

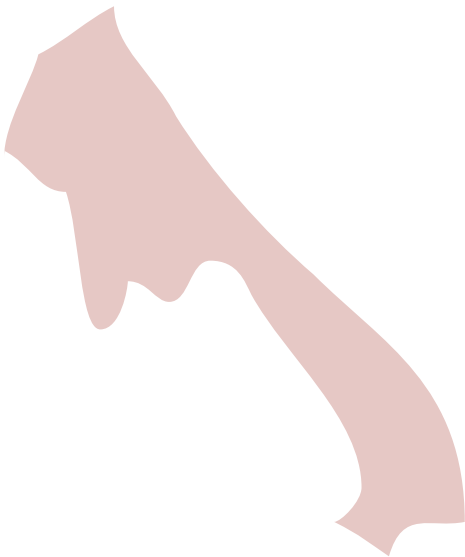


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SENDING COUNTRIES: SOUTHEAST ASIA

Lao PDR



A. COUNTRY CONTEXT

The Lao People’s Democratic Republic (PDR) is a landlocked country in South-East Asia that shares its border with China, Myanmar, Thailand, Cambodia and Viet Nam. The country’s population of approximately 6.3 million includes 49 ethnic groups, however the largest three (Lao, Khmou and Hmong) comprise almost 75 percent of the population.¹ The Lao PDR is a lower middle-income country, with a Gross National Income per capita of 1,010 US dollars² and ranks “medium” in the UNDP’s latest human development index.³

The Lao PDR’s economy is driven mainly by manufacturing and service sectors, as well as hydropower, which provides electricity to neighbouring countries, including Thailand, China and Viet Nam. There has also been increased reliance on mining activities as demand for the Lao PDR’s minerals has intensified.⁴ The Lao PDR is a member of the Asia Pacific Trade Agreement as well as the Association of Southeast Asian Nations (ASEAN) and the East Asia Summit.

1 UNDP, “In Laos, Community Radio Gives a Voice to Ethnic Groups”, Governance success story, 20 April 2010.

Available from: <http://web.undp.org/asia/SuccessStories/Governance/LAO-Apr2010.html>

2 Available from: <http://www.worldbank.org/en/country/lao/overview>

3 Available from: <http://hdrstats.undp.org/en/countries/profiles/LAO.html>

4 World Bank, “Lao PDR: Talking Economics”, Feature story (Vientiane, 5 April 2012). Available from: www.worldbank.org/en/news/feature/2012/04/05/lao-pdr-talking-economics

Human Development Index (2011)	Rank 138 out of 187 (medium human development) ⁵
Stock of Immigrants 2010	18,900 ⁶
Net migration rate (2012)	1.14/1000 population
Immigrants' share of population (2010)	0.3 % ⁷
Proportion of female immigrants (2010)	48.1% ⁸

The Lao PDR is primarily a migrant labour-sending country. Each year approximately 60,000 individuals at the age of entering the labour market are unsuccessful at finding work and thus emigrate in search of economic opportunity. Most migrate to Thailand, where they can earn higher wages working in the agriculture and construction sectors, or doing domestic work.⁹ In 2004, Thailand initiated a registration process for migrant workers from the Lao PDR, Myanmar and Cambodia. In June, 2011 a new round of registration took place and between June 15 and July 14, 104,928 migrants from the Lao PDR registered with the Thai Ministry of the Interior in search of work permits.¹⁰ A substantial number of workers from the Lao PDR have also migrated to more developed countries. The International Labour Organization (ILO) estimated that in 2009, 143,012 Lao migrants were working in member countries of the organization for Economic Co-operation and Development, and 108,100 were working in the United States.¹¹ In the past several years the Lao PDR has seen rapid feminization of migration, and recent estimates are that some 70 percent of the country's emigrants are women.¹²

While a significant number of people emigrate for employment, there are also increasing numbers of migrant workers entering the Lao PDR from Viet Nam, China, Thailand, and Myanmar. According to recent statistics, 250,000 migrant workers are officially in the country, mostly working in construction, casinos, plantations and the service sector.¹³ The law sets limits on the percentage of foreign workers that companies may hire, and the government must approve foreign hires.¹⁴

5 Available from: <http://hdrstats.undp.org/en/countries/profiles/LAO.html>

6 World Bank, Migration and Remittances Unit, *Migration and Remittances Factbook 2011*, compiled by Dilip Ratha, Sanket Mohapatra, and Ani Silwal (Washington DC, 2011). Available from: www.worldbank.org/prospects/migrationandremittances/

7 World Bank, *Migration and Remittances Factbook 2011*.

8 Ibid.

9 ASEAN Secretariat, *Country Report of the ASEAN Assessment on the Social Impact of the Global Financial Crisis: Lao PDR*, (Jakarta, 2009), p. 5. Available from: www.aseansec.org/publications/ARCR/LaoPDR.pdf

10 International Organization for Migration, *Migrant Information Note Issue No. 12*, (Geneva, August 2011). Available from: www.scribd.com/doc/61533801/Thailand-IOM-Migrant-Info-Note-No-12-August-en

11 ASEAN Secretariat, *Assessment on the Social Impact of the Global Financial Crisis*, p.5

12 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Lao PDR* (CEDAW/C/LAO/CO/7), (Forty-fourth session, 2009). Available from: www2.ohchr.org/english/bodies/cedaw/

