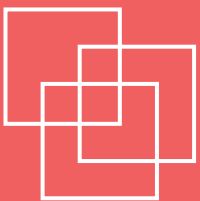


Protected or put in harm's way?

Bans and restrictions on
women's labour migration
in ASEAN countries



Protected or put in harm's way?

Bans and restrictions on women's labour migration in ASEAN countries

Rebecca Napier-Moore

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Foreword

Women make up nearly half of all migrant workers in the countries of the Association of Southeast Asian Nations (ASEAN).¹ Migration is often a catalyst for increasing women's economic and social power, benefitting women migrant workers themselves, as well as their families, communities, and countries of origin. However, migrant women face multiple and intersecting inequalities that can regularly undermine the gains they stand to make from migrating. Women have fewer options for regular migration and are disproportionately represented in jobs with lower pay and fewer labour and social protections. Consequently, women migrant workers often face heightened risks of exploitation and abuse. In order to ensure migration is an empowering experience for women, migration policies must be rights-protective and gender-responsive. ASEAN Member States need to focus on ensuring decent work for the millions of women moving across this region with the goal of improving their livelihoods and futures.

Concerned about the risks associated with migration, policy-makers worldwide have responded with well-intentioned – but misguided – gender-specific migration bans and restrictions. These policies range from outright prohibitions on women's migration into certain jobs or countries, to migration prerequisites relating to age, marital status, and even parental or spousal permission. While such restrictions are supposed to protect women, they violate numerous human rights standards addressing discrimination and equal opportunity, as well as the right to leave a country.

Limited attention has been paid to assessing the effect of these restrictions in preventing exploitation of women migrant workers. Moreover, there is a lack of knowledge on the impact of restrictions on women prevented from working abroad, or on women who migrate irregularly due to restrictions. *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries* was commissioned by UN Women and the International Labour Organization (ILO) to begin to address these knowledge gaps and offer a basis for evidence-based policies and practices that support women's mobility.

Protected or put in harm's way? provides a policy mapping of restrictions on women's migration in the ASEAN region, but focuses on bans suspending migration for domestic work in the Myanmar–Singapore and Cambodia–Malaysia migration corridors. The study analyses the effects of these restrictions based on available data and interviews with 158 people, including migrant and returnee women, private recruitment agents, government officials, lawyers, academics, and representatives from migrant organizations, non-governmental organizations, trade unions, religious institutions, and international organizations. The report concludes with recommendations providing alternatives to restrictions on women's migration.

This study was undertaken as part of the Australian Government Department of Foreign Affairs and Trade (DFAT)-funded UN Women project 'Preventing the Exploitation of Women Migrant Workers in ASEAN'. The focus on women migrant workers reflects the shared priority of UN Women and the ILO. UN Women partnered with the ILO under this project to improve availability and access to gender-sensitive evidence and knowledge on labour migration in ASEAN. This collaboration builds on UN Women and ILO's existing work within ASEAN on safe migration and increasing women migrants' voices and participation in decision making.



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¹ United Nations Department of Economic and Social Affairs (UNDESA): *International migration report 2015* (New York, UNDESA, 2016). http://www.ilo.org/asia/whatwedo/publications/WCMS_432817/lang--en/index.htm [Accessed 3 Mar. 2017]

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Abbreviations and acronyms

ACRA	Association of Cambodian Recruitment Agencies
AEAS	Association of Employment Agencies (Singapore)
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CERD	Committee on the Elimination of Racial Discrimination
CLM countries	Cambodia, Lao People's Democratic Republic and Myanmar
CSO	civil society organization
G-to-G	government-to-government
HIV	human immunodeficiency virus
HOME	Humanitarian Organization for Migration Economics
ICCPR	International Covenant on Civil and Political Rights, 1966
ILO	International Labour Organization
IPA	In Principal Approval [Singapore]
MOEAF	Myanmar Overseas Employment Agencies Federation
MOHR	Ministry of Human Resources [Malaysia]
MOLIP	Ministry of Labour, Immigration and Population [Myanmar]
MOLVT	Ministry of Labour and Vocational Training [Cambodia]
MOM	Ministry of Manpower [Singapore]
MOU	memorandum of understanding
MUI	Council of Indonesian Ulama
MWC	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
MYR	Malaysian ringgit
NACC	National Trade Union Alliance Chamber of Cambodia
NGO	non-governmental organization
PIKAP	Malaysian National Association of Employment Agencies [translation]
POEA	Philippine Overseas Employment Administration
POLO	Philippine Overseas Labour Offices
SGD	Singapore dollars
SOP	Standard Operating Procedure
STI	sexually transmitted infection
TWC2	Transient Workers Count Too
UDHR	Universal Declaration on Human Rights, 1948
UN WOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
US\$	United States dollars
VDR	Visa with Reference [Malaysia]
WAO	Women's Aid Organization
WLB	Women's league of Burma



Executive summary

Various policies across the Association of Southeast Asian Nations (ASEAN) restrict women's labour migration. When women experience exploitation abroad, both countries of origin and countries of destination in the region have opted for restrictions on women's labour migration. Bans are imposed on men's migration with much less frequency, and if action is taken to counter exploitation of men migrant workers, it is often in the form of an effort to negotiate for better conditions. Countries of destination place further restrictions on women's labour migration than countries of origin, limiting women's access to jobs based on their age, country of origin, spousal permission, pregnancy status, religion, or education.

