPAB.E.2557 Section 29</li> <li>• SDG 8</li> <li>• GCM Principle 18, 19, 21</li> <li>• ASEAN Consensus: 26, 28, 47</li> <li>• 10th AFML Theme 5(5.8)</li> <li>• 13th AFML: 10,11</li> </ul>
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### Note 1.

Migrant workers working in construction in Singapore are required to have skills test by Singapore Building Construction Authority (BCA) (Kiriya Kulkonkarn, 2013).

### Note 2.

Example:

- 2.1 Pre-departure training for migrant workers in the Republic of Korea. In addition to the required criteria set by South Korean employers, the potential migrant workers are required to pass a Korean language proficiency test (Test of Proficiency in Korean-TOPIK). Tests take place in the sending countries by the labour migration authorities (Kim, M.J.2015). The Korean language lessons are offered by the Korean Cultural Center in sending country (Korean Cultural Center, (<http://thailand.korean-culture.org/th>)).
- 2.2 In Thailand, many employers express their preference for migrant workers who are able to communicate in Thai. Language proficiency is beneficial for migrant workers to get the jobs, and essential for promoted positions (FGD, consultation meetings, June to August, 2020)

### Note 3.

- In Indonesia, the Institute for Societal Development Studies, the provincial manpower office of East Java, and the ILO lead a 200-hour course, in which all the instructors are domestic workers certified by the National Authority for Profession Certification.
- In the United Arab Emirates, a Dubai-based recruitment agency categorizes domestic work by skill level. The worker classified as a “trainee housekeeper” can enroll in a one-day-a-week training programme that includes classroom teaching, English language, and site visits. After completion of four modules within two years, the domestic worker receives certification and progresses to the category of “housekeeper”, with a built-in wage increase.

### Note 4.

In the Republic of Korea, migrant workers and employers participating in the Employment Permit System (EPS), are required to subscribe to an insurance package particular to the programme which consists of four different types of insurance Departure Guarantee Insurance, Return Cost Insurance are subscribed to by the employer; Casualty Insurance, and Wage Guarantee Insurance is subscribed by migrant workers.

- The Departure Guarantee Insurance, can be claimed by the worker only prior to his departure from the Republic of Korea or changing his workplace.
- The Casualty Insurance covers non-work-related injuries, disease, disability or death and can be claimed by either the worker or their family after the insurer validates the claim through an investigation.





## Note 5.

Prior to starting work for South Korean employer, migrant workers will be trained by the employers' association, for example, the Korea Federation of Small Businesses (KBiz) provides three-day training for EPS workers selected for manufacturing jobs; the National Agricultural Cooperatives Federations (NSCF) provide training for agricultural EPS workers. In addition, 16 postadmission training are mandatory and cover two hours on Korean language, two hours on Korean culture and customs, six hours on Korean immigration, labour and grievance procedure laws, and six hours on industrial safety and skills (Kim, *ibid.*).

## Note 6.

Under the Singapore's Skills Development Levy (SDL) Act, employers are required to pay a monthly SDL for all employees rendering services in Singapore, including foreign employees and employees employed on casual, part-time, or temporary basis. The SDL payable is at 0.25% of the monthly remuneration for each employee, with the minimum payable of USD 2 (for an employee earning less than USD 800 a month) and a maximum of USD 11.25 (for an employee earning more than USD 4,500 a month). All SDL collected are channelled to the Skills Development Fund (SDF) which is used to support upgrading programmes and to provide training grants to employers to send their employees to attend training under the national Continuing Education and Training system. The SDL and SDF are administrated by the SkillsFuture Singapore Agency (SSG).

## Note 7.

During COVID-19, Agencies and Civil Society in ASEAN countries have been providing assistance to migrant workers

Example:

- 1) An Inter-agency Taskforce in Singapore has been set up to provide support to foreign workers who are unable to go to work, and dormitory operators during COVID-19. The support includes providing daily meals and packs consisting of masks, thermometers and hand sanitizers. (Ministry of Man Power, Singapore. Available from: [www.mom.gov.sg/newsroom/press-releases/2020/0407-inter-agency-taskforce-to-support-fws-and-dormitory-operators-during-circuit-breaker-period](http://www.mom.gov.sg/newsroom/press-releases/2020/0407-inter-agency-taskforce-to-support-fws-and-dormitory-operators-during-circuit-breaker-period)).
- 2) Thailand: Private sector, especially employers cooperate with local communities and civil society organizations to assist migrant communities in Samutsakorn. Support includes food donations by employers and local people, and disseminations by civil societies and migrant communities. Available from: ([www.thaiunion.com/en/newsroom/press-release/1248/thai-union-continues-to-provide-humanitarian-assistance-to-migrant-workers-impacted-by-the-covid-19-outbreak-in-samut-sakhon](http://www.thaiunion.com/en/newsroom/press-release/1248/thai-union-continues-to-provide-humanitarian-assistance-to-migrant-workers-impacted-by-the-covid-19-outbreak-in-samut-sakhon)).



