Human Rights and Gender Equality

Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN

National Report: Lao People’s Democratic Republic

Enhanced Regional EU-ASEAN Dialogue Instrument
E-READI
Disclaimer

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About the Report

This national report was one of ten national ASEAN Member State reports produced to feed into a regional Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN. The regional study offers a comprehensive analysis on how ASEAN Member States have dealt with the movement of migrant workers into their labour markets, covering all skill levels and including occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs), and providing recommendations as feedback for ASEAN policymakers and practitioners in improving policies and measures pertaining to the mobility of migrant workers.

The national reports and the regional study were produced with support by the "Enhanced Regional EU-ASEAN Dialogue Instrument" (E-READI), a development cooperation program funded by the European Union. E-READI facilitates dialogues between the EU and ASEAN in priority policy areas of joint interest.

This national report was prepared by Tingthong Phetsavong, National Consultant from Lao PDR. The text of this publication is meant as a reference document for concerned stakeholders only. It may not be freely quoted or reprinted. The right to reprint and further circulate this national report lies with Ministry of Labor and Social Welfare, Lao People’s Democratic Republic.
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<th>Description</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>AEC</td>
<td>ASEAN Economic Community</td>
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<td>ASEAN</td>
<td>The Association of Southeast Asian Nations</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>Lao PDR</td>
<td>Lao People’s Democratic Republic</td>
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<tr>
<td>LFTU</td>
<td>Lao Federation Trade Union</td>
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<tr>
<td>MOFA</td>
<td>Ministry of Foreign and Affairs</td>
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<tr>
<td>MOLSW</td>
<td>Ministry of Labor and Social Welfare</td>
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<td>MOP</td>
<td>Ministry of Public Security</td>
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<td>MRA</td>
<td>Mutual Recognition Arrangement</td>
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<td>MRC</td>
<td>Migrant Resource Center</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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Executive Summary

The government of the Lao People’s Democratic Republic (Lao PDR) is committed to protect and promote the rights of migrant workers including foreign workers working in Lao PDR. This has enshrined in the National Constitution, numbers of international agreement and ILO conventions related to labor migration that Lao is partied to.

Labor Law 2013 and Law on Immigration and Foreigner Management 2014 are applied for both Lao and foreign workers, these laws also define the conditions for entry, stay, incorporate and exit Lao PDR including enforcement measures regarding to the work permit and foreign migrant workers management.

The government of Lao PDR promotes the labor management works through the tripartite mechanism which comprise of Ministry of Labor and Social Welfare, Lao Federation of Trade Union and National Chamber of Commerce and Industry.

Lao is among the fastest growing economic country in this region during the last decade, there are high demand for using new skills and expertise. However, at the same time Lao is among the small labor market and limited in term of local stock labor, there is increasing foreign workers working in Lao in deferent sectors in recently years, this has created both potentials and challenges for labor management. Lack of comprehensive data collection system and linkage is one of the main obstacles in managing labor migration works for Lao government. There is a need to improve labor migration data management and coordination among relevant government agencies for the better implementation and monitoring of foreign migrant workers management as well as to use data for policy and legal framework review and development.

There is no one stop service for foreign worker, work permit, stay permit and visa approval are under the three different departments under Ministry of Labor Social Welfare, Ministry of Public Security and Ministry of Foreign Affairs. This create the gaps and challenges to provide the services for foreign migrant workers, the implementations and practices among government authorities are sometime not in line with the existing laws and regulations leaves uncertain and unclear processes and services for business sectors and foreign migrant workers.

MRA has not specific integrated into national laws, policies and regulations related to labor migration. There is few works carried out at country level, most of the previous development workers were focus on outbound migration with the limited and short term support from development partner in Lao PDR.

In order to foster mobility and increase skills flow, there is a need establish and improve data collection and services for foreign migrant workers including strength the capacity building for government staff to support foreign workers when they face problem or seek help. Increase capacity building for relevant government agencies at all level particular at sub-nation level to ensure the implementation in line with the national laws and regulations as well as international labor standard.
Chapter I: Introduction

There is an increasing movement of labor migration globally as well as within Asian regions which creates both opportunities and challenges in social- economic development.

Lao People’s Democratic Republic (Lao PDR) considered as sending country for cross border migration with neighboring countries, most of Lao migrant workers working in Thailand. At the same time, in-bound migration as well as number of foreign migrant workers are increasing since the Lao government introduced the open-door policy in 1986 (known as New Economic Mechanism), this policy aims to shift the economy from a centrally planned system to one that is more market driven as well as aims to foster regional and international integration and cooperation and to promote foreign investment in difference economic sectors. As a result, new establishments, organizations, projects and foreign investments in specific economic sectors demand for foreign workers in different fields.