This study includes a policy mapping of restrictions on women's migration in ASEAN, and looks in detail at two particular policy restrictions: the 2014 Myanmar ban on migration to any country for domestic work, and the 2011 Cambodia ban on migration to Malaysia for domestic work. These policy restrictions were chosen because these countries are in the scope of the ILO TRIANGLE in ASEAN programme and the UN Women project 'Preventing the Exploitation of Women Migrant Workers in ASEAN', and because they affect domestic work – a major sector of work for migrant women in the region and around the world. It is hoped that other countries in ASEAN will be able to use findings of this report to guide future policy-making.

The two bans in focus here specifically target domestic workers, thus the report has a sectoral focus on domestic work. Data from 2013 indicates that there were 2.23 million migrant domestic workers in the South-East Asia and Pacific subregion, 91 per cent of whom were women. As domestic work is a women-dominated sector, the bans primarily impact and discriminate against women.

A number of international laws explicitly discourage restrictions on women's labour migration. Among them, the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) includes a mandate for States to repeal sex-specific bans and discriminatory restrictions on women's migration (CEDAW, General Recommendation 26), as does the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC), 1990 (MWC, General Recommendation 1). Several international laws fundamentally guarantee all persons the right to leave any country, including the Universal Declaration on Human Rights (UDHR), 1948;

the International Covenant on Civil and Political Rights (ICCPR), 1966; the Committee on the Elimination of Racial Discrimination (CERD); and the MWC.

Research methods and participants

Primary interview and focus group data was collected from 11 May to 22 September 2016 in Cambodia, Malaysia, Myanmar, Singapore, and Thailand. A total of 158 people, including migrant and returnee women, recruiters, government officials, lawyers, academics, and representatives from migrant organizations, NGOs, trade unions, religious institutions, and international organizations, participated in the research. Of these, 70 per cent were women, and 51 were women migrant domestic workers selected through purposive sampling. Of these 51 women, 44 (or 86 per cent) were migrants during the bans on migration for domestic work from Myanmar or Cambodia. Some of these women migrated for the first time under the ban, and others had gone before the ban, but were in the country of destination and/or visited home during the ban period. The experiences of the latter were important to the research, as the suspension affected their working conditions, and some faced restrictions at airports that kept them from returning to their jobs once they had gone home for a visit.

The research scope did not allow for a broad-based survey, and the findings from domestic workers' experiences presented here cannot be read as generalizable. They do, however, point to trends, reflecting experiences of domestic workers in or returned from Singapore and Malaysia. The study looks at impacts of restrictions on:

- labour markets;
- numbers of migrants;
- safe and regular migration;
- working conditions;
- assistance and information about labour migration;
- social status and livelihoods for women who stayed home; and
- bilateral negotiations.

Findings

Impact on labour markets

There is high demand for domestic workers in Singapore and Malaysia. Women from the Philippines and Indonesia have historically made up the largest proportion of domestic workers in both Malaysia and Singapore. However, recent bans from the Philippines and Indonesia, as well as extension of higher wages and some limited labour rights provisions to Filipina and Indonesian domestic workers through bilateral agreements or embassy pressure, resulted in a shift of recruitment efforts to Cambodia (for Malaysia) and Myanmar (for Singapore), among other origin countries. Thus country of origin migration bans and pressure for better conditions for just one set of workers tends to shift recruitment to other countries of origin that are home to people who will or must migrate for less pay and few guarantees of decent work – a race to the bottom. Once Myanmar and Cambodian workers started migrating to these destination countries in larger numbers as a response, reports of abuse increased. The Myanmar and Cambodia governments responded with bans on migration for domestic work in 2014 and 2011, respectively.

Impact on the number of migrants

In examining the 2014 Myanmar and 2011 Cambodian bans on migration for domestic work, this study looks to determine the extent to which women workers migrate for domestic work despite the bans. Past studies in Bangladesh, India, Indonesia, Nepal, and Sri Lanka show that women throughout Asia migrate despite policies aiming to stop them. This study focuses on women who move from Myanmar to Singapore and from Cambodia to Malaysia.

