

# Legally Binding

A Summary of Labor Laws in the Greater  
Mekong Subregion



Mekong Migration Network  
With the Support of the Toyota Foundation

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## A Summary of Labour Laws in the Greater Mekong Subregion

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Mekong Migration Network  
September 2011

# Members of Mekong Migration Network (MMN)

The following is the list of MMN members as of July 2011.

## CAMBODIA

- Legal Support for Children & Women (LSCW)
- Cambodian Women for Peace and Development (CWPD)
- BanteaySrei
- Cambodia Human Rights and Development Association (ADHOC)
- Cambodian Women's Crisis Center (CWCC)
- Coordination of Action Research on AIDS and Mobility (CARAM) Cambodia

## CHINA

- Migrant Workers Education and Action Research Centre (MWEAC)
- Association for Women's Capacity Building and Community Development in Yunnan
- Ruili Women and Children Development Centre
- Women Migrant Education Research Professional Association
- Yunnan Reproductive Health Research Association

## LAO PDR

- Faculty of Social Sciences, National University of Laos
- Lao Women Union

## THAILAND

- MAP Foundation
- Foundation for Education and Development (formerly Grassroots-HRE)
- Thai Action Committee for Democracy in Burma (TACDB)
- EMPOWER Foundation
- Federation of Trade Unions-Burma (FTUB)
- Foundation for AIDS Rights (FAR)
- Foundation for Women

- 
- Friends of Women Foundation
  - Human Rights and Development Foundation
  - Institute for Population and Social Research (IPSR), Mahidol University
  - Maryknoll Thailand - Office for Migrants at Immigration Detention Center in Bangkok
  - The Mekong Ecumenical Partnership Program-Christian Conference of Asia (MEPP-CCA)
  - National Catholic Commission on Migration
  - Pattanarak Foundation
  - The Peace Way Foundation
  - Raks Thai Foundation
  - Shan Women's Action Network (SWAN)
  - Studio Xang
  - Young Chi Oo Workers Association (YCOWA)

## **VIETNAM**

- Center of Research and Consultancy for Development (CRCD), Southern Institute of Social Sciences
- The Applied Social Work Center
- Education & Psychology Association -Ho Chi Minh City

## **Regional**

- Asian Migrant Centre (AMC)

# Handbook on Labour Protection in the GMS

## Preface

Many of the industries in the Greater Mekong Subregion, namely Burma, Cambodia, Lao PDR, Thailand, Yunnan Province of China and Vietnam, rely heavily on the work of migrants. Despite migrant workers being the backbone of social and economic development of the Greater Mekong Subregion (GMS), they continue to be denied the protection of essential benefits and rights. Recently, there has been increased discussion among GMS governments and civil society concerning collaborating in their responses towards labour migration. In part, governments' motivation for this new approach reflects their vision of economic integration of countries in the region. On the other hand, civil society's concerns lie with the quality of life of migrants.

While the protection of the rights of migrant workers is often spoken of during such discussions, the general lack of understanding about the labour standards in the neighbouring countries in the GMS often makes it unclear exactly which labour standards the policy discussions are referring to.

It is essential to gain an understanding of the labour protections available to migrant workers according to each GMS country's national labour laws for two main reasons: firstly, to enable policy makers and advocates to have informed discussions about labour protection; and secondly, to strengthen bilateral and/or regional collaboration and coordination in promoting and protecting the rights of migrant workers.

The *Handbook on Labour Protection in the GMS* is a concise guide to understanding labour standards according to the national labour laws in the GMS countries. Labour protection has been classified into 14 key elements. Relevant international laws are also included. The Mekong Migration Network has active partners working with Burmese migrants, as well as contacts with academics and practitioners located in Burma. However, throughout this project it unfortunately proved largely impossible to find complete up-to-date information on Burmese labour laws. We understand that in recent years some efforts have been made by the Burmese government to draft new labour laws, however these laws have not yet been made public at the time of finalizing this publication. Many of the laws which are available for viewing date from the colonial period, and there is

no information available indicating whether or not these laws are still in force/ current or not. While successive military regimes have issued orders rescinding or replacing laws, it is difficult to follow these changes and permutations throughout the life-spans of these laws. For these reasons, the sections on Burma are often sadly lacking in concrete information. We apologise for this information gap, in addition to apologising particularly in the event that such laws do exist but we have been unable to locate them. It has been reported that a new labour law - signed on 11 October 2011 by President Thein Sein - contains positive elements, such as allowing workers to form unions and to strike. At the time of going to press this piece of legislation was not publicly available. If and when it becomes available, the MMN plans to upload the updated information onto its homepage.