13 US State Department, *Human Rights Report 2011 - Laos (2011)*, p. 23. Available from: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

14 Ibid.

B. KEY GENDER AND HUMAN RIGHTS ISSUES

The Lao PDR has ratified six of the nine core international human rights treaties, including Conventions on: Elimination of Racial Discrimination (CERD), Civil and Political Rights (ICCPR), Economic, Social and Cultural Rights (ICESCR), Elimination of Discrimination against Women (CEDAW), Rights of the Child (CRC) and Rights of People with Disabilities (CRPD). It has also signed the Convention against Torture (CAT) and the Convention on Enforced Disappearance (CED). Despite this, significant human rights problems persist and the Government has been criticized for: its authoritarian rule; restrictions of freedom of expression, association and assembly; mistreatment of Hmong refugees; refusal to release political prisoners and prisoners of conscience; and a corrupt police force and judiciary.^{15,16} To date the country has no national human rights institution, and while the Ministry of Foreign Affairs has responsibility for investigating alleged violations of human rights, in practice it rarely exercises this authority.¹⁷

Despite this, the Government has made achievements in improving the socio-economic well-being of its citizens. In its 2010 Universal Periodic Review (UPR), the Government reported that poverty had been reduced from 49 percent in 1990 to 25 percent in 2009; maternal mortality had decreased; the vast majority of children were attending school; and the overall literacy rate was 80 percent.¹⁸ These are important gains, however, women and girls have not benefited equally from these initiatives. The World Bank reports that literacy rate among females is only 63 percent, and only 81 girls are enrolled in secondary schools for every 100 boys. It also notes that almost half of Lao women have been victims of domestic violence.¹⁹

Although the Lao PDR ratified the CEDAW in 1981, knowledge of its principles and the State's obligations remains limited.^{20,21} In the CEDAW Committee's 2009 Concluding Observations it urged the Lao PDR to take "all appropriate measures to ensure that the Convention is sufficiently known and applied by all branches of Government as a framework for all laws, court verdicts and policies on gender equality and the advancement of women."²² The Lao PDR's 1991 Constitution guarantees equal rights between men and women and equal treatment before the law. However, patriarchal attitudes and gender-role stereotyping keep women and girls in subordinate positions, and prevent their equal access to resources, services, education and business opportunities. This is a particular problem in rural areas and among indigenous communities, where illiteracy and school drop-out rates are much higher for women and girls. The Government has made minimal efforts to address these problems and ensure substantive equality for women.²³

15 Ibid, p. 1.

16 Amnesty International, *Annual Report 2011 - Laos* (London, 2011). Available from: www.amnesty.org/en/region/laos/report-2011

17 US State Department, *Human Rights Report 2011*, p.15.

18 Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Lao PDR* (Geneva, Fifteenth session, June 2010), para. 6.

19 World Bank, *Reproductive Health at a Glance - Lao PDR* (2011). Available from: <http://siteresources.worldbank.org/INTPRH/Resources/376374-1303736328719/LAOhealth41811web.pdf>

20 CEDAW Committee, *Concluding Observations*, para. 11.

21 CEDAW, *CEDAW in Action in Southeast Asia, Lao PDR CEDAW Implementation*, (webpage, n.d.). Available from: http://cedaw-seasia.org/lao_cedaw_implementation.html

22 CEDAW Committee, *Concluding Observations*, para. 12.

23 CEDAW, *Lao PDR CEDAW Implementation*

C. KEY STAKEHOLDERS

The National Commission for the Advancement of Women (NCAW), established in 2003, has sub-units in all government ministries throughout the country. The NCAW is the focal point for gender mainstreaming in government, directly participates in national policy making, and monitors implementation of CEDAW, the Beijing Platform for Action, as well as other government commitments to enhance gender equality.

The Lao Women's Union is a government organization that responds to women's development needs and promotes the status and role of women.²⁴ With the help of UN Women, the Lao Women's Union has focused on "safe migration" initiatives, such as providing financial literacy training and information to women migrant workers on their rights.²⁵

The Ministry of Labour and Social Welfare (MLSW) plays a leading role in regional efforts to regulate migration and combat trafficking. The MLSW supports repatriation and victim protection programmes as well as alternative vocational training, and has negotiated cross-border Memoranda of Understanding (MoUs) with the Thai Government, in order to stop trafficking in persons.²⁶

The National Steering Committee on Human Trafficking is mandated to strengthen the Lao PDR's capacity to effectively implement laws and programmes aimed at preventing, investigating and prosecuting human trafficking, and protecting and empowering victims.²⁷

The Lao Federation of Trade Unions' Department of Labour Protection is tasked with protecting the rights of migrant workers by assisting in the resolution of conflicts between workers and recruitment agencies, and organizing workshops and education campaigns about the realities of migration.²⁸

D. RATIFICATION RECORD

The following table illustrates the Lao PDR's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	14 August 1981

24 Lao Women's Union, *Promotion and Protection of Lao Women's Rights*, (Vientiane, 2009). Available from: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU_UPR_LAO_S08_2010_LaoWomensUnion.pdf