When women move along these two migration corridors for domestic work, they must *leave* their countries of origin irregularly and without permission in order to find a job abroad. However, policy restrictions are not always coherent across migration corridors. That is, while a restriction might be applied in a country of origin, the country of origin does not have juridical power to apply it in the country of destination; and vice versa. Despite the 2014 Myanmar ban, high labour market demand in Singapore has driven a reported increase of women from Myanmar entering domestic work in Singapore, which issues documentation to nearly all migrant women in domestic work. The 2011 Cambodia ban, on the other hand, resulted in an estimated reduction of migration from Cambodia and further re-entrenched

the labour shortage in Malaysia. However, many Cambodians do still continue to seek domestic work in Malaysia, for the most part working irregularly, though it is possible for them to access legal documentation by converting visas once in country. Data on exact numbers of domestic workers migrating along these corridors is not reliable, and findings on “effectiveness” of the bans in restricting migration are necessarily limited. However, data from both corridors confirm that women migrate despite these bans. A lack of resources, extensive and porous borders, as well as aforementioned policy incoherence, make enforcement of restrictions difficult along the Myanmar–Singapore and Cambodia–Malaysia corridors.

Impact on safe and regular migration

When women migrate despite bans, they leave their countries irregularly, often at great risk. Women make decisions to migrate despite known risks, judging that potential gains outweigh potential problems. Many women report satisfaction and empowerment through migration, as they can earn much higher wages than at home.

After the bans, both Myanmar and Cambodia have seen growth in unlicensed smaller agencies or individual recruiters advertising opportunities for domestic work in Singapore and Malaysia, among other destinations. Some licensed recruiters also illegally recruit in countries of origin – either by not registering domestic workers at all with their governments, or registering them by declaring to the government that the workers will work in non-domestic work occupations. This results in an absent or partial “legal trail” in countries of origin. Without legal traceability, workers report that they cannot hold recruiters to account when there are problems, and that recruiters have greater, unchecked power over women migrant workers. The potential for forced labour or trafficking increases with this heavily recruiter-reliant migration and the impunity surrounding it. During suspensions, domestic work recruiters in Myanmar and Cambodia no longer have to provide pre-departure training, and since training is illegal, they move women with frequency from one pre-departure holding site to another to avoid detection while waiting for deployment. This study finds deceptive recruitment practices increase under the restrictions, with recruiters telling women that they will work as nurse aides or even factory workers, and then placing them in domestic work in the destination country – a type of contract substitution.

Interviewees report that migrant women workers pay increased costs to cover bribes that are necessary in order for them to exit countries of origin under the bans. Migration routes are not always straightforward, as some agents take women to alternative exit points staffed with immigration officials willing to take bribes; or to transit countries en route to the destination, where women often face extortion from officials in transit as well.

Impact on working conditions

Policy incoherence, which enables women from “ban” countries to gain regular status in countries of destination, has the result of protecting some rights of women migrant workers, though undermining other rights. Some documented domestic workers interviewed in Singapore particularly reported being able to turn to the Singapore Ministry of Manpower for help. Two of the 51 domestic workers in the study note that in their experience employers and recruiters respond to bans by making working conditions better. As one worker notes: “The ban improves the employer’s mind not to torture.”

Others, however, report that they feel employers respond to the bans (and associated lack of labour supply) with heightened controls on workers. Both the positive and negative responses are employer strategies to hold on to the domestic worker, as the deficit in labour supply for domestic work makes finding domestic workers hard. In addition to time consuming processes, formal recruitment channels are also expensive for employers, due to high recruitment fees charged by agencies. The controlling responses reported in interviews include forced contract extensions, surveillance, and threats of non-payment of wages, among other abuses. Some employers and recruiters reportedly justify these abusive controlling measures because of the accountability gap that bans create. One worker, speaking in the context of the Cambodian ban said: “They told me that even if I was killed, no one would know.”¹

Impact on assistance and information

Women find increased barriers to assistance when they have migrated under bans. Recruiters are often the first point of contact for domestic workers seeking to rectify a problem or leave an exploitative situation. In fact, some

¹ Focus group discussion, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

governments in the region have explicitly handed protection responsibilities to recruitment agencies. Complicating matters, in the case of both Cambodia and Malaysia, domestic work-focused recruitment agencies (both licensed and unlicensed agencies) report closures and staff reduction, making it difficult or not possible to handle migrant workers' cases.

Women who know they have contravened a law in migrating may fear repercussions if they approach government authorities for assistance. Some turn to unions or NGOs instead – if they have contact details for these. Furthermore, it was reported in several interviews that some government officials in the region have business interests in or take money from recruitment agencies that place domestic workers. This indicates that there may be conflicting interests at negotiations of bilateral agreements, as well as in assistance and remedy processes.

Impact on women's social and economic position at home

Myanmar and Cambodian women prevented from taking up migration as a livelihood option often have limited livelihood alternatives at home. Unemployment is high, wages are limited, and in some places conflict continues to limit access to livelihoods. Further, forced labour rates are high in the private sector: 26 per cent of internal migrants in Myanmar experience forced labour (ILO, 2015c). Gender-specific migration bans have a broader effect of reinforcing paternalistic gender norms at home and abroad, by reinforcing the perception that women need protection. Unfortunately, bans justified with an aim of keeping women nationals out of “low work” further entrench the low value that ASEAN societies place on domestic work. This undervaluing in turn justifies under-payment and other labour rights abuses for domestic workers in origin and destination countries. Interviewees in Myanmar particularly report stigma around domestic work due to the perception that the Government is signalling through the bans that domestic work is neither safe nor respectable.