Lao PDR is classified as the lower-middle income country with the gross domestic product (GDP) average growth rate of 7.8% per annum over the last decade, considered as the fastest growing economic area in the region. Although Lao government has put number of efforts on human development and promote national employment. Due to relatively small labor market, lack of expertise and experiences in different fields, the government also recognizes the demand of foreign migrant workers as well as high skills labor and those expertise and positions unable to be filled by Lao labor. This creates some level of challenges for the management of foreign workers in Lao PDR due to lack of experiences and resources as well as the absent of comprehensive data collection system in governing labor migration works at both national and local levels.

Under the support from E-READI Project, this study is an initiative of the Ministry of Labor, Invalids and Social Affairs (MOLISA), Viet Nam, in collaboration with the ASEAN Secretariat. Under the thematic area ‘protection and promotion of the rights of migrant workers’ of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).

The aim for this study is to foster better understanding on the barriers to the mobility of migrant workers within the ASEAN region and to recommend strategies to overcome these challenges. A key output of this initiative is an ASEAN-wide comparative study identifying the differences in laws and policies in managing the entry and stay, incorporation and exit of migrant workers within Asian member states covering all skill levels and including occupations under the eight ASEAN Mutual Recognition Arrangements (MRA).

This initiative is contributing to the implementation of the ASEAN-EU Plan of Action (POA) 2018-2020. The study’s findings will address how laws, national policy frameworks and governance mechanisms, regulations and avenues of assistance can be improved and streamlined, and enable migrant workers to comply with administrative or other formalities. Its recommendations will provide further inputs to dialogue and exchange between the EU

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1 Lao People's Democratic Republic, Lao Economic Monitor FY15-16, World Bank
and ASEAN, with the involvement of international organizations and relevant stakeholders, on issues related to laws and policies on migrant workers.
Chapter II: Migration Laws and Policies

2.1 Entry and Stay Measures

2.1.1 Work Permit Requirements for Foreign Migrant Workers

The work permit issued for foreign workers in Lao PDR is not specific apply to foreign workers covered under the 8 ASEAN MRAs but to all foreign worker in different sectors with regardless of nationalities and origins.

In order to promote national employment, it is by Law that employers are required to prioritize Lao workers, however, the employers can request to enter foreign migrant workers in the case that the demand for workers cannot be met by Lao nationals. The proportion of hiring of foreign workers within a enterprise and project must be as follows:

- Fifteen percent of the total number of Lao workers within a establishment and business for technical experts undertaking physical labor;
- Twenty-five percent of the total number of Lao workers within a establishment and business for technical experts undertaking mental labor. For big scale projects and project prioritized by the government within five years or less than five years, the proportion of hiring of foreign migrant workers will be based on the agreement between the project and the government.

The conditions for enterprise and project wish to enter and hire foreign workers to work in Lao PDR, at least they should have a certain of investment fund for running business along with a labor requirement plan².

Individual, legal entities, Lao nationalities and foreigners operating licensed productions, businesses, services and projects have the rights to submit the request for import of foreign migrant workers in accordance with their annual foreign workers requirement plan. The labor requirement plan should include the plan for knowledge and skills transfer from foreign workers to Lao workers as well as ensure that Lao workers will be able to take over the position when the foreign workers ended their contract and excited Lao PDR.

Department of Labor and Social Welfare at provincial level will review the request and approve the importation in accordance with the labor quota approved by Department of Skills Development and Employment, Ministry of Labor and Social Welfare (MOLSW)³. The duration of labor quota approval is not exceeded than three weeks. In the case of big investment projects, there is a need to submit the labor requirement plan to Ministry of Planning and Investment (MPI) to review and approve in accordance to the Five years Social Economic Development Plan.

Foreign workers wish to apply for work permit in Lao PDR, must at least over the age of twenty years old; have certain level of skills and a qualification based on the required position; committed and be able to transfer the knowledges and skills to Lao workers. The applicant

² Labor Law 2013 (Article 42), Lao PDR
³ Labor Law 2013 (Article 41), Lao PDR
must be the person that have not been prosecuted and sentenced by Lao court or black listed. There needs a mandatory health check at origin or destination countries; and other conditions as deemed necessary.

Department of Skills Development and Employment, MOLSW will review and approve the labor quota within two weeks and the labor quota will be valid for 1 year. Individual, enterprise and projects that granted labor quota to enter and hire foreign workers have to register and apply for a work permit card within one month from the day of quota approval. Work permit card for foreign workers will be issued at the destination country by Department of Labor and Social Welfare at provincial level.

Job application are tested against the available pool of eligible workers for the job opening to make sure no settled worker could do the job. Before issuance work permit to foreign migrant workers, Department of Skills Development and Employment, MOLSW will review work permit application along with job vacancy and term of references in order to check whether job position require a high skill worker or not.

A work permit will be issued upon obtaining a certified personal profile (black listed record) issued by Department of Immigration, MOPS and a working visa (LA-B2) issued by Department of Consular, MOFA or Lao Embassies or Consular Offices based in foreign countries. Foreign workers also can obtain the working visa on arrival in special case. Foreign worker can apply for multiple visa after they entered Lao PDR with the Department of Consular upon work permit and stay permit issued.