## Note 8

Details of Thailand Laws, Regulation, Regional and International Standards

### 1) Thailand Royal Ordinance on the Management of Migrant Workers B.E. 2560, amendments (No. 2) B.E. 2561

**Section 46** Before a migrant worker starts working with an employer, the employer shall prepare a written contract with details prescribed by the Director-General and store the employment contract at a business place of the employer for the Registrar or competent official to inspect and a copy of the contract to be kept by the worker.

**Section 49** An employer who brings a migrant worker to work shall not request or accept money for expenses already paid by the employer (passport, health check-up, work permit, and other fees stipulated by law.). The employer shall deduct these expenses from the wage or overtime pay but this amount cannot exceed 10 per cent of the total monthly wage of the worker.

**Section 53** The work permit shall be terminated for the migrant worker who has no right to change employers under Section 51 or the worker who has the right to change employer but does not work with new employer within the prescribed period under Section 52.

**Section 55** When the worker has worked until the expiration of the contract, they shall be repatriated to origin country except in the case of contract renewal or if the worker has begun working with the new employer within the prescribed time period under Section 52.

**Section 64/1** In the case of the issuance of a work permit, it is necessary for a migrant worker to obtain a health check-up and health insurance.

**Section 77** (1) assisting a migrant worker who suffers from rights violation, (2) covering repatriation cost (3) assisting state agencies or non-governmental organizations that have proposed projects to support welfare provision, education, public health and labour protection for migrant worker.

### 2) Thailand Labour Protection Act, 7th edition (Amended B.E. 2019)

**Article 8** Where the work to be performed is of the same nature, quality and quantity or the work is in the equivalent value, the wage, overtime pay, holiday pay and holiday overtime pay shall be fixed by the employer in the same rate regardless of whether the employee is a man or woman.

**Article 16** An employer who wishes to move the place of established business operation to a new business establishment or to other locations, shall publish a notice in advance in a public place where such business operation is established and employees are able to see the notice clearly for a continuous period of no less than 30 days from the day of moving the business establishment. Such notice shall contain, at least, statements which are clear and sufficient to understand in regard to which, where and when an employee would be moved to.



### 3) Thailand Occupational Safety, Health and Environment Act B.E. 2554

**Section 16.** An employer shall provide an occupational safety, health and environment training to be attended by executives, supervisors and employees in order to safely administer, manage and execute the occupational safety, health and environment. Where an employer has working staff, changes the employee's work, workplace, or machinery or equipment, which may harm the life, body, wellbeing and health of the employees, the employer shall provide a training for every employee before commencing work.

**Section 22.** An employer shall provide the employees with and require them to wear personal safety protection equipment in accordance with the standards prescribed and notified by the Director-General. The employees shall have the duty to wear the personal safety protection equipment and take care of the same mentioned in paragraph one in workable conditions in accordance with the nature of the work throughout the working period. In the case where the employee fails to wear such equipment, the employer shall order that employee to cease working until the employee wears such equipment.

### 4) Thailand. Skill Development Promotion Act B.E. 2545 (2nd edition B.E. 2557), Section 29

"The business operator engaging in the business where the type, size, number of employees, the proportion of trainees and employees of the area as stipulated by the Minister with the recommendation of the Committee must make a contribution towards the Fund at the rate fixed as per Section 30, except if the operator is already the training provider under Chapter 1. Workplaces that have 100 employees or more are required to arrange skill development programmes for at least 50 per cent of the total employees in each calendar year and submit a Skill Development Fund contribution form. Workplaces that do not arrange any skill development programmes or do not meet the minimum proportion must pay contributions to the Skill Development Fund." (Ministerial announcement (B.E. 2558) No. 4.)

### 5) Ministerial Regulation for the Administration and Management of Occupational Safety, Health and Environment (B.E. 2549).