Impact on diplomacy and bilateral negotiations

Governments hoping to bargain for better wages and other working conditions for women workers can attempt to use bans as leverage, withholding labour resources and sending clear signals that the working conditions for migrants are unacceptable. Yet holding migrant domestic workers as a bargaining chip has historically had mixed results for countries in the region and for the countries in this study. Some indeed have secured better conditions for their workers, and others not being able to do so or finding they must contend with policy or diplomatic backlash. Destination governments have often said they cannot be bent by this pressure and that the bans are not bilateral and domestic workers are still welcome.

Alternatives to restrictions: Empowering, rights-protective responses

Restrictions on women's migration limit the positive possibilities of women's labour migration and offer a paternalistic approach to women's empowerment. Attention to labour protections and to valuing women's work is due for women-dominant sectors throughout ASEAN. Progressive, alternative strategies are outlined below and in the Recommendations of this report.

Policies applicable to women's labour migration should provide empowering and rights-protective environments for workers. For instance, in 2013 Bangladesh replaced a women's migration ban with a migration law specifically including non-discrimination provisions. A few regional countries/territories of destination and origin, including Hong Kong (China), the Philippines, Thailand, and Viet Nam, already provide migrant and/or national domestic workers with protections like maternity leave and limits on working time, though in most countries protections remain insufficient. Making systemic changes to guarantee labour rights and safe migration is key to protecting workers in women- or men-dominant sectors.

There are examples of effective policy reform benefiting greatly from consultations with women who have migrated for work despite bans on their doing so. Consulting women migrant workers, as part of the process of tripartite social dialogue, before lifting bans and putting in place alternative protective mechanisms results in evidence-based and well-informed policy-making that risks fewer unintended and unanticipated policy effects. Women domestic workers consulted for this study were clear, for instance, that they preferred irregular migration channels to a Memorandum of Understanding (MOU) system that “ties” them to their employer but does not necessarily improve labour or social protections, as is often the case in the ASEAN region.

Summary of research findings

- Myanmar and Cambodian women migrated for domestic work, despite the 2014 Myanmar ban on migration for domestic work and the 2011 Cambodian suspension on migration for domestic work to Malaysia.
- Migration restrictions limited women to irregular channels for exiting their countries of origin. This left an absent or partial “legal trail” for accountability in country of origin recruitment systems.
- The bans resulted in an increase of small, unregulated recruiters in Myanmar and Cambodia. During the bans, Myanmar and Cambodian migrant domestic workers faced increased deception in recruitment, including contract substitution.
- Myanmar and Cambodian migrant domestic workers interviewed said migration costs increased, as informal payments had to be paid at exit ports and when they transited through third countries.
- During bans, women migrant workers did not have access to protective elements afforded by regular migration, including pre-departure training, standard employment contracts, access to complaints mechanisms, or recourse to a regulated recruitment agency or origin government assistance.
- Duty-bearing stakeholders, including government officials, reported that the ban absolved them from responsibility for abuses that occur in migration. In situations where women migrated despite the ban, duty-bearers said that blame for abuses now rested with women migrant workers, since they contravened migration restrictions.
- Partly because it is harder to recruit and send workers under these and other restrictions in ASEAN, there is high employer demand for domestic workers. Interviewed women reported that recruiters were not allowing them to return home upon complaints of exploitation. Employers were also reportedly forcing workers to sign contract extensions in Malaysia under threat of not receiving their salary.
- Any single country’s ban on women’s migration shifts regional recruitment to other countries and potentially drives the ASEAN labour market to lower working conditions and wages.
- Women reported that bans increased class-based stigma attached to domestic work.
- Restrictions on women’s migration can strain diplomatic relations, reportedly making bilateral relations and negotiation more difficult.
- Policy incoherence between countries of origin and destination meant that women who migrated through irregular channels had access to documented status in countries of destination, with access to assistance and redress that this afforded. Of research respondents, all in Singapore (26 of 26 women interviewees) and a minority in Malaysia (three of 14 interviewed) had documentation in their country of destination. However, these countries of destination also applied further restrictions on migrant women’s work. These restrictions discriminated against women migrant workers based on their age, country of origin, spousal permission, pregnancy status, religion, or level of education.

Recommendations

The following recommendations emanated from this research. They are divided into two sections: the first directly addressing restrictions on women’s labour migration, and the second providing alternatives to restrictions that would build systems for safe labour migration opportunities for women migrant workers, and particularly for domestic workers in ASEAN, in line with international standards and research findings.

Recommendations regarding restrictions on women’s labour migration:

- In accordance with international law, including international labour standards, governments should repeal all gender-based restrictions on labour migration. All countries in the ASEAN region have signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Its General Recommendation No. 26 is as follows:

States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status. They should lift restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel.