25 Available from: www.unwomen-eseasia.org/docs/factsheets/04%20Lao%20PDR%20factsheet.pdf

26 Available from: www.humantrafficking.org/organizations/153

27 *Vientiane Times*, "Laos Looks to Toughen Response to Human Trafficking", 20 September 2011. Available from: www.unodc.org/laopdr/en/stories/laos-looks-to-toughen-response-to-human-trafficking.html

28 Including the Task Force on ASEAN Migrant Workers Lao Federation of Trade Unions - Labour Protection Department, see: www.workersconnection.org/articles.php?more=147

ICCPR	25 September 2009
ICESCR	13 February 2007
ICERD	22 February 1974 a
ILO C29 Forced or Compulsory Labour	23 January 1964
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	-
ILO C105 Abolition of Forced Labour	-
ILO C111 Discrimination in Employment	13 June 2008
ILO C138 Minimum Age for Admission to Employment	13 June 2005
ILO C143 Migrations in Abusive Conditions and The Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition on the Worst Forms of Child Labour	13 June 2005

E. COMPLIANCE WITH CEDAW

DISCRIMINATION

Articles 35 and 37 of the Lao Constitution state that all are equal before the law and both sexes enjoy equal rights. The Amended Penal Law of 2005 makes it an offence to discriminate against any woman and carries penalties of imprisonment and fines. The Family Code was amended to prohibit discrimination against women in matters of marriage and inheritance and the 2004 Law on the Development and Protection of Women was passed specifically to eliminate all forms of discrimination against women; prevent and combat trafficking; eliminate domestic violence; and ensure women equal opportunities to participate in development.

While the Constitution and most laws incorporate gender equality provisions, implementation and enforcement is weak. The lack of detailed operational plans for how to combat discrimination means that women and girls, particularly those in rural and remote areas, continue to be discriminated against in education, employment, access to

health and social services, and access to justice.²⁹ The CEDAW Committee has expressed its concern about this and criticized the Government for failing to include, in the Constitution or other legislation, a definition of discrimination that encompasses both direct and indirect discrimination, and discrimination in public and private spheres, in accordance with article 1 of the CEDAW.³⁰

In its 2009 Concluding Observations, the CEDAW Committee urged the Government to “put in place without delay a comprehensive strategy, including review and formulation of legislation, to modify or eliminate traditional practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention”. The Committee made particular note of the need to promote positive, non-stereotypical and non-discriminatory portrayals of women in the media and to use formal and informal methods of education to eradicate negative stereotypes, attitudes and practices in communities and families.³¹ The Government was also been criticized for racial discrimination due to its policy of cancelling visa-on-arrival services for citizens of certain countries, and excluding “undesirable” non-documented migrants from Vientiane.³²

POLICY MEASURES

The Ministry of Labour and Social Welfare and the NCAW are collaborating with UN Women to develop a gender-sensitive policy on migration. Currently the focus is on collection and analysis of sex-disaggregated data, which was a key recommendation of the CEDAW Committee to the Lao PDR in its 2009 Concluding Observations. This data will allow policy makers to better understand the specific situation of women migrant workers and will contribute to safe migration policies and initiatives.

Policies currently in place that address issues related to gender and migrant workers include:

- 1) The National Strategy for the Advancement of Women (NSAW) 2011-2015, which outlines strategies for integrating gender equality principles into national laws and policies, and for implementing programmes to meet international women’s human rights obligations.
- 2) Prime Minister Decree 68/2002 related to the Export of Lao Workers Abroad (2002), which describes the government’s reasons for sending Lao workers abroad, including expanding the quantity and variety of workplaces available to Lao workers, and upgrading the skills, knowledge, and expertise of Lao workers in both technical and professional fields. In order to be considered for recruitment through formal channels migrants must be a Lao citizen, at least 18 years of age, have completed primary school, in good health, and considered a good citizens.³³

29 CEDAW, *Lao PDR CEDAW Implementation*

30 CEDAW Committee, *Concluding Observations*, paras. 9-10.

31 *Ibid.*

32 Office of the High Commissioner for Human Rights, *Compilation Prepared by OHCHR for Human Rights Council – Lao (A/HRC/WG.6/8/LAO/2)* (Geneva, 2010). Available from: www.upr-info.org/IMG/pdf/A_HRC_WG-6_8_LAO_2.pdf, para. 18.

33 International Labour Organization, *The Mekong Challenge: An Honest Broker – Improving Cross-border Recruitment Practices for the Benefit of Government, Workers and Employers*, (Geneva, 2008). pp. 15-6.

- 3) Guidelines No. 2417/MOLSW & 3011/MOLSW (2007) on Implementation of Decree on Export of Lao Workers Abroad (2002), which describe the contractual requirements for the formal migration of Lao workers to Thailand, including contracts between Lao workers and recruitment agencies (article 7.3), between Thai employers and the Lao recruitment agencies (article 9.3), and between Lao workers and Thai employers (article 9.4).³⁴
- 4) Guideline No. 3824/MOLSW details restrictions and limitations for recruiting Lao workers abroad. Specifically it bans three categories of work from labour migration: unskilled workers such as cleaners, domestic workers, or porters; jobs that are incompatible with the Lao tradition, culture and law, including sex work, work with narcotics, or illegal political activities; and dangerous occupations such as open-sea fishing or exposure to radioactive radiation.³⁵

Additionally, the Ministry of Labour and Social Welfare has launched a labour-market information system to collect data on domestic and overseas employment and adopted the Decree on Employment Services to regulate domestic employment services and overseas employment processes.³⁶

These policies are limited to those migrating through formal channels. However, according to IOM estimates, approximately 85 percent of cross-border movements from the Lao PDR are irregular.³⁷ These policies are largely irrelevant to those using informal channels to seek employment outside of the Lao PDR. It is this group of migrant workers who are most at risk of trafficking, forced labour and contracting communicable diseases.