**Clause 23** The employee of any workplace that has 50 employees or more shall arrange to have the Committee of Occupational Safety, Health and Environment of the Workplace within 30 days following the date this Ministerial Regulation comes into force, or within 30 days following the date the workplace has got 50 employees with the conditions as follows: (1) The workplace that has 50 or more, but less than 100 employees, shall have at least five members of the committee comprising the employer or one representative of the employer in management level acting as the Chairman of the Committee, one representative of the employer in commanding level, and two representatives of the employee acting as members of the committee and a safety officer in advanced technical or professional level acting as Member and Secretary of the Committee. (2) The workplace that has 100 employees or more, but fewer than 500, shall have at least seven members of the committee comprising the employer or one representative of the employer in management level acting as the Chairman of the Committee, two representatives of the employer in commanding level and three representatives of the employee acting as members of the committee, and a safety officer in professional level acting as Member and Secretary of the Committee. (3) The workplace having 500 employees or more shall have at least 11 members of the committee comprising the employer or one representative of the employer in management level acting as the Chairman of the Committee, four representatives of the employer in commanding level



and five representatives of the employee acting as members of the committee, and a safety officer in professional level acting as Member and Secretary of the Committee. As for the workplaces prescribed in Clauses (1), (2), and (3) that do not have a safety officer in advanced, technical, or professional level, the employer shall select a representative of the employer in commanding level to be a member of the Committee, and the Chairman shall select one member that is a representative of the employer in the commanding level to act as the Secretary.

### 6) Memorandum of Understanding (MOU) between Thailand and Cambodia, Lao PDR, Myanmar

**Article 1** The Parties shall apply all necessary measures to ensure the following: 1) Proper procedures for employment of workers; 2) Effective repatriation of workers who have completed the terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses; 3) Due protection of workers to ensure that there is no loss of their rights and protection of workers and that they receive the rights they are entitled to; 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers. **Article 4** The Parties shall take all necessary measures to ensure proper procedures for employment of workers. Employment of workers requires prior permission of the authorized agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries.

**Article 5** The authorized agencies may through a job offer inform their counterparts of job opportunities, number, period, qualifications required, conditions of employment, and remuneration offered by employers.

**Article 7** The authorized agencies shall coordinate with the immigration and other authorities concerned to ensure that applicants who have been selected by employers and duly permitted in accordance with Article IV, have fulfilled, inter alia, the following requirements: 1) Visas or other forms of entry permission; 2) Work permits; 3) Health insurance or health services; 4) Contribution into savings fund as may be required by the authorized agencies of the respective Parties; 5) Taxes or others as required by the Parties; 6) Employment contracts of employers and workers. Contract of the terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorized agencies.

**Article 12** In the case of workers whose services are terminated prior to completion of employment and have to return to their permanent addresses, the refund of them accumulated contribution and the interest shall also be made within 45 days after termination of employment.

**Article 17** The Parties in the employing country shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country.

**Article 18** Workers will receive wage and benefits at the same rate applied to national workers based on the principles of non-discrimination and equality on the basis of gender, ethnic identity, and religious identity.

**Article 19** Any disputes between workers and their employers concerning employment issues shall be considered and solved by authority bodies in accordance with laws and regulations of the country of employment.