- Accordingly, governments are recommended to adopt non-discriminatory clauses in labour migration policy and to guarantee freedom of movement and the right to leave a country.
- Documentation schemes affording amnesty to migrants should be extended by countries of origin and destination so that women who have migrated under restrictions can be recognized by governments and acquire documentation.
- Stakeholders should consult women migrant workers, through tripartite social dialogue, as part of the process of lifting bans and putting in place protective mechanisms.

Recommended alternatives to restrictions on women's migration:

Domestic work specific recommendations:

- All ASEAN governments should sign and ratify the ILO Domestic Workers Convention, 2011 (No. 189) and update national laws accordingly.
- Governments should develop and implement measures for labour inspection with due regard for the special characteristics of domestic work (Convention No. 189, Art. 17). On-site labour inspections in places of employment, including full translation/inspection in the worker's own language, inspection of living quarters, and private interviews with workers are recommended. Off-site meetings with employers, workers, and inspectors should be arranged as an alternative. Governments could also consider having a labour inspector at health check institutions, with an aim to interview migrant workers privately when they report for these checks.
- Employers should respect live-in domestic workers' rights to privacy and freedom to leave the workplace/accommodation.
- Domestic workers should enjoy freedom of association and the right to collective bargaining. Stakeholders should specifically support regional and national domestic workers' movements, including unions, workers or migrants' associations, and other forms of organizing.
- Language, culture, rights, and vocational training are essential to equip women migrant workers with the skills and knowledge to facilitate positive worker–employer relationships, and for migrant workers to claim their rights in destination countries. All stakeholders should facilitate greater recognition of the skills and knowledge that women migrant workers bring to domestic work positions. Women note that language training is vital to a successful migration experience, as well as contributing to development of origin countries upon migrants' return. Language training should be provided in countries of origin and destination.
- Governments, trade unions, civil society, and other stakeholders should educate the public and employers on the social and economic value of domestic work.

Recommendations applicable to all migrant work sectors:

- A zero recruitment fee policy for all migrant workers, as per international standard set in the ILO Private Employment Agencies Convention, 1997 (No. 181), the accompanying Private Employment Agencies Recommendation, 1997 (No. 188), and the 2016 ILO General Principles and Operational Guidelines on Fair Recruitment, should be legislated and enforced.
- At least minimum wage should be paid to all workers – nationals and migrants; women and men; those employed in the formal and informal economy; and migrants with regular and irregular legal status. In case of wages above minimum wage, eliminate differentials based on gender, nationality, or any other identity category.
- Credible and enforced penalties for employers who violate policy, as well as referral, change-of-employer, and redress systems for migrant workers, should follow when abuses are uncovered through labour inspections and individual reports. Legislative changes are needed in countries of destination to allow migrant workers to stay in country during legal proceedings.
- Migrant workers who seek assistance should not be sent back to employers or recruitment agencies without the migrant worker's consent.
- Governments, workers' and employers' organizations and civil society organizations (CSOs) should establish appropriate dispute resolution mechanisms that will be available to all migrant workers regardless of nationality. Governments should not rely solely on recruitment agencies to resolve disputes and provide assistance.

- Governments should adequately regulate recruitment agencies, with machinery and procedures to investigate complaints, alleged abuses, and fraudulent practices. Regulation should specify obligations of the recruitment agency and the employer towards the domestic worker, and provide for penalties, including sanctions of agencies that engage in fraudulent practices and abuses.
- Employment protection and immigration enforcement should be separated to enable migrant workers to make complaints without fear of deportation. Extension of employment protections irrespective of migration status protects the integrity of, and avoids the undermining of, a country's employment standards and rights.
- Governments, together with CSOs, should use referral systems and provide gender-sensitive services, including shelters, gender-based violence counseling (or sensitivity at a minimum), counseling in cases of gender-based or other discrimination, and access to redress mechanisms. Women staff of any service body need to be available for case management. Embassies and consulates should consider hosting regular official meetings for migrant workers – and particularly domestic workers – offering advice and support through networks of service providers.
- Women migrant workers should have access to sexual and reproductive health care, including safe and legal termination services; contraceptives; and pre-natal, birth, post-natal, HIV and other STI care. Redress and access to care in cases of rape, sexual assault, and harassment should be available to all migrant workers.
- Guarantees of minimum standards for worker protections may be more systematically and equally achieved if ASEAN governments jointly negotiate multilateral labour migration agreements. Further multilateral agreements should include South Asian and other relevant origin countries outside ASEAN. Countries of origin are particularly encouraged to work together to set minimum standards for all, so that competition does not undercut wages or working conditions. Nationality-based wage discrimination and inequalities are – in part – the result of the current system of bilateral agreements.
- Immigration and work permits need to progressively move to independence from a specific employer, in other words, not “tied” to an employer. Work permission tied to an employer creates a system where it is possible for employers to abuse migrant workers with impunity.
- A joint and several liability system for country of origin and destination recruiters should be created bi- or multilaterally to ensure there are no gaps in accountability as workers move through cross-border systems of recruitment and employment. Under a joint and several liability system all relevant parties (employers, recruitment agencies in countries of origin and destination) are jointly liable for abuses that occur during the migration process, meaning that recruitment agencies can be held responsible for violations by employers, and vice versa.
- Country of origin livelihood access, education, and rights protections for all persons – with an aim of women's empowerment and gender equality – are essential to ensure that all persons have a genuine choice in migration and do not have to migrate out of necessity. Countries of origin should also provide return and reintegration support for returnee migrants.
- Country of origin and destination governments should provide all migrants with meaningful access to social security, including portable social security.
- Policies should specify that government officials working on labour migration and related issues, or members of their families, may not own or have interests in recruitment agencies. These should be complemented by enforcement of penalties for abusive practices like bribe-taking, as well as with incentives for transparent individuals and agencies. Practices encouraging transparency include: publication of bilateral and multilateral agreements and standard contracts; public blacklisting of agencies; and systems for workers to denounce violations, including online mechanisms.
- Countries of destination levies applied to employers hiring migrant workers should be eliminated, as it is difficult to ensure those costs are not passed on to workers.