To limit irregular migration, more policies must be in place to address the root causes of migration such as poverty and lack of income-generating activities. To that end, the Lao PDR recently developed a strategic plan (2011–2020) for work force development that includes the protection of Lao migrant workers and foreign migrant workers in the Lao PDR, in order to prevent and reduce irregular migration.³⁸ This along with the country's poverty-alleviation programme, and its National Steering Committee on Rural Development and Poverty Eradication, are positive steps. The CEDAW Committee has noted, however, that these programmes are not always gender-sensitive and rural women are often left out of the decision-making process. For example, the Committee was concerned that state-run drug eradication programmes that banned opium growing offered no sustainable alternatives. This policy led to "large-scale food shortages and migration" and has had a "negative impact on the situation of rural women. The Committee thus called upon the Government to mainstream gender equality in all policies and implement programmes only after gender impact assessments involving rural women are conducted."³⁹

34 Ibid.

35 Ibid.

36 International Labour Organization, *Promoting Decent Work for Foreign Migrants*, ILO/Japan Regional Project on Managing Cross-Border Movement of Labour in Southeast Asia (Bangkok, 2011), available from: www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_151565.pdf

37 Available from: <http://www.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific/lao-pdr.html>

38 International Labour Organization, *Promoting Decent Work for Foreign Migrants*

39 CEDAW Committee, *Concluding Observations*, paras. 42-44.

TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Laos is a source country for women and girls trafficked into Thailand, Malaysia and China who are forced into working in the sex trade or in factories, agriculture, the fishing industry, or domestic work. Some Vietnamese and Chinese women are also forced into prostitution in the Lao PDR to work in the country's casinos or special economic zones. Lao women generally pay anywhere from 70 to 200 dollars to brokers to obtain work abroad but after their arrival they are often forced into servitude in order to pay off debts. Lao ethnic groups are particularly vulnerable to trafficking in Thailand, because they lack Thai language skills and are unfamiliar with Thai society⁴⁰. Data collected from UN Women's Country programme in the Lao PDR indicates that from 2001 to 2011, more than 1,500 victims of human trafficking were recorded as having returned from Thailand. Data also shows that: the number of females trafficked overwhelmingly exceeds the number of males; the majority of victims are under 18; and most victims come from Champasak, Saravan and Savannakhet provinces, and the capital Vientiane. Anti-trafficking organizations have reported that in some villages, officials were paid to facilitate the immigration or transportation of girls to Thailand.⁴¹

The Lao PDR's National Plan of Action on Human Trafficking, drafted in 2007, is still waiting for approval from the Prime Minister's Office. Because of this and limited progress in other ways, the 2012 TIP Report assigned the Lao PDR a Tier-2 rating, indicating that the Government does not fully comply with the minimum standards of eliminating trafficking.

PROSECUTION

Article 134 of the Penal Code, and article 49 of the Law on the Development and Protection of Women (2004), prohibit all forms of human trafficking and prescribe penalties ranging from five years to life in prison, and fines ranging from 1,250 to 12,500 dollars. To strengthen the legal framework on trafficking however, in 2011 the Government established a committee to identify and address potential gaps.⁴² In all, 49 cases of suspected trafficking involving 69 offenders resulted in 37 convictions in 2011. However, according to the TIP report, "court proceedings lacked due process and transparency, and the Lao judicial sector remained weak and inefficient."⁴³

PROTECTION

The Lao PDR has taken some important measures to protect women victims of trafficking. In Vientiane there is a transit centre, run and operated by the government, where victims of trafficking can stay and access services while investigations are being conducted. The Lao

40 US State Department, *Trafficking in Persons Report 2012 – Lao (2012)*, p. 216. Available from: www.state.gov/j/tip/rls/tiprpt/2012/

41 US State Department, *Trafficking in Persons Report 2012*, p. 217.

42 Ibid.

43 Ibid.

Women's Union also operates a hotline to report cases of domestic abuse and trafficking. Importantly, the Law on Development and Protection of Women ensures that women and children trafficking victims are not prosecuted for crimes committed as a result of being trafficked. However, in northern Lao PDR, where many trafficking victims originate, there is a severe lack of services and many women are unaware of their right to seek redress.⁴⁴

PREVENTION

Efforts by the Government to prevent trafficking include training for village chiefs and district officials on trafficking laws, victims' rights and conducting trafficking investigations. Additionally, workshops for tourism professionals on recognizing suspected trafficking cases were organized by the Lao Tourism Authority. A lack of resources however means that trafficking-prevention efforts in Lao are limited.