## 7) ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017

- (8) Migrant workers may be visited by their family members for purposes and length of time that the national legislations, regulations and policies of the Receiving State may allow.
- (9) Migrant workers have the right to hold their own passports and original government-issued work and personal documents subject to laws, regulations, and policies of the Receiving State.
- (10) Subject to national laws, regulations and policies of the Receiving states, migrant workers have rights no less favourable than those applied to nationals of the receiving states when they are committed to prison or placed in custody pending trial or while detained for any reason.
- (11) Migrant workers have the right to file their grievances with the relevant authorities of receiving states and/or seek assistance from their respective embassies, consulates, or missions located in receiving states.
- (12) Migrant workers have the right to freedom of movement in the Receiving State, subject to laws, regulations and policies of the Receiving State.
- (13) Migrant workers have the right to access information on matters pertaining to their employment and employment-related conditions from relevant authorities, bodies and/or recruitment agencies of sending and receiving states.
- (14) Migrant workers have the right to be issued an employment contract or proper documentation by relevant authorities/ bodies and/or employers with clear and basic terms of employment subject to national laws, regulations, and policies.
- (15) Subject to national laws, regulations, and policies of the Receiving State, migrant workers have the right to fair treatment in the workplace.
- (16) Migrant workers have the right to adequate or reasonable accommodation subject to national laws, regulations and policies of the Receiving State.
- (17) (a) Migrant workers, regardless of gender, have the right to fair and appropriate remuneration and benefits in accordance with the laws, regulations, and policies of the Receiving State. (b) If migrant workers leave the Receiving State, they should not lose their rights to benefits arising from their employment in accordance with the national laws, regulations, and policies of the Receiving State.
- (18) Migrant workers have the right to transfer their earnings and savings in any modes of transfer in accordance with laws and regulations on currency transmission in the receiving and sending states.
- (19) (a) Migrant workers shall have the right to file a complaint or make a representation under the law relating to labour dispute in the Receiving State against termination of employment and/or breach of an employment contract in the Receiving State and, subject to the national laws, regulations, and policies relating to immigration, be allowed to continue staying in the Receiving State pending the disposal of his or her case. (b) If the decision on appeal is favourable to the migrant worker, he or she shall be entitled to any relief for loss of his or her rights arising from the employment contract.
- (20) Migrant workers have the right to join trade unions and associations subject to the national laws, regulations and policies of the Receiving State.



- (21) The sending state, in close coordination with the Receiving State, will organize a pre- departure orientation/education programme, including human and labour rights, general working and living conditions, laws, policies, regulations, culture, norms, and practices of the Receiving State, avenues of assistance in the Receiving State and such other matters as will enable them to comply with administrative or other formalities of the Receiving State.
- (22) The sending state will ensure that migrant workers are informed and aware of the terms and conditions of their work through a written employment contract or proper documentation and in a language that they understand.
- (23) (a)The sending state will set reasonable, transparent, and standardized fees for passport issuance and other relevant documents. (b)The sending state will likewise take necessary actions to prohibit overcharging of placement or recruitment fees by any parties chargeable to migrant workers in the sending state.
- (24) The sending state will take all necessary actions to simplify the administrative processes for overseas placements such as, but not limited to, “one-stop service centre” where appropriate.
- (25) The sending state will ensure migrant workers meet the health requirements of the Receiving State before departure.
- (26) The sending state will develop a comprehensive reintegration programme for returned migrant workers and their families as well as an employment programme for returned migrant workers taking into account their skills obtained overseas.
- (28) The sending state will ensure the right of returned migrant workers to establish associations, participate in policy making and programmes affecting migrant workers, and to access services for returned migrant workers and their family members in accordance with the national laws, regulations and policies of the sending state.
- (29) The sending state will take appropriate actions against any parties within its territory who willfully destroy, mutilate, tamper, or forge travel, work, or personal identity documents of migrant workers issued by the sending state.
- (30) The Receiving State will, in accordance with its national legislations, regulations, and policies, protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers. In doing so, the Receiving State will take necessary and appropriate measures to: (a)Ensure fair treatment towards migrant workers; and (b) Prevent abuses, exploitation and violence towards them.
- (31) The Receiving State will make every effort to issue authorization for migrant workers to stay and engage in employment for at least the same period of time as they are authorized to engage in the remunerated activity where separate authorizations to stay and engage in employment are required by national laws and regulations.
- (32) The Receiving State will in accordance with its national legislations, regulations, and policies: (a) Undertake employer education programmes to explain the procedure for legally hiring a migrant worker; (b) Take appropriate actions against employers who illegally detain migrant workers; (c) Take appropriate actions against employers who willfully destroy, mutilate or confiscate a migrant worker’s passport and work permit issued by any government agency; and (d) Take appropriate actions against employers who illegally employ migrant workers.