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“You are coming illegally. We are protecting you. You have to do what we say.”

A returned migrant domestic worker recalling ban-based threats made by a recruitment agency.

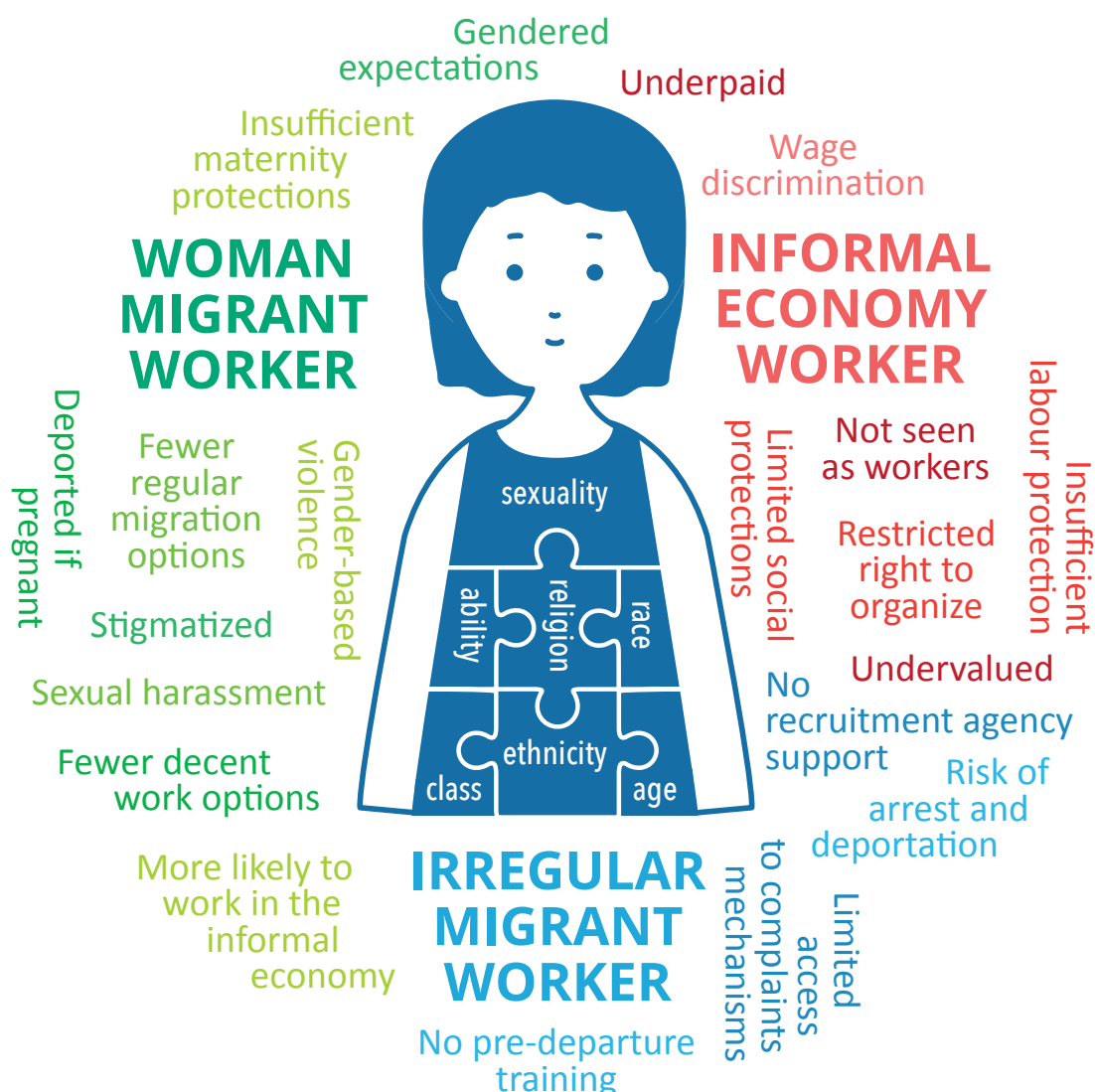
1. Introduction

This qualitative study details restrictions on women’s migration in the Association of Southeast Asian Nations (ASEAN) region, and focuses attention on the Myanmar–Singapore and Cambodia–Malaysia migration corridors. Policy-makers in the region intend for migration restrictions to prevent exploitation by deterring migration into certain sectors, but little focus has been given to whether restrictions are effective in meeting these aims. Nor is there enough knowledge of the unintended consequences of migration restrictions, namely the consequences for women who migrate regardless of restrictions, and for those prevented from working abroad.

Women make up 47.8 per cent of migrants between the ages of 20 and 64 in ASEAN (UNDESA, 2013), but have fewer options than men for regular migration, due in part to gender-specific restrictions. In countries of destination women are often channelled into low-paid informal sector work with few, if any, labour protections. In ASEAN, women earn on average less than men in all Member States bar the Philippines (ILO and ADB, 2014). Inequalities in pay are compounded with a myriad of other systemic inequalities in access to education, social security, support services, formal sector employment, promotions, skills training, migration documentation, complaints mechanisms at work, unions and other workers’ organisations, control of resources, participation at all levels of decision-making, and leadership positions. Migrant women workers in South-East Asia face violence at work, as well as insufficient or absent maternity protections and health care, including sexual and reproductive health care (Marin, 2012).

Discrimination and other violations that migrant women face are often compounded if they are undocumented and/or workers in the informal economy (see figure 1). Preventing exploitation of women migrant workers, in particular domestic workers, is high on the agenda of many countries of origin (and increasingly countries of destination) in the region, not only because of rights violations, but also because of reputational risk associated with governments perceived as supporting women’s migration into exploitative work. Among, women migrant workers in South-East Asia and the Pacific, 39.2 per cent are domestic workers (ILO, 2015b).

Figure 1: Intersecting identities and associated inequalities experienced by women migrant workers