While acknowledging efforts to combat trafficking and protect victims, the CEDAW Committee expressed its concern at the persistence of trafficking and sexual exploitation of the country's women and girls. The Committee urged the Government to adopt and implement its national action plan to combating trafficking, and "improve implementation of the 2005 memorandum of understanding with Thailand on trafficking, especially along the border areas." Other recommendations urged the Government to: carry out country wide training for judges, police, public officials and social workers on anti-trafficking laws; conduct comparative studies on trafficking, covering both cross-border and rural to urban trafficking; and ensure systematic monitoring and evaluation of the trafficking situation.⁴⁵

EMPLOYMENT

The Lao PDR has been gradually reforming its economy and opening up to direct foreign investment. This has led to new industries and new opportunities for employment. Despite this, three quarters of the population still work in the agricultural sector, which is characterized by low pay and low productivity.⁴⁶ The majority of women still live and work in rural areas, and due to limited opportunities and low wages, many of them migrate to Thailand and other neighbouring countries in search of better employment prospects. In order to reverse this trend practical steps are needed to give women more choices in the formal labour market.

Improvements to the education system would lead to better job prospects both at home and abroad, which in turn would reduce women's vulnerability to exploitation and abuse. Currently many students who graduate from the Lao school system do not have the knowledge and skills necessary to compete in the job market. The low quality of the country's technical and vocational education training also means that few students are interested in attending these

44 Ibid.

45 CEDAW Committee, *Concluding Observations*, paras. 27-28.

46 International Labour Organization, *Decent Work Country programme (2011-2015) – Lao PDR* (Geneva, 2011), p. 9. Available from: www.ilo.org/public/english/bureau/program/dwcp/download/laos.pdf

programmemes. The ILO reports that “in 2007/8, there were fewer than 16,000 students enrolled in technical and vocational schools (combined), only a third of which were girls. Few of these provide adequate preparation for advanced-level technical and managerial positions in the private sector.”⁴⁷

The CEDAW Committee raised this issue stating it was concerned about the “inadequate educational infrastructure,” the “limited number of qualified teachers,” and the “marked difference in the quality of, and access to, education between urban and rural or remote communities.” The Committee noted that “education is key to the advancement of women and that the low level of education of women and girls remains one of the most serious obstacles to the full enjoyment of their human rights.”⁴⁸ In response to these concerns the Ministry of Labour and Social Welfare has been mandated to develop employer-recognized standards for testing and certification from educational and vocational training institutions. This is a first step to ensuring that education and training is high-quality, relevant and responsive to the needs of the labour market.⁴⁹

The CEDAW Committee also expressed its concern that when women do find work in the formal sector, it is often in situations characterized by poor work conditions. It specifically noted the conditions of garment factories where 80 percent of the employees are women from rural areas. The Committee called on the government to “pay specific attention, and to adopt a comprehensive approach, to improving the conditions in garment factories.”⁵⁰

Such limited options for employment and poor working conditions are largely what drive women to seek employment outside of the Lao PDR. However, conditions for women working abroad are not always better. In recognition of this, and to protect migrant workers, the Government issued regulation No. 3824 on “The Types of Jobs Prohibited for Sending Lao Workers to Work Abroad,” dated 19/12/2002. The regulations ban Lao migrants from: unskilled positions such as cleaners, domestic workers, or porters; vocations that are inappropriate and incompatible with the Lao tradition, culture and law, such as work in the sex sector, work with narcotics, or illegal political activities; and dangerous occupations such as open-sea fishing or exposure to radioactive radiation.⁵¹

Because several of the occupations banned are those where women predominate, this regulation indirectly discriminates against women. In General Recommendation 26, the CEDAW Committee urged parties to repeal outright bans and discriminatory restrictions on women’s immigration. Countries must ensure that visa regulations do not restrict women migrant workers from employment in certain job categories where men predominate, or exclude certain female-dominated occupations.⁵² Thus the Lao PDR’s Regulation No 3824 does not comply with the CEDAW and should be repealed.

47 Ibid, p. 19.

48 CEDAW Committee, *Concluding Observations*, paras. 33.

49 International Labour Organization, *Decent Work Country programmeme*, p. 20.

50 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 35. Available from: www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

51 International Labour Organization, *The Mekong Challenge: An Honest Broker*, pp. 15-16.

52 CEDAW Committee, *General recommendation No. 26*, para. 24a.

EMPLOYMENT CONTRACT

With respect to Lao workers migrating to Thailand for employment, regulations require that a contract be in place either: between the worker and recruitment agency; the worker and the employer; or the employer and the recruitment agency. These contracts can be beneficial in that they enable the Lao Embassy to trace employers more easily, and to use the judicial system to bring abusive employers to justice.⁵³ However, the Lao PDR does not require the use of a “standard” migrant worker employment contract, thus the terms of these contracts are largely dictated by the employer, leaving the migrant workers with little control over the terms and conditions of their employment.

The Government should develop and promulgate a standard contract that is used by all employers and employment agencies wishing to hire migrant workers. The standard contract should comport with the national labour law and all applicable international standards, and be legally enforceable in a court of law.⁵⁴ The use of such contracts decreases the chances of exploitation and thus constitutes a good gender-sensitive rights -based practice.