- (33) The Receiving State will take necessary actions to prohibit overcharging of placement or recruitment fees chargeable to migrant workers by any parties in the Receiving State.
- (34) The Receiving State will, through its relevant authorities or bodies, ensure that migrant workers are provided with adequate information within reasonable timeframe among others of their rights and responsibilities, occupational safety and health measures, avenues of assistance after their arrival in accordance with the labour laws, policies and regulations, and customs and traditions of the Receiving State.
- (35) The receiving states will promote harmony and tolerance with the view of providing the conditions under which migrant workers are able to integrate with local communities as well as their religions, and customs and traditions subject to the national legislations, regulations and policies.
- (36) (a) The Receiving State will issue regulations or guidelines prescribing the terms and conditions of employment that must be included in employment contracts or proper documentation for migrant workers in accordance with the legislations, regulations, and policies of the Receiving State. (b) The Receiving State will ensure that migrant workers are provided with a copy of employment contract or proper documentation for their work in accordance with the applicable legislations, regulations, and policies of the Receiving State. (c) The Receiving State will regulate the employment of migrant workers by ensuring that clear employment terms and conditions, such as wages, employment benefits, working conditions, health and safety, employment dispute mechanisms and repatriation are provided in national laws, regulations, contracts of employment, or other appropriate documentation.
- (37) The Receiving State will ensure that migrant workers are provided with fair and appropriate remuneration and other benefits in accordance with the applicable national legislations, regulations, and policies of the Receiving State.
- (38) The Receiving State will in accordance with its national legislations, regulations, and policies, provide migrant workers the right to join trade unions and associations.
- (39) The Receiving State will, in accordance with its national legislations, regulations, and policies, ensure that migrant workers are provided with adequate or reasonable accommodation.
- (40) The Receiving State will, in accordance with its applicable national legislations, regulations and policies, provide fair treatment to migrant workers in respect of: (a) Working conditions and remuneration; (b) Occupational safety and health protection; (c) Protection from violence and sexual harassment; and (d) Gender and nationality in the workplace.
- (41) The Receiving State will provide migrant workers with access to adequate medical and health care in accordance with the applicable laws, regulations and policies of the Receiving State.
- (42) (a) The Receiving State will facilitate migrant workers with access to legal recourse and assistance, including language interpretation, if necessary, if they become victims of discrimination, abuse, exploitation and/or violence in accordance with the national laws, regulations, and policies; (b) The Receiving State will facilitate the exercise of consular functions by consular or diplomatic authorities of the Sending States when a migrant worker is arrested or committed to prison or custody or detained in any other manner under the laws, regulations, and policies of the Receiving State and in accordance with the Vienna Convention on Consular Relations of 1963.



## TOWARDS A SHARED RESPONSIBILITY FRAMEWORK

on Ethical Recruitment, Decent Employment and Skills Development for Migrant Workers in Thailand

- (43) The Receiving State will protect the employment rights of migrant workers during repatriation including ensuring the compliance with the applicable/relevant repatriation processes of the Receiving State upon termination of employment contract/work pass.
- (45) Consult and cooperate with a view to promoting decent, humane, productive, dignified and remunerative employment for migrant workers;
- (46) Endeavor to recognize an employment contract containing the terms and conditions of employment;
- (47) Collaborate in promoting human resources and skills development of migrant workers;
- (48) Collaborate to take concrete measures to prevent and eliminate any illegal or clandestine movement involving migrant workers and employment of migrant workers in an irregular situation, with due regard to the safety, welfare, and access to justice of migrant workers;
- (49) Collaborate to raise public awareness and disseminate accurate information on labour migration;
- (50) Enforce laws, regulations and policies related to the protection of migrant workers including those related to labour intermediaries within the jurisdiction of each ASEAN Member State;
- (51) License, regulate, and supervise public and private recruitment agencies with a view to eliminating recruitment malpractices and to ensuring compliance with the law, regulations, and policies of the respective ASEAN Member States. In doing so, ASEAN Member States will adopt effective measures to eliminate malpractices in the recruitment system;
- (52) Take measures to ensure effective prevention and suppression of smuggling and trafficking in persons, establishment and implementation of systems to identify victims, stiffer penalties for those who are involved in these activities, and provision of support for victims;
- (53) Facilitate information sharing through development or strengthening of their respective database and information systems on matters relating to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both Sending and receiving states;
- (54) Enhance cooperation aiming at: (a) Building capacity and sharing of information including on laws, regulations, policies, and practices in relation to protection and promotion of migrant workers' rights and welfare; (b) Encouraging constructive dialogue, consultation, cooperation, and regular exchange of information, for the purpose of effective enforcement of policies and programmes concerning migrant workers;
- (55) Cooperate and coordinate to extend assistance to migrant workers who are caught in conflict or crisis situations in the receiving states through the services of Embassies and Consular Offices of the Sending States and authorities in the Receiving State;
- (56) For humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented; Nothing shall be interpreted as implying the regularization of the situation of undocumented migrant workers;
- (57) Take measures to prevent and curb the flow of undocumented migrant workers and explore cooperation and coordination among ASEAN Member States in providing assistance to those who are in need of protection subject to prevailing national laws, regulations and policies of ASEAN Member States.