The work permit will be invalid in accordance with the employment contract. The authorized work permit duration for foreign workers working in the Lao PDR under an employment contract are not exceed twelve months and can be renew either for six months or one year, the work permit period is not exceeded five years in total. However, for senior management level and expert in specific areas will be considered as necessary. The approval for renew and extend work permit will be considered based on the needs of work, business development and operation including the needs in applying and using new technology. Registration and issuance of temporary work permits will not exceed three months for a probationary period, for monitoring and evaluation of projects, or for the installation and reparation of equipment in accordance with an equipment sales contract. The approval duration for renew and extend the work permit is four days.

Foreign workers are not required to prove the ability to support themselves financially during the process of applying for work permit but at the request for the stay permit stage. The fee for work permit is 1,020,000 Lao KIP (equivalent to 113.7 USD) per year, plus the fee for application form 50,000 KIP (equivalent to 5.5 USD). The fee for work permit extension is 50,000 KIP (equivalent to 5.5 USD).

Work permit approval procedure is not required for pregnancy test for female foreign workers. Based on Labor Law of Lao PDR, employers are prohibited to check female pregnancy before

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4 Labor Law 2013 (Article 43), Lao PDR
5 Labor Law 2013 (Article 44), Lao PDR
offering the position as well as discriminate and stigma or create any barriers to reject female employees who are married or pregnant. Employers are also prohibited to determinate the employment contract due to marriage or pregnancy\(^6\).

### 2.1.2 Requirements for Foreign Migrant Worker to Enter Lao PDR

The key principle of the immigration and foreigners management works of the Lao government is granted in the Law on Immigration and Foreigners Management 2014, this law aims to ensure the implementation of immigration and foreigners control consistence with international treaties and conventions that the Lao PDR is a party. The government of Lao PDR take accountability to development and strengthen the services to provide the convenient, rapid, transparent and ensure modernized services; at the same time is to ensure national security\(^7\).

Foreign migrant workers are not required to acquire an entry visa or entry permit in order to enter Lao PDR, but they should present the labor quota which approved by MOLSW to the immigration authorities.

Bases on the Immigration and Foreigner Management Law, individual and foreign workers are prohibited to enter the Lao PDR are those who are in the prohibited list of entry into the Lao PDR, including individual and foreign workers whose are using and present forgery travel documents and those who have insufficient financial to cover during the temporary stay in the Lao PDR\(^8\).

Since 2019, the Lao government has expand service centers across the country to issue temporary work visas for undocumented foreign migrant workers. This is in response to governments’ measures to monitor and manage foreign workers and foreign-owned businesses to ensure that such business operations comply with national laws and regulations.

Foreigner workers can obtain a labor visa (LA-B2), on either a single-entry or multiple-entry basis. With this labor visa, foreign workers can stay in Lao PDR for a period of either 1 month, 3 months, 6 months, or 1 year with renewable. Currently, a labor visa cannot be obtained via the online system, but can be secured upon arrival (provided a pre-approval for the issuance of a visa is obtained prior to arrival). Following their entry into Lao PDR on a visa on arrival, the individual should apply for their work permit and stay permit (and potentially a long-stay labor visa, depending on the duration of stay).

Employment of foreign workers for a period of less than 3 months are considered as short-term work. A short-term labor visa will be issued for such purposes. Following a foreign migrant worker’s entry into Lao on the short-term Labor Visa, foreign migrant workers will still need to secure a work permit and stay Permit.

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\(^6\) Labor Law 2013 (Article 100), Lao PDR

\(^7\) Immigration and Foreigner Management Law 2014 (Article 6), Lao PDR

\(^8\) Immigration and Foreign Management Law, 2014 (Article 12), Lao PDR
Labor visa are issued to foreigner migrant workers including their family members. Foreign migrant workers may include dependent family members such as legal spouse, children and parents in the labor visa and stay permit application.

### 2.1.3 Relevant Agencies

MOLSW is the key government agency to implement and monitor labor development strategy and plan of action, the roles of MOLSW including review foreign workers quota submitted by Department of Labor and Social Welfare at provincial level, management, registration and issuance of work permit to foreign workers in collaboration with other relevant government agencies.

MOLSW at central and provincial levels has the role to register and collect data and information on foreign workers working in the Lao PDR in collaboration with other relevant agencies. Labor management agencies have the role to disseminate and promote information on the labor market and information regarding the demand and supply of labor.