MINIMUM WAGE AND MINIMUM AGE FOR DEPLOYMENT OF WORKERS ABROAD

The Ministry of Labour and Social Welfare determines the minimum wage. In November 2011, the Government increased the minimum wage for the private sector to be approximately \$42-75 US dollars per month. The minimum wage for civil servants is 49 dollars per month. The Lao PDR sets no minimum wage for its citizens migrating abroad for work. According to Thai law, those who legally migrate to Thailand for work are entitled to receive the minimum wage of 300 Thai Baht (10 dollars) per day applied in seven provinces including Bangkok since April 2012. However in practice, many work for less.⁵⁵

Article 3 of Decree of the Prime Minister on Sending Lao Workers to Work Abroad No. 68/ PMO dated 28 May 2002 requires that Lao workers must be at least 18 years of age to migrate to work abroad.⁵⁶ However, in practice many Lao girls under the age of 18 volunteer or are coerced into illegally migrating to neighbouring countries for work. The CEDAW Committee noted that it was particularly concerned that 60 percent of victims of trafficking in the Lao PDR are reportedly girls between the ages of 12 and 18.⁵⁷

53 International Labour Organization, *The Mekong Challenge: An Honest Broker*.

54 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment* (2005). Available from: www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf

55 International Labour Organization, *The economic contribution of migrant workers to Thailand: Towards policy development* (2007), p.21. Available from: http://www.ilo.org/asia/whatwedo/publications/WCMS_098230/lang--en/index.htm

56 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR: Migration Mapping Study- A Review of Trends, Policy and programme Initiatives*, for UNIFEM, Lao PDR (February 2007). Available from: <http://apmrn.anu.edu.au/conferences/8thAPMRNconference/17.Gender%20Concerns%20in%20Migration%20in%20Lao%20PDR.pdf>

57 CEDAW Committee, *Concluding Observations*, para. 27.

REGULATION OF EMPLOYMENT AGENCIES

In 2002, the Lao PDR enacted Decree No. 68/PMO on Sending Lao Workers to Work Abroad. The Decree is meant to protect migrant workers by requiring pre-departure training as well as licensing and inspection of recruitment agencies. However, because the Decree has no provisions for redress there has been little incentive for recruitment agencies to abide by its rules.⁵⁸

For example pre-departure training, generally held the day before departure, is often only a very basic orientation with little information shared about what to expect when working abroad.⁵⁹ It has also been reported that on the day of departure workers are required to hand over their passports to employment agencies, and are issued identity cards. The passports are then given to the employer who keeps them as a way of preventing the worker from running away. Migrant workers are not able to retrieve their passports and work permits until they have paid off their debts.⁶⁰ This practice contravenes international law which prohibits passport retention, and is an indication of forced labour.⁶¹ The CEDAW Committee has urged the Lao Government to strengthen its information activities so that women are fully aware of their rights as well as the risks of migrating for work.

For a variety of reasons, many migrant women choose to bypass formal processes and instead use unofficial middlemen to facilitate finding work abroad. Middlemen often take advantage of migrant women's low level of education by charging them inordinate fees to process their documents and applications. Sometimes, the expenses charged are more than four times greater than the actual costs. The CEDAW Committee commented on this problem in General Recommendation 26, noting that women with restricted access to education, training and reliable information on migration are vulnerable to exploitation by unscrupulous employers, and recruitment agencies.⁶² Exploitative fees charged by employment agents cause women, who generally have fewer assets than men, to suffer greater financial hardships and make them more dependent, for example, if they need to borrow from family, friends, or moneylenders at usurious rates.⁶³ The Committee stressed the importance of introducing gender-sensitive policies that protect women migrant workers, including those that use informal channels to go abroad, from all forms of violations of their rights.⁶⁴

BILATERAL AGREEMENTS

In 2002, the Lao PDR and Thailand signed a MoU on Employment Cooperation designed to address concerns over human trafficking, and improve the safety of Lao migrant

58 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

59 Ibid.

60 Ibid.

61 Stefanie Grant, *International Migration and Human Rights, Global Commission on International Migration (Geneva, September 2005)*, p. 11. Available from: www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP7.pdf

62 CEDAW Committee, *General recommendation No. 26*.

63 Ibid.

64 CEDAW Committee, *Concluding Observations, para. 43*.

workers. The MoU states that the governments will: “introduce appropriate procedures for employment, and effective return of migrant workers who have completed the duration of their work permit; prevent and intervene in undocumented cross-border labour practices and employment; share information on the same; and introduce measures for appropriate labour protection.”⁶⁵ In the MoU Thailand has agreed to ensure that Lao migrants receive the same wages and benefits as national workers doing similar work. The MoU also stipulates that Labour disputes are to be governed by the national laws in the country of employment and by its authorities.⁶⁶ This type of agreement is an example of gender-sensitive rights-based good practice as it provides for effective government-to-government channels for communication on migration issues, sets out methods of migration management to be jointly implemented, and guarantees women migrant workers coverage under the labour law.

The CEDAW Committee commended the Lao PDR for concluding the MoU with Thailand. It also urged the government to develop bilateral agreements and MoUs with other countries where Lao women migrate for work, and ensure that such agreements fully reflect women’s human rights and are in conformity with CEDAW.⁶⁷

HEALTH

Migration for work can increase vulnerability to communicable diseases such as HIV and tuberculosis. The UN Country Team noted in the UPR Compilation Report for Laos that, while HIV/AIDS prevalence in the Lao PDR remained low, the rapid increase in internal and cross-border travel, as well as socio-economic changes, increase the country’s vulnerability to an AIDS epidemic.⁶⁸

With the help of the International Organization for Migration (IOM) the Government has implemented several health projects targeting migrants and mobile populations. Projects have included one titled Human Influenza and Pandemic Preparedness as well as procedures for identifying tuberculosis cases among migrants. Currently, the HIV project team and the Environmental and Social Division of the Lao Ministry of Public Works and Transport are promoting the use of training tools with various stakeholders that focus on HIV prevention and safe migration in road construction and affected communities, including sex workers.⁶⁹ This constitutes a good gender-sensitive practice as women migrant workers, particularly those involved in prostitution, are at a high risk of being infected with HIV/AIDS.