## 8) ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration 2008)

### Principle

1. Both the receiving states and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member States.
2. Principle 2: The receiving states and the sending states shall take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies.
3. Principle 20: ASEAN will extend assistance to migrant workers of ASEAN Member States who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member States, based on bilateral consultations and arrangements.
5. Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers.
6. Work towards the achievement of harmony and tolerance between receiving states and migrant workers.
7. Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties.
8. Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers.
9. Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states.
10. Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.
13. Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin.
14. Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.
15. ASEAN Member States should promote decent, humane, productive, dignified and remunerative employment for migrant workers.



16. ASEAN Member States will establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin.
17. ASEAN Member States will take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities.
18. Facilitate data sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states.
20. ASEAN will extend assistance to migrant workers of ASEAN Member States who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member States, based on bilateral consultations and arrangements.

## 9) Global Compact on Migration (GCM 2018)

### Principle

- 1: Collect and utilise accurate and disaggregated data as a basis for evidence-based policies.
- 3: Provide accurate and timely information at all stages of migration.
- 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.
- 7: Address and reduce vulnerabilities in migration.
- 9: Strengthen the transnational response to smuggling of migrants.
- 10: Prevent, combat and eradicate trafficking in persons in the context of international migration.
- 11: Manage borders in an integrated, secure and coordinated manner.
- 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral.
- 13: Use migration detention only as a measure of last resort and work towards alternatives.
- 14: Enhance consular protection, assistance and cooperation throughout the migration cycle.
- 15: Provide basic access to basic services for migrants.
- 16: Empower migrants and societies to realize full inclusion and social cohesion.
- 17: Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration.
- 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences.
- 19: Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries.
- 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration.
- 22: Establish mechanisms for the portability of social security entitlements and earned benefits.
- 23: Strengthen international cooperation and global partnerships for safe, orderly and regular migration.



## I0) ILO (2019) General Principles and Operational Guidelines (OG) on Fair Recruitment

- OG 1: Governments have an obligation to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, in the recruitment process. This includes respect for, and protection of, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
- OG 2: Governments should protect workers against human rights abuses in the recruitment process by employers, labour recruiters and other enterprises.
- OG 3: Governments should adopt, review and, where necessary, strengthen national laws and regulations, and should consider establishing, regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.
- OG 4: Governments should ensure that relevant legislation and regulations cover all aspects of the recruitment process, and that they apply to all workers, especially those in a vulnerable situation.
- OG 5: Governments should effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law.
- OG 6: Governments should take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers.
- OG 13: Governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers, are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively.
- OG 14: Governments should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that are owned or controlled by the Government, or that receive substantial support and contracts from government agencies.
- OG 16: Enterprises and public employment services should undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce, lower wages or working conditions, or otherwise undermine decent work.
- OG 17: No recruitment fees or related costs should be charged to, or otherwise borne by, recruited workers and jobseekers.
- OG 21: Labour recruiters should respect the applicable laws and fundamental principles and rights at work.
- OG 22: When labour recruiters recruit workers in one country for employment in another country, they should respect human rights, including fundamental principles and rights at work, in compliance with international law and the law in the country of origin, the country of transit and the country of destination, and with international labour standards.
- OG 23: Labour recruiters acting across borders should respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers' rights.



## **I I) IOM IRIS Standard**

### **General Principle A: Respect for Laws, and Fundamental Principles and Rights at Work**

CRITERION A.1: The labour recruiter is compliant with all applicable laws in its countries of operation.

CRITERION A.2: The labour recruiter is compliant with international standards on prohibition of forced labour.

CRITERION A.3: The labour recruiter does not recruit migrant workers under the age of 18.

CRITERION A.4: The labour recruiter does not restrict migrant workers' freedom of association

CRITERION A.5: The labour recruiter does not recruit migrant workers for the purpose of replacing workers who are on strike.

### **General Principle B: Respect for Ethical and Professional Conduct**

CRITERION A.6: The labour recruiter ensures that migrant workers are treated equally throughout the recruitment process and are not discriminated on the basis of race, ethnicity, sex, gender and gender identity, national or social origin, nationality, caste, age, political affiliation, religion, sexual orientation, union membership, physical ability, health, pregnancy, marital or family status or any other status, in accordance with applicable law.