The Department of Labor Management, MOLSW have the mandate to inspect and monitor the workplaces and projects to protect the rights of employee (both Lao and Foreign works) in accordance with Labor law. Labor inspectors have the rights to monitor and check whether foreign workers have work permit issued by MOLSW. Their roles including to monitor the workplace’ environments, occupational health, review and approve internal regulations draft by enterprises and projects. Lack of resource person to monitor the occupational health in the workplace is one of challenges for labor protection works at the moment, the Government of Lao PDR has a plan to develop specific capacity for the labor inspectors in different fields in the future. At the sub-national level (provincial and district) the Labor Protection Division are implementing numbers of project in providing social services for both Lao and foreign workers, such as information promotion for employee on the labor related issues and labor dispute and access to justice.

Labor and Social Welfare Department at provincial level responsible for foreign workers management, coordinate with relevant agencies to develop and submit labor requirement plan to Department of Skills Development and Employment of MOLSW for approval. their role including approve importation, registration and issuance of work permit to foreign workers. The Labor and Social Welfare Office at district level has the mandate for labor migration information promotion and labor dispute resolution through the mediation mechanism including the role to monitor foreign workers to return to their countries when employment contract expired. The labor and social welfare representatives at villages level have the role to monitor the foreign workers activities within its village.

Lao Federation of Trade Union and professional associations are not directly involved in the employment permit application process for foreign migrant workers, but have the role and mandate to raise any concern and issues as well as to propose recommendations to governments and relevant government agencies regarding to the labor migration issue.

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9 Labor Law 2013 (Article 142), Lao PDR
10 Labor Management Agency refers to Ministry of Labor and Social Welfare at National level and Sub-national level (Provincial, district and village level)
MOPS is the leading government agency in charge for immigration and foreigner management of the Lao PDR in collaboration with MOLSW and MOFA. MOPS responsible for entry and departure of foreign migrant workers, including the roles to register, data manage and monitor the movement of foreigners including issue temporary and permanent residency permit and stay permit card of foreigners, review the request for marriage between Lao citizens and foreigner.

MOFA has the role to issue labor visa, issue or cancel multiple entry-exit visas of foreign migrant workers, review the request for marriage of Lao citizens to marry foreigners and review the request for permanent residency in the Lao PDR of foreigners.

Employers have the obligation to report and provide data and information on labor protection such as number of Lao and foreign workers categorized by sector and gender; salary or wages scale and workplace’s environment, etc….to the labor management agency on quarterly basis.

### 2.1.4 Stay Permit Requirement for Foreign Workers

MOPS is the authorized government agency to review and issue stay permit for foreign workers working in Lao PDR including the role to facilitate, control, monitor and inspect the entry-departure of the Lao PDR.

After obtained working visa from Consular Department, MOFA and work permit card issued by Department of Labor and Social Welfare, foreign workers are required to apply for residence permit which will be issued by Department of Police for Foreigners Control, MOPS.

The foreigner management police officers will register and issue the Stay Permit cards to the foreign workers based on the following conditions:

- Hold passport with validity of six months or more
- Labor Visa (LA-B2); or without visas as per the bilateral agreement
- Reference document from a relevant organization or business licensed from employer.

The immigration police officers at border checkpoints are to determine the stay duration of foreign worker, based on each visa category or bilateral agreement or government agreement.

The period of stay permission will be based on the request from workers on the basis of three months, six months or one year. Foreign migrant workers who have been issued stay permit and wish to extend their stay shall apply for the extension of stay with relevant Foreigners Control Police Officers before it expires.
Foreign workers are permitted to stay only at the places that approved by authorities such as guesthouse, hotel, rental house and overnight accommodation. Foreign workers are obligated to respect cultures and traditions of Lao PDR; and follow national laws and regulations. In case there is a need to change the workplace and position or transfer foreign workers to new employers, there need to submit the request for approval from Labor Management Agencies.

Foreign workers are required to declare their travel documents or stay permit cards to the accommodations owner for registration. Entrepreneurs or resident owners are required to record and keep copy of travel documents of foreigner workers and report to local authorities at the village level within twenty-four hours.

The police authorities have the right to determinate registration and stay permit card of foreign workers in case of violation regulations and laws or involved in any activities that irrelevant or beyond their job description.
Chapter III: Incorporation Measures

Although the Labor Law stipulates that workers and employers have the right to apply for membership of mass organizations or other social organizations in the Lao PDR\textsuperscript{12}, however, workers are eligible for membership of Lao Trade Union are only apply for Lao citizen\textsuperscript{13}. Nevertheless, foreign migrant workers have the right to join associations operate legally in Lao PDR.

Foreign workers are entitled for legal protection and access; equal benefit and treatment as Lao worker when undertaking the same position and skills, including equal salary and wages\textsuperscript{14}.

The National Social Security Scheme is cover for both national and foreign workers working in Lao PDR. According to the Labor Law and Law on National Social Security, all workers must be insured through the National Social Security Fund under MOLSW. In case, workers who have not paid to the national social security fund or have paid but are not yet entitled to the benefits, employers must be responsible according to the law and regulations\textsuperscript{15}. After having work permit issued, foreign workers can apply for the member of the social security fund, foreign workers have the same benefit as Lao workers under this social security scheme.