Women migrant workers lack access to healthcare, including trauma counselling and pre- and post-test counselling for HIV/AIDS that would help them cope with these problems.⁷⁰ Violations of the right to health, including inadequate safety measures at work sites, which

65 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

66 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: www.unifem.org/materials/item_detailc768.html

67 CEDAW Committee, *Concluding Observations*, para. 43.

68 Office of the High Commissioner for Human Rights, *Compilation*.

69 Available from: www.iom.int/jahia/Jahia/lao-pdr

70 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*.

may cause a host of health problems including HIV/AIDS, violate article 12 of CEDAW on equal rights to health and healthcare. The CEDAW Committee in its Concluding Observations therefore recommended that the Lao PDR sustain efforts to address the impact of HIV/AIDS on women and girls, and urged the Government to enhance its focus on women's empowerment and include a clear and visible gender perspective in its policies and programmes on HIV/AIDS.⁷¹

WOMEN'S ACCESS TO JUSTICE

Women migrant workers can suffer from many different types of exploitation and abuse including: high recruitment costs; deception about wages, type of work and legal status; non-payment of wages; withheld passports or identity documents; physical confinement; substandard working conditions, and threats of denunciation to the authorities. While those who migrate for work are some of the most vulnerable, they are also the least likely to be able to access justice mechanisms. Many do not complain about exploitation by brokers or employers out of fear of losing their jobs or work permits. The problem is compounded by the fact that authorities have limited capacity to monitor recruitment practices or inspect conditions where migrants work.⁷²

Some initiatives designed to increase access to justice for women include:

- The Lao Federation of Trade Unions' (LFTU) Department of Labour Protection is mandated to protect the rights of migrant workers and help them resolve conflicts with recruitment agencies such as distortion of information about jobs, wage issues and high service fees.⁷³ The Department has worked with the ILO to raise awareness in villages on the dangers and reality of irregular migration and as well as on legal recruitment procedures and conditions. It has also visited workplaces in Thailand where many Laotians work to collect information on their livelihoods and working conditions.⁷⁴
- The Department of Employment and Skills Development and the Ministry of Labour and Social Welfare have also recently established Migrant Worker Resource Centres in Savannakhet, Xaiyaboury and Champasak provinces to provide potential migrants, return migrants and members of their families with information, counselling and legal advice related to safe and legal migration, rights at work, and support services, etc. The centres also serve as a focal point of coordination between migrant workers, local authorities, recruitment agencies, and other key stakeholders.⁷⁵
- The exemption of women and children who have been identified as trafficking victims from criminal prosecution for unlawful acts committed as a direct result of trafficking is another

71 CEDAW Committee, *Concluding Observations*, para. 41.

72 International Labour Organization, *Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation* (TRIANGLE Project) (webpage, u.d.). Available from: www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm

73 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*

74 Ibid.

75 International Labour Organization, *Opening of Migrant Worker Resource Centres in Xaiyaboury and Champasack Province, Lao PDR*. Available from: www.ilo.org/asia/whatwedo/events/WCMS_176231/lang--en/index.htm

important legal protection. In addition, several support shelters have been established for victims in the capital as well as in several provinces, which provide medical assistance, legal assistance and consultation, and vocational training.⁷⁶

These are all good, gender-sensitive practices that increase women's access to justice and are in line with CEDAW's General Recommendation 26, which advises governments to design comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned.⁷⁷ Despite these positive measures, access to legal redress is often hampered in the Lao PDR by a lack of awareness and lack of resources on the part of victims and the legal community. For example, while trafficking victims are allowed to file civil suits against their traffickers, this has never been done in practice. Additionally, although the government encourages victims to cooperate with prosecutions, it does not often provide witness protection to victims.⁷⁸ The CEDAW Committee urges governments remedy to this problem by ensuring that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid.⁷⁹ The Committee specifically called on the Lao PDR to "strengthen its legal complaints system to ensure that women, especially women of ethnic groups, have effective access to justice".⁸⁰

F. ANALYSIS AND CONCLUSIONS

The Lao PDR has instituted several policies and programmes to better protect women migrant workers from abuse and exploitation. The CEDAW Committee commented on some of these in its 2009 Concluding Observations, commending the Lao PDR for its:

- Ratification of international human rights instruments that protect women's rights.
- National Strategy for the Advancement of Women 2006-2010.
- National Steering Committee on the Fight Against Human Trafficking.
- Regional Plan of Action II on trafficking.
- Memorandum of Understanding with Thailand on bilateral cooperation on trafficking.
- Establishment of temporary shelters for women and children victims of trafficking.
- Poverty alleviation programme.
- Ministry of Education's curriculum for teaching gender equality in schools.
- Establishment of the National Steering Committee on Rural Development and Poverty Eradication.