In light of concerns surrounding women migrant workers' risk to exploitation and abuse, women throughout Asia are subject to policy restrictions on migration abroad. However, as this and other studies show, the gender-specific measures result in effects that are counter to those intended by policy-makers. Restrictions range from outright bans on the emigration of women into certain sectors, to requirements that the parents of adult women give permission for them to work as domestic workers. The bulk of restrictive measures are directed towards women, primarily those in low-paid or low-status work. When migration restrictions are based on gender, they are in violation of a number of international laws addressing discrimination and equal opportunity. Countries of origin and destination do, however, also place restrictions on men only, as well as blanket bans on all migrant workers. The purpose of this research is to address a knowledge gap about women's labour migration policy and its effects, and to inform ASEAN policy-makers, employers, recruitment agencies, trade unions, and civil society of relevant findings that can contribute to building evidence-based policies that do indeed protect the rights of women migrant workers.

This study first outlines research methods, followed by background about women's migration in ASEAN and previous research findings on women-restrictive labour migration measures. It then maps relevant policies in major origin and destination countries in ASEAN. The latter half of the report focuses on the restrictions women face in the Myanmar–Singapore and Cambodia–Malaysia migration corridors. While it outlines destination country policy, it looks specifically at the impacts of origin country restrictions, namely the 2014 Myanmar ban on women migrating to all countries for domestic work, and the 2011 Cambodia ban on women migrating to Malaysia for domestic work. These restrictions

were chosen as they are geographically in the remit of the International Labour Organization's (ILO's) TRIANGLE in ASEAN programme and the UN Women project 'Preventing the Exploitation of Women Migrant Workers in ASEAN'. In addition, these restrictions were chosen because they impact domestic work – a major sector of work for migrant women in the region. Target countries of destination were chosen for the same reason. Other restrictions from both the origin and destination governments in these corridors are described, but are not the primary focus of analysis. The research touches briefly on omissions in policy that result in failures to extend rights protections to migrating women. While the main focus is on restrictions affecting women – and particularly domestic workers – other gender-, age-, religious-, marriage-, or work sector-based measures and their effects are also described in brief.



“There were some women in the training centre who decided to return home when they heard of the ban.”

Domestic worker, Singapore

2. Research methods

Mapping of policies that restrict women’s migration was conducted in early 2016, and primary data was collected from 11 May to 22 September 2016 through desk review, semi-structured interviews, and focus groups. An interpreter assisted the researcher in most interviews of women migrant workers, excepting a few when workers were fluent in English.