CRITERION B.1: The labour recruiter's management system complies with the IRIS Principles.

CRITERION B.2: The labour recruiter performs ongoing due diligence on employers and end-user employers to ensure their continued and uninterrupted compliance with applicable laws and labour standards.

CRITERION B.3: The labour recruiter performs ongoing due diligence on recruitment business partners and subcontractors to ensure their continued and uninterrupted compliance with applicable laws and the IRIS Principles.

### **Principle 1: Prohibition of Recruitment Fees and Related Costs to Migrant Workers Criterion**

1.1: The labour recruiter has a policy commitment prohibiting the charging of recruitment fees and related costs to migrant workers, irrespective of where or how they are recruited.

1.2: Recruitment fees and related costs are not borne by the migrant workers.

1.3: The labour recruiter informs jobseekers during the recruitment process that they do not bear any costs of recruitment.



- 2.1: The labour recruiter does not hold the passports, other identity documents, work permits or other documents of migrant workers without their informed written consent.
- 2.2: No labour recruiter withholds bank books, bank cards, deeds to real or personal property of the migrant workers or their family members at any time.
- 2.3: Employment contracts and service agreements between the labour recruiter and migrant workers do not limit their freedom of movement
- 3.1: The labour recruiter provides the migrant workers with a written employment contract that is straightforward and understandable by them and contains at a minimum: position of worker, job description, job site, commencement and duration of contract, details of transportation to and from country of destination, details of accommodation, meals provided under the contract, union or other legal dues payable by the worker (if applicable), name and address of the employer, wages and frequency of pay, working hours and days of rest, overtime rates, vacation, other leave entitlements, all lawful deductions from pay, benefits of employment and conditions of termination in accordance with applicable law.
- 4.1: The labour recruiter has a policy on data protection which is in accordance with applicable laws, rules and regulations, and the IRIS Principles.

### Principle 3: Respect for Transparency of Terms and Conditions of Employment

#### Criterion

- 3.2: The labour recruiter verifies that the terms and conditions of employment are the same as originally offered by the employer and comply with applicable law and practice.
- 3.3: The employment contract is provided to migrant workers prior to deployment.
- 3.4: The employment contract is agreed to and signed by migrant workers without coercion.
- 3.5: The employment contract signed by the worker is not substituted for another employment contract unless for better living and working conditions and agreed upon with the migrant worker.
- 3.6: The labour recruiter ensures that migrant workers receive pre-departure orientation (PDO) training.
- 4.2: Personal data of migrant workers collected by the labour recruiter are relevant, protected and treated confidentially by the labour recruiter and any third party.
- 4.3: Informed consent is obtained from migrant workers at the time of collection of personal data.
- 4.4: The labour recruiter does not release migrant workers' personal data without cause and their explicit consent.
- 5.1: The labour recruiter has or participates in effective operational-level grievance mechanisms.
- 5.2: The labour recruiter ensures that the migrant workers are informed about and have an open and direct access to a grievance mechanism related to the recruitment process.
- 5.3: The labour recruiter provides migrant workers with information about available state, employer and industry provided grievance mechanisms related to the employment in both origin and destination countries.



## 12) CEDAW Article 1, 2, 3 and 11

### Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

### Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;



- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
  - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
  - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
  - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
  - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

### **13) Sustainable Development Goals (UN 2015)**

- SDG 1.3: Social protection systems and measures for all.
- SDG 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- SDG 5: Achieve gender equality and empower all women and girls.
- SDG 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- SDG 8.7: Eradicate forced labour and modern slavery and human trafficking.



- SDG 8.8: Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, particularly women migrants and those in precarious employment.
- SDG 8.8.1: Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status
- SDG 8.8.2: Increase national compliance of labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation, by sex and migrant status.
- SDG 10.2: Empower and promote the social, economic, and political inclusion of all.
- SDG 10.4: Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.
- SDG 10.7: Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.
- SDG 16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children.
- SDG 16.3: Promote rule of law and equal access to justice for all.