Other examples of gender-sensitive and rights-based good practices to address root causes of migration and protect women migrant workers include:

⁷⁶ Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

⁷⁷ CEDAW Committee, *General recommendation No. 26*, para. 24i.

⁷⁸ Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

⁷⁹ CEDAW Committee, *General recommendation No. 26*, para. 26Ciii.

⁸⁰ CEDAW Committee, *Concluding Observations*, para. 14

- Article 134 of the Penal Code, which prescribes penalties ranging from five years to life imprisonment for human trafficking offences.
- Contracts required between Lao workers, recruitment agencies, and employees for legal migration.
- The requirement that Lao workers must be at least 18 years of age to migrate to work abroad.
- The Lao Women's Union's safe migration initiatives, including financial literacy training and rights awareness programmes.
- Shelters providing victims of trafficking and sexual exploitation with psychological care and other services.
- The Lao Federation of Trade Unions' Department of Labour Protection, which helps to resolve conflicts between workers and recruitment agencies and organizes workshops and education campaigns about the realities of migration.
- The 2004 Law on the Development and Protection of Women that prohibits all forms of discrimination against women and aims to ensure women equal opportunities to participate in development.
- The Ministry of Labour and Social Welfare's labour-market information system to collect data on domestic and overseas employment
- The Decree on Employment Services to regulate domestic employment services and overseas employment processes.
- The Strategic plan (2011–2020) for work force development that includes the protection of Lao migrant workers and foreign migrant workers in the Lao PDR.
- Efforts to train village chiefs and district officials on trafficking laws, victims rights and conducting trafficking investigations.
- Workshops for professionals in the tourism sector on recognizing suspected trafficking cases, organized by the Lao Tourism Authority.
- Health projects targeting migrants and mobile populations that focus on HIV prevention and other communicable diseases.
- Migrant Worker Resource Centres, which provide potential migrants, return migrants and members of their families with information, counselling and legal advice related to safe and legal migration, rights at work, and support services, etc.

Despite these positive developments, as noted by the CEDAW Committee and the Human Rights Council, the vast majority of Lao women migrant workers are still vulnerable to exploitation, and have little options for redress when their rights are violated. Notable areas of concern are:

- The feminization of migration.
- The lack of a definition of discrimination that encompasses both direct and indirect discrimination in the Constitution and other relevant legislation.
- Lao women's lack of knowledge about their rights under CEDAW.
- A lack of complaint mechanisms for rights violations.
- Entrenched stereotypes about the role of women in the society.
- The continued high prevalence of violence against women and girls.
- The persistence of trafficking and sexual exploitation of women and girls.
- Low quality of education and high illiteracy rates of women in rural areas.

- Persistent wage gaps between men and women and labour force segregation.
- Development projects do not include a gender perspective.

G. RECOMMENDATIONS

POLICY REFORMS

Include a definition of discrimination in the Constitution and other appropriate legislation that encompasses both direct and indirect discrimination and discrimination in the public and private spheres, in accordance with article 1 of CEDAW.

Since Lao women constitute approximately 70 percent of the country's migrant workers, adopt a comprehensive gender-sensitive migration policy, which includes regulation of recruitment agencies, standard contracts and other protection rights for women migrant workers.

PROGRAMMES AND SERVICES

Adopt a comprehensive national action plan for combating trafficking, including the prevention of trafficking, timely prosecution and punishment of traffickers, both those who are directly or indirectly involved in trafficking and those who are negligent in dealing with or preventing trafficking cases, as well as the provision of protection from traffickers/agents and support to victims.

Improve the implementation of the 2005 MoU with Thailand on trafficking, especially along the border areas.

Train the judiciary, law enforcement professionals and other public officials on anti-trafficking measures.

Ensure that trafficked women and girls are able to access free legal assistance, counselling and quality medical care.

Amend the Decree of the Prime Minister on Sending Lao Workers to Work Abroad No. 68/PMO 2002 to include provisions for redress so that there is incentive for recruitment agencies to abide by its rules and ensure that the Decree is gender-sensitive and rights-based.

Repeal the Regulation of the Minister of Labour and Social Welfare on the Types of Jobs Prohibited for Sending Lao Workers to Work Abroad, No. 3824/MLSW to eliminate the outright bans and discriminatory restrictions on women's immigration. Ensure that visa schemes do not indirectly discriminate against women by restricting permission to women migrant

workers to be employed in certain job categories where men predominate, or by excluding certain female-dominated occupations from visa schemes.

Adopt regulations to ensure good practices among recruitment agencies and specify sanctions for breaches of regulations.

Continue to conclude bilateral agreements and MoUs that fully reflect women's human rights, with countries and regions to which Lao women migrate in search of work.

Improve educational and technical school standards to ensure graduates are prepared to enter the labour market.

Eliminate traditional practices and stereotypes that discriminate against women.

Develop a gender-sensitive policy on migration.

Give gender equality a central role in all policies and implement programmes only after gender impact assessments involving rural women, are conducted.

Improve collection of disaggregated data.

Improve rural women's literacy rates and increase their options in the job market.

Improve work conditions for women in garment factories

Require a standard labour contract that reflects women's human rights, to be used by all employment agencies and employers when hiring Lao migrant workers

Enact better monitoring mechanisms over recruitment agencies.

Increase migrant women's access to justice mechanisms by enacting witness protection programmes, ensuring free legal aid is available and distributing information about rights and means for redress.

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