The Law on Lao Nationality amended in 2017, provided more promising conditions for foreigners living in Lao PDR who wish to apply for Lao citizens. Qualified foreigner who wish to apply for Lao nationality must have at least stayed in Lao for ten consecutive years. In order to apply for Lao citizen, foreigner has to relinquish their previous citizen. The applicant is required to have professions and qualifications in certain areas and have a sufficient economic status, as well as have not been impression sentenced by any court.

Foreign workers are protected against having their identity document confiscated by other specified by national laws or regulations. Except in the case of foreign workers committed an offend against national laws and regulations, authorities have the right to detain or confiscate travel documents for temporary period and authorities must report to Consular Department of MOFA within 48 hours.

Employers are obligated to provide adequate and suitable accommodation for foreign migrant workers, particular for those workers working the big investment and development project. Foreign migrant workers working in Lao PDR are eligible to apply for family reunion but family members are prohibited to work in Lao PDR for income generation purpose during their visit. The spouse or partners of foreign workers are also prohibited to work for income generation without having to apply for work permission.

\textsuperscript{12} Labor Law 2013 (Article 60), Lao PDR
\textsuperscript{13} Trade Union Law (Article 21), Lao PDR
\textsuperscript{14} Labor Law 2013 (Article 69), Lao PDR
\textsuperscript{15} Labor Law 2013 (Article 71), Lao PDR
Foreign workers have the right to marry to Lao citizen in accordance to Prime Minister’s Decree on the Marriage between a Lao Citizen and Foreigner No. 198/PM, dated 19 December, 1994 and accordance to the Law on Family 2008.

Foreign workers are eligible to apply for permanent residence, applicant who requests to live permanently in the Lao PDR shall not been imprison sentenced and live in Lao PDR for ten consecutive years or more. Foreigners are eligible to apply for permanent residence in Lao PDR including those legally married with Lao citizens and live in the Lao PDR for more than two consecutive years, with professional knowledge at the level of expert which is required by the Lao PDR and etc…

Employers are required to ensure the safety and security during the entry and departure of migrant workers, employers are responsible to enabling workers and members of their family able to access information and other social service such as education, healthcare and social security services that are available. It’s by law that employers are required to ensure foreign migrant workers able to upgrade their skills and capacity through the training, including certification of expertise.

Foreign workers regardless to their ages, have the right to access public education and vocational trainings. Employers are required to have capacity building plans for its staff and ensure all workers have certain knowledge and skills to accomplish their works. Employers also have the obligation to facilitate and support foreign migrant workers to return to their home country after employment contract is expired.
Chapter IV: Exit Measures

Immigration Department at central and provincial level responsible for the exit of foreign migrant workers in Lao PDR in collaboration with relevant ministries. Foreign workers are required to exit the Lao PDR (after having extended and renewed the work permit for five years in total) within fifteen days after the expiration of employment contract\textsuperscript{16}. In order to exit Lao PDR foreign workers are required to have valid travel documents including stay permit document. In case the travel document is lost or invalid, there is a need to have a certified letter from local police or Immigration Police Department and Division in order to apply for new travel document issuance by its embassy, consulate, and then request an exit visa from the MOFA before depart from the Lao PDR.

Foreign workers are prohibited to depart from Lao PDR in the case they have committed violation of the national laws and regulations including for those who use and present forged documents to authorities, and who are involved in criminal cases or civil cases which are still at the prosecution or fine procedures and civil compensation has not been completed.

It’s the obligation of employers to report and inform labor management authorities periodically after employment contract is ended and foreign workers exited Lao PDR. Foreign workers have to return stay permit card to foreigner control police at provincial level or authorities at the border checkpoint when the employment contract is ended and foreign workers exited Lao PDR.

Any foreign worker committed serious offend against national laws and regulations will put on black list to enter Lao PDR.

Legal entities (airlines and carriers) enter into and depart from the Lao PDR is responsible to pay for food and accommodation and other expenses including the passenger deportation out of the Lao PDR in case the passengers were brought in with forged documents.

At the moment, most of reintegration program support by development partners in Lao PDR are focusing on Lao migrant workers returned from foreign countries but not cover regular foreign migrant workers working in Lao PDR.

\textsuperscript{16} Labor Law 2013 (Article 69), Lao PDR
Chapter V: Enforcement Measures

Employers hiring foreign workers without an approval from the Department of Skills Development and Employment or the Department of Labor and Social Welfare at provincial level will be fined up to USD 250 per person per time. Employers placed foreign workers to work in an enterprise and project where authorization is not stated will be fined up to USD 200 per person per time. If violated for the second time, employers will not be allowed to hire foreign workers and will be fined and responsible to cover all expenses for sending foreign workers to their origin countries.