We hope that in addition to promoting understanding of existing labour standards in the region that this handbook will also help migrant advocates to identify relevant labour laws that they can then use in responding to labour rights abuses. Readers are however encouraged to verify the current status of laws in question and to seek legal advice where necessary.

This handbook has been prepared as part of a project entitled: “Mekong Vocabulary on Labour Migration – promoting a common language understanding in the region and building a regional network for safe migration in the (GMS),” which is supported by the Toyota Foundation Asian Neighbors Program. This project aims to fill an information gap by increasing common understanding of vocabulary. As an outcome of the project the handbook *Speaking of Migration : Mekong Vocabulary on Migration* has also been published, which includes approximately 120 terms on migration issues translated into Burmese, Chinese, Khmer, Lao, Thai and Vietnamese. As a companion handbook to *Speaking of Migration*, this *Handbook on Labour Protection in the GMS* has been developed. MMN believes that all workers - including migrant workers - must be afforded equal labour protection. We hope that in the future this booklet will become a useful reference tool for those advocating for the realisation of optimum labour protection for all workers in the GMS.

*The Mekong Migration Network (MMN) is a sub-regional network of civil society organisations working for the rights of migrants in the Greater Mekong Subregion. Many of our member organizations employ legally trained staff who routinely assist migrant workers pursue their labour rights through the courts. We work together for the full recognition and promotion of the human rights of all migrant workers and their families in the Mekong. The list of members is in the appendix of the handbook. For details of MMN activities, please visit [www.mekongmigration.org](http://www.mekongmigration.org).*



# Acronyms

ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
GMS	Greater Mekong Subregion
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
UDHR	Universal Declaration of Human Rights

# Table of Ratification of International Conventions

International Convention	Burma	Cambodia	China	Lao PDR	Thailand	Vietnam
ICESCR		X	X	X	X	X
ICCPR		X	*	X	X	X
Migrant Workers' Convention		*				
CEDAW	X	X	X	X	X	X
CRC	X	X	X	X	X	X
ILO C1, Hours of Work (Industry)	X					
ILO C14, Weekly Rest (Industry)	X		X	X	X	X
ILO C29, Forced Labour						
ILO C30, Hours of Work (Commerce and Offices)	X	X		X	X	X
ILO C87, Freedom of Association and Protection of the Right to Organise	X	X				
ILO C106 Weekly Rest (Commerce and Offices)						
ILO C132, Holidays with Pay						
ILO C138, Minimum Age		X	X	X	X	X
ILO C153, Hours of Work and Rest Periods (Road Transport)						
ILO C156, Workers with Family Responsibilities						
ILO C158, Termination of Employment						
ILO C181, Private Employment Agencies						
ILO C182, Worst Forms of Child Labour Convention		X	X	X	X	X
ILO C183, Maternity Protection						

\* = signed but not ratified

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# Section 1

## Scope of Application of Labour Laws

### Overview

Employees and employers are broadly covered by labour legislation in each of the GMS countries, with certain exceptions:

In Cambodia, labour legislation does not apply to judges of the judiciary and those employed in permanent positions in the public service.

Lao labour legislation does not apply to civil servants, military and police personnel employed in Party or State organisations, the Lao Front for National Construction and mass organisations.

In Thailand, labour legislation does not apply to Central Administration, Provincial Administration, Local Administration including Bangkok Metropolitan and Pattaya City or State Enterprises.

Vietnamese labour legislation does not apply to State employees and officials, elected and appointed officials, members of units of the people's armed forces and police force, members of public organizations, members of other political and social organizations, and members of co-operatives.

# Burma (Myanmar)

## Relevant Legislation

None available.

# Cambodia

## Relevant Legislation

The Government of Cambodia, *Cambodian Labour Law* (1997)<sup>1</sup>

Article 1 of the *Cambodian Labour Law* states that the law:

[...] governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are. This law applies to every enterprise or establishment of industry, mining, commerce, crafts, agriculture, services, land or water transportation, whether public, semi-public or private, non-religious or religious; whether they are of professional education or charitable characteristic as well as the liberal profession of associations or groups of any nature whatsoever. This law shall also apply to every personnel member who is not governed by the Common Statutes for Civil Servants or by the Diplomatic Statutes as well as officials in the public service who are temporarily appointed.

Article 1 also specifies that the *Labour Law* does not apply to:

- a) Judges of the Judiciary.
- b) persons appointed to a permanent post in the public service.