### 14) The 10th ASEAN Forum on Migrant Labour (10th AFML)”.

The Forum gathers annually to discuss and share experiences, as well as to build consensus on the protection of migrant workers’ issues committed under the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007 (Cebu Declaration). It concludes with the adoption of Recommendations that bring life to the provisions of the Cebu Declaration. The 10th AFML carries the overall theme “Towards Achieving Decent Work for Domestic Workers in ASEAN”

### 15) The 13th ASEAN Forum on Migrant Labour (13th AFML)

"Supporting Migrant Workers during the Pandemic for a Cohesive and Responsive ASEAN Community" Ensure access of all migrant workers in all sectors to health care, including COVID-19 testing and treatment, emergency relief measures, income support, social protection, and unemployment benefits, where applicable, of the receiving states and/or Sending States. Implementation of the recommendations of Thailand’s study on portability of social security benefits for migrant workers should be expedited. Furthermore, fear of sanctions for immigration violation should be delinked from health concerns of migrant workers.

1. Improve safety and health standards at the workplace and employer-provided housing for migrant workers including hygiene, sanitation living conditions, and Personal Protective Equipment (PPE) as preventive measures to reduce migrant workers’ exposure to the COVID-19 infection. In this regard, minimum standards for decent living conditions of live-in domestic workers that respect their safety and privacy should be ensured.
2. Ensure decent wages of migrant workers and protect their wages in time of pandemic through effective complaint mechanisms and support services. In this regard, the complaints on wages and grievances, claims and labour disputes of migrant workers who lost their jobs due to the pandemic should be investigated and handled immediately and, where possible, prior to returning home without increasing health risks due to a prolonged stay.
3. Consider that fees related to recruitment and redeployment, including additional costs for COVID-19 testing, quarantine and health insurance, should not be charged to migrant workers in accordance with the





ILO General Principles and Operational Guidelines for Fair Recruitment. In line with this, migrant workers who paid recruitment fees and were not deployed should be reimbursed. In this regard, regulations and monitoring of the practices of recruitment agencies should be strengthened.

5. Provide access of migrant workers, especially domestic migrant workers and laid-off migrant workers, to mental health support and services. Stigmatization, xenophobia, and discrimination against migrant workers, especially those infected by COVID-19, should be addressed through, among others, public campaigns.
6. Information of COVID-19 related migration, labour, health and safety policies should be accessible to migrant workers in languages understood by them and, where possible, electronically. Responses to COVID-19 and other potential pandemic in future should be included in the occupational safety and health policies at the workplace to ensure better protection of all workers including migrant workers.
7. Strengthen migrant workers' return and reintegration programmes with adequate resources. In doing so, special attention to be given to stranded and repatriated migrant workers during pandemic crises including extending to migrant workers in countries of transit and points of entry during deployment and return. If detention facilities are used as the last resort, safety and health standards should be ensured.
8. Integrate rights-based and gender responsive protection of migrant workers and their families into national and regional pandemic and emergency preparedness plans. Consultation with migrant workers' associations, trade unions, employers' organizations and civil society is key to ensure cohesive and responsive policies and plans.
9. Maximize digital technology in the online processing of migrant workers' immigration and employment documents, and ensure its accessibility to migrant workers to reduce physical contacts in time of pandemic.
10. Strengthen the employability of migrant workers who lost their jobs due to the pandemic through improving their access to available re-skilling and up-skilling programmes, including digital literacy, public employment programmes, job placement and skills certification and recognition, with due consideration to the needs and realities of women migrant workers.
11. Support the recovery of labour migration flows in the new normal by strengthening and sharing available disaggregated data, including gender, on labour migration and labour markets, using standardized definitions, while maintaining confidentiality of personal information.
12. Increase cross-sectoral referral mechanisms and collaboration to strengthen national policy framework for protection of migrant workers in time of pandemic. Protection of women migrant workers and victims of gender-based violence during the pandemic and their access to coordinated essential services should be strengthened. The heightened risks of forced labour and human trafficking during the pandemic and post pandemic recovery should be addressed.





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# Annex I

Participants in Focus Group Discussion in Consultation meetings

Date	Province	Employer*	Number of participants					Researcher
			Government agency	Recruiting company	Civil society Non-government Organization*	Migrant Representative		
25 June 2020	Samutsakorn	12	2	4	1	2	4	
30 June 2020	Chonburi	12	2	3	-*	-	4	
14 July 63	Phuket	13	3	2	-*	-	4	
30 July 63	Chiangmai	15	3	9	4	2	4	
7 August 63	Nakornrachasima	15	3	4	-	-	4	
18 August 63	Bangkok	10	1	4	-*	-	5	
Total		77	14	26	5	2	5	









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