Employers hiring foreign workers over a permitted period will be fined up to USD 5 per person per day. Any foreign workers that work illegally without work permit issued by the Department of Skills Development and Employment or the Department of Labor and Social Welfare at provincial level will be fined up to USD 100 per person per time. Employers offered jobs to foreign workers without permission from authorities concerned will be fined up to USD 300. Foreign workers violate regulations, laws and custom of Lao PDR will be prosecuted based on national laws and regulations\textsuperscript{17}.

Foreign workers illegal residence in Lao PDR are considered as an administrative offense under the Law on Immigration and Foreign Management and decision of Prime Minister No.136. However, fine measures is neither specified under Law on Immigration and Foreign Management nor the Labor Law.

\textsuperscript{17} Labor Ministerial Decree on Importing of Foreign Worker into Lao PDR, No. 5418, dated 10 December, 2007
Chapter VI: Progress and Challenges in Implementation

The government of Lao PDR has made numbers of good progress and effort on the development, review existing laws, policies and put in places the implementation mechanism related to labor migration during the last ten years. The admirable efforts made by the government of Lao PDR including established institutional mechanism such as the National Tripartite Committee on Labor Migration (comprising of MOLSW, Lao Federation Trade Union and Lao National Chamber of Commerce and Industry) and established steering committee within MOLSW.

Lao government had signed bilateral and multi-lateral agreements with neighboring countries and sub-regional level on anti-human trafficking and labor management cooperation. Currently, Lao PDR has signed three Memorandum of understanding on employment cooperation with three countries, Thailand, Japan and Republic of Korea.

The amendment of the Labor Law in 2014 that are more in line with international labor standards and applied protection provision, migrant workers term was defined in this law for the first time, the Labor Law in 2014 applies for both national and foreign migrant workers.

In 2014, the Government of Lao PDR introduced the new Law on Immigration and Foreigner Management, this law come to replace the Prime Minister's Decree No. 13 on the Foreigner Management, issued in 2009. However, the fine measures under PM’s Decree No. 13 are still reserved to enforce. The draft decree on fine measure regarding to the immigration and foreign management is being finalized by the government of Lao during the period of this study and it expected to be approved by the Prime Minister by the end of 2020.

In order to translate policy frameworks into practice, the government of Lao PDR has initiated and put in placed necessary services to promote and protect the rights of migrant workers including foreign migrant workers such as established migrant resource centers (MRC) in five provinces and 14 job service centers across the country, including established and expanded employment agencies. These initiatives and development aim to increase opportunities for migrant workers access to employment information, as well as promote mobility and movement of migrant workers.

The government of Lao lead by MOLSW is implementing national plan of action to promote decent work and strengthened its efforts to improve labor inspection system in collaboration with various government agencies and working closely with development partners (UN, NGOs and CSOs).

In 2013, with the supported from ILO’s Tringle Project, MOLSW in collaborated with MOFA and MOPS, has developed the Operations Manual on the Protection and the Management of Migrant Workers for three ministries of Lao PDR. This manual is a guideline for government staff of the three ministries at central and local levels to facilitate and manage migrant workers including in bound and out bound migration. This guideline is developed to ensure the

18 Country Analysis Report, 2015, UNDP Lao PDR
The progress of implementation of existing laws, policies and international and regional agreements are still focusing at the personal and institutional capacity development and strengthen. Although government adopted the long-term strategy and plan of action on labor development, however, due to lack of resources and expertise, the current development programs related to labor migration are mainly rely on development partner supports and often carry out in ad hoc manners and lack of financed long term program intervention.

Entry, incorporate, exit measures of foreign migrant workers in Lao PDR are mainly define in the Labor Law and Law on Immigration Foreigners Management, these legal frameworks provide better environment in implementation, management and coordination among inter-government agencies. However, foreign migrant workers management are under various government agencies’ responsibilities namely MOLSW, MOFA, MOPS and MPI, this requires multi-government agencies collaboration and coordination including private sectors. This is however, create some challenges in implement policies and law enforcement as well as to facilitate the mobility of foreign migrant workers and sometime roles and mandates among government agencies are duplicated. This challenge arise is due to lack of knowledge and understanding of legal and policies framework particular at sub-national level due to lack of training, laws dissemination as well as knowledge exchange among relevant government agencies. This challenges also form difference practices and not consistent with laws and regulations. For example, Labor visa approvals, sometime are not inline and based on labor quota due to lack of inter government coordination.

There is no specific law, policy, and mechanism related to MRA at national level and the MRAs has not integrated in the existing national laws and policies. Therefore, there is very limited knowledge and understanding on this regional framework among key government officials working on labor migration issues, very few them have been involved at the regional and national forum on MRA as well as lack of dissemination of MRA at country level.

Lack of monitoring, follow up and knowledge exchange on the implementation of related laws and regulations at both national and sub-national level, this has created gaps for policy makers to develop and improve the existing policies, legal framework and regulations, for example, it’s not clear to what extent of the Operation Manual on the Protection and Management of Migrant Workers for Three Ministries have been implemented.