# China

## Relevant Legislation

*Lao Dong Fa [Labour Law of the People's Republic of China]* (Promulgated by the NPC Standing Committee, effective January 1, 1995), 1994 FAGUI HUIBIAN 91, 94 (Official Source)<sup>2</sup>

*Labour Act* (5 July 1994)<sup>3</sup>

Section 2 of the *Labour Act* (mirrored in Article 2 of the *Labour Law*) states that the laws contained therein apply:

[...] to all enterprises and individual economic organizations (hereafter referred to as employing units) within the boundary of the People's Republic of China, and labourers who form a labour relationship therewith. State organs, institutional organizations and societies as well as labourers who form a labour contract relationship therewith shall follow this Law.

# Lao PDR

## Relevant Legislation

*Lao PDR Labour Law, 2006 (Amended)*<sup>4</sup>

Article 6 of Lao PDR's *Labour Law* states that the law applies 'to all employees and employers who carry out activities in the labour units', in addition to 'persons working under written contracts for employment of three months or more'. The law does *not* apply to 'civil servants, military and police personnel employed in Party or State organisations, the Lao Front for National Construction and mass organisations' [Article 6].

Article 2(4) defines an employee as:

[...] a person working under the supervision of an employer while receiving compensation for work through salary or wages, benefits or other policies as regulated by laws, regulations and the employment contract.

Article 2(5) defines an employer as:

[...] a person or organisation using employees for its activities by paying salary or wages, and providing benefits and other policies to the employees as regulated by laws, regulations and the employment contract.

## Thailand

### Relevant Legislation

*Labour Relations Act*, B. E. 2518 (1975)<sup>5</sup>

The *Labour Relations Act* does not specify the exact scope of application of the legislation, however the *Act* does stipulate that the laws contained therein do not apply to Central Administration, Provincial Administration, Local Administration including Bangkok Metropolitan and Pattaya City or State Enterprises [Section 4].

Section 5 also defines employee as a 'person agreeing to work for an employer in return for wages', and an employer as 'a person agreeing to accept an employee for work by paying him wages'.

## Vietnam

### Relevant Legislation

*Labour Code of the Socialist Republic of Vietnam*, 23 June 1994 (Amended 2 April 2002, effective 1 January 2003)<sup>6</sup>

Article 2 of the *Labour Code* stipulates that the legislation applies to 'all workers, and organizations or individuals utilizing labour on the basis of a labour contract in any sector of the economy and in any form of ownership', in addition to trade apprentices, domestic servants, and other forms of labour outlined in the *Code*. Article 3 extends the scope of the *Code* to cover foreigners working for Vietnamese

companies in Vietnam, and Vietnamese citizens who work in an enterprise with foreign owned capital in Vietnam, or 'in a foreign or international organization operating in the territory of Vietnam'.

Article 4 states that the *Labour Code* does not apply to:

[...]State employees and officials, elected and appointed officials, members of units of the people's armed forces and police force, members of public organizations, members of other political and social organizations, and members of co-operatives [...].

## Endnotes

- <sup>1</sup> *Cambodian Labour Law*, 1997, available at [http://www.gocambodia.com/laws/labor\\_law.asp](http://www.gocambodia.com/laws/labor_law.asp) (accessed 16/05/11).
- <sup>2</sup> *Lao Dong Fa [Labour Law of the People's Republic of China]*, 1/01/1995, available at <http://www.usmra.com/china/Labour%20Law.htm> (accessed 16/05/11).
- <sup>3</sup> *Labour Act*, 5/07/1994, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm> (accessed 16/05/11).
- <sup>4</sup> *Lao PDR Labour Law* (amended) 2006, available at [http://www.na.gov.la/docs/eng/laws/soc\\_cult/Labour%20\(2006\)%20Eng.pdf](http://www.na.gov.la/docs/eng/laws/soc_cult/Labour%20(2006)%20Eng.pdf) (accessed 30/05/11).
- <sup>5</sup> *Thai Labour Relations Act*, 1975, available at [http://thailaws.com/law/t\\_laws/tlaw0140\\_3.pdf](http://thailaws.com/law/t_laws/tlaw0140_3.pdf) (accessed 25/05/11).
- <sup>6</sup> *Labour Code of the Socialist Republic of Vietnam*, 23/06/1994, (amended 2 /04/2002), available at <http://www.global-standards.com/Resources/VNLaborCode1994-2002.pdf> (accessed 16/05/11).