There is no One Stop Service Centre for foreign migrant workers in Lao PDR, as well as the absent of comprehensive data collection system and linkage among key government agencies. Currently, labor migration data are recorded and tracked on off line basis by different government agencies, therefore, there is a challenge to track and monitor the number of foreign migrant workers who is still working in Lao PDR and those who ended the employment and exited the country in systematic way.

Lack of data also create mismatch between the skills available and those demanded by enterprises, and make barrier for both productivity and national competitiveness. The lack of
data also challenges for the development of progressive employment policies, which are necessary to prepare the workforce for employment opportunities expected to growth.

There is lack of social services for foreign migrant workers and most of the available services are cover for internal migrants, existing services are facing difficulty in lack of experiences and expertise to provide services for foreign migrant workers when they seek support in case of abuses and exploitations.

Due to lack of resources and expertise in different fields, protection and monitoring works of foreign migrant workers were mainly carried out in the big projects such as mining and hydro power projects meanwhile lack of monitoring for small scale enterprises and projects.

Some regulations governing labor migration are out of date and have not been revised for the last ten years, this has created some obstacles to foster and promote the mobility of foreign migrant workers as well as do not meet with the needs of the current social and economic growth.

Table 1. Regulations Related to Foreign Workers in Lao PDR

<table>
<thead>
<tr>
<th>Regulations</th>
<th>Issued date/year</th>
<th>Last updated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Law. No. 43/NA</td>
<td>24 December, 2013</td>
<td>-</td>
</tr>
<tr>
<td>Decree of the Prime Minister on the marriage between a lao citizen and a foreigner. No.198/PM</td>
<td>29 November, 1990</td>
<td>-</td>
</tr>
<tr>
<td>Decree of the Prime Minister on Entry and Exit Lao PDR and Management of Foreigners. No. 136/PM.</td>
<td>25 May, 2009</td>
<td>Up graded to be Immigration Law and Foreigners Management, 2015</td>
</tr>
<tr>
<td>Ministerial Decree on Importing of Foreign Workers into Lao PDR. No. 5418/MOLSW</td>
<td>10 December 2007</td>
<td>-</td>
</tr>
<tr>
<td>Operations Manual on the Protection and the Management of Migrant Workers for three Ministries of Lao PDR.</td>
<td>2013</td>
<td>-</td>
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</tbody>
</table>

Existing labor market promotion are not match to employer’s employment needs as well as lack of investment in workplace skills training\(^\text{19}\) including poor tracking system to ensure knowledge transfer from foreign migrant workers to local workers. According to ADB’s study on Regional Brain Network 2017, Lao PDR is among the lowest skilled flow country if compared to other ASEAN countries, the diversity of skilled flow is mainly exchange with Thailand and Vietnam.

UNDP in Lao PDR (2015) expected that vehicles, trade and transportation sectors will continue to growth, the demand for both medium-skilled and high-skilled labor is expected to

\(^{19}\) Firing Up Regional Brain Network, 2017, ADB
rise, while the flows of low-skilled workers are forecasted to continue in the short and medium-term. However, the majority of the Lao workforce that rely on agriculture sectors may not meet the AEC provisions for skill criteria. Therefore, without appropriate measures, the AEC may not lead to value employment for the majority.

The professional and skills development in Lao PDR is still at the basic level, although the government put numbers of effort and focusing on higher and vocational education development. Based on ADB’s study, about 50% of enterprises experienced difficulties in recruiting staff, graduated students lacked experiences, skills and knowledge, and motivation; 74% of private sector employers were more satisfied with foreign workers’ skills than those national graduated students. Base on ADB (2011), most Lao graduated students prefer to work in the government sectors, lack of skills workers is one of the main obstacles for the national growth as well as low skill workers in an economy still dominated by the agricultural sector, meanwhile industrial sector is growing slowly. ADB suggested the government should take priority to address the gap between skills demand and supply.

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21 Decent Work Country Programme for Lao PDR, 2017-2021, ILO
Chapter VII: Recommendations and Opportunities for Cooperation

Since MOLSW is currently working toward the development of a ministry-wide Labor Migration Information System, it is recommended that efforts toward the development of a national migration-related data system should be located as a module within this broader framework rather than as a stand-alone system. Toward the development the following areas can be taken:

- A broad understanding of the current and potential roles of inbound and outbound in the Lao labour market and in overall national development in order to identify why migration and migration-related data are needed and how they might be used;
- A basic understanding of the technical aspects of data on inbound and outbound migration data, including the potential and limitations of migration-related data for use in planning and programme development;
- Analysis and use of existing migration and migration-related data for policy, planning and programme development, with particular emphasis on collaboration between data users and producers and analysis;
- Consideration should be given to reviewing the education data system that has been developed over more than two decades by the Ministry of Education and Sports;
- This will require close collaboration among the various agencies that hold labour-related and migration related data. Therefore, consideration should be given to the participation of all the agencies holding migration data or migration-related data including at sub-national level in the capacity building with a view to strengthening inter-agency communications and encouraging sharing of data and analysis.
- Capacity-building on data analysis could draw on the expertise and experience of the Lao Statistics Bureau and of Lao researchers, UN agencies and NGOs working on labor migration issues.

Develop and increase capacity building for key government agencies at both national and sub-national level on legal and policy framework related to the management of foreign workers to ensure the implementation are inline with legal framework, regulations, and international labor standards.

Develop and improve the existing service such as MRC and Job Service Centre to ensure that all foreign migrant workers are able to access to services and information, including social services (education, health and legal services).

Develop and improve monitoring mechanism to ensure the knowledge transfer from foreign workers to local workers. This will help promote sustainability development and to balance the knowledge and expertise gap as well as to promote win-win approach.

In order to promote regional mobility and improve the services for foreign migrant workers, the government of Lao should consider to conduct the feasibility study on one stop service center for foreign migrant workers working in Lao PDR.
Consider to ratify the International Convention on the Protection of the Right of All Migrant Workers and Members of Their Families including other ILO conventions that Lao PDR is not party to.

Lao PDR is relatively small labor market, lack of expertise and experience in managing labor migration works compared to other ASEAN Countries. At the same time there are various potentials for development in term of geography and new emerging market in different sectors, therefore, working closely and learn from other countries in ASEAN particular among CLMV countries will help to reduce the development gap and foster the mobility in the region.
Annex I: Research Methodology

This national study applied a qualitative methodology, 5 key informants were consulted and interviewed at national level, including desk review of relevant documents which agreed by EREADY Project and SLOM focal point in Lao PDR. The main target agencies for field data collection are key stakeholders working on labor migration in Lao PDR including government, UN agency and private sector in order to assess a better understanding of the national political and policy context and scope of service delivery.

Throughout the study process, national consultant closely consulted with the SLOM focal point in Lao PDR to identify appropriated key informants and agencies for the interview, consultation and data collection. Questionnaires, data collection plan and list of literature review had shared and agreed by SLOM focal point in Lao PDR prior to data collection. Questionnaires were translated into Lao language based on the requested from MOPS and MOFA. After questionnaires and work plan reviewed and agreed by the Cabinet Office of MOLSW, the official letter was issued by this Cabinet Office to inform the national study among key government agencies as well as to ensure the smoothly and facilitate the study process at the country level.

Study’s questionnaires developed by EREADY Project and agreed by ASEAN Secretary was filled by national consultant and shared with three ministries working directly on work permit, visa and stay permit in Lao PDR namely, Department of Skills Development and Employment Promotion, and Department of Labor Protection of MOLSW, Department of Immigration and Department of Police for Foreigners Management, MOPS and Department of Consular, MOFA. The questionnaires forms were sent to three ministries on behalf of MOLSW. After data were filled and vetted by relevant officials from three ministries and reviewed and approved by their Director General or Deputy Directors, then data were reverted to MOLSW.
## Annex II: List of Individuals Consulted and Interviewed

<table>
<thead>
<tr>
<th>Name and Position</th>
<th>Organization</th>
</tr>
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<tbody>
<tr>
<td>1. Mr. Bounsouan Xaiyasinh, Director of Employment Promotion Division,</td>
<td>Department of Skills Development and Employment, Ministry of Labor and Social Welfare</td>
</tr>
<tr>
<td>2. Mr. Phetdavong Keokhanya, Director of Administration Division,</td>
<td>Department of Immigration, Ministry of Public Security</td>
</tr>
<tr>
<td>3. Ms. Daovading Phirasayphitak, Deputy Director of Secretary Office</td>
<td>Lao National Chamber of Commerce and Industry</td>
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<tr>
<td>5. Mr. Vongthavan Sayavong, National Project Coordinator for Triangle Project</td>
<td>ILO Office in Lao PDR</td>
</tr>
</tbody>
</table>
Annex III:

1. ASEAN Declaration on Protection and Promotion of the Right of Migrant Workers, dated 13 January 2007
2. Country Analysis Report, 2015, UNDP Lao PDR
3. Decision of Minister on the permission for the importing foreign workers to work in Lao PDR, No. 5419, dated 10 December 2007, MOLSW
4. Decent Work Country Program for Lao PDR, 2017-2021, ILO
5. Family Law, 2008, Lao PDR
6. Firing Up Regional Brain Network, 2017, ADB
8. Implementation of recommendations from the 3rd to 10th ASEAN Forum on Migrant Labor (AFML), 2018, ILO
9. Labor Law -2013, Lao PDR
11. Law on Social Security -2013, Lao PDR
12. Ministerial Decision on Labor Inspection, 2016, MOLSW