2.1 Research questions

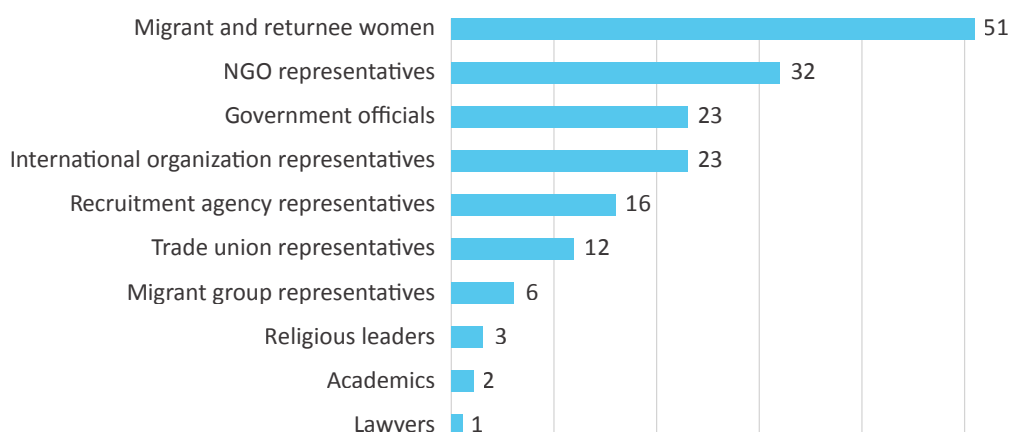
A standard set of questions was used in semi-structured interviews. Questions were organized along certain themes or main lines of inquiry, with the flexibility to ask follow-up questions dependent on responses. Specific interview and focus group tools were designed for each stakeholder group and country context. Core questions guiding the study are as below:

- What migration restrictions are or have been in place in ASEAN countries in law and/or in practice over the last five years, particularly in the Myanmar–Singapore and Cambodia–Malaysia migration corridors?
- What are government rationales for applying and removing restrictions?
- Have migration restrictions been effective in curtailing women’s migration?
- For women who decide not to migrate and those who migrate despite restrictions, what are the social and economic effects of migration restrictions?
- What effect do restrictions have on labour markets of countries of origin, countries of destination, and regionally in ASEAN?
- Do migration restrictions affect origin and destination governments’ provision of assistance and human rights protections? How?
- What successful alternatives to migration restrictions have been implemented for other demographics or in other countries?

2.2 Research participants

A total of 158 people, including migrant and returnee women, recruiters, government officials, lawyers, academics, and representatives from migrant organizations, non-governmental organizations (NGOs), trade unions, religious institutions, and international organizations, participated in the research. Of these participants, 70 percent were women, and 30 per cent were men. All migrant and returnee domestic workers interviewed were women. All were over 18 years old when interviewed. Focus groups and semi-structured interviews were held with stakeholders, as listed above, from Cambodia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand (see figure 2 for details of all research participants).

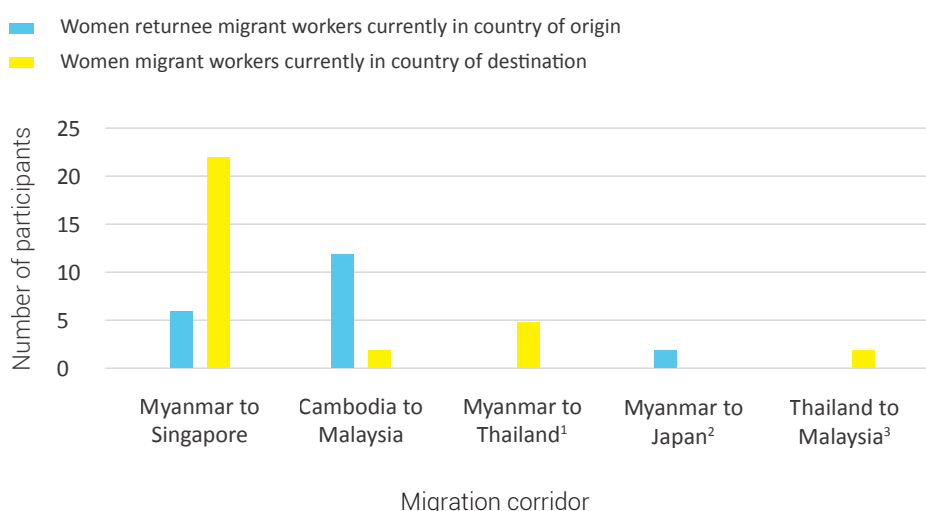
Figure 2: Research participants



Note: Total of 158, of whom 11 are in multiple categories

The research included focus groups and interviews with 51 women migrant workers, selected through purposive sampling. Of those, 28 migrated from Myanmar to Singapore (26 of whom had been in country of destination during the period banning migration for domestic work); and 14 migrated from Cambodia to Malaysia (12 of whom had been in country of destination during the period banning migration to Malaysia for domestic work) (See figure 3).

Figure 3: Women migrant worker research participants by migration corridor



¹ Women domestic workers from Myanmar in Thailand. Myanmar's 2014 restriction on women migrating for domestic work applies to all countries of destination, including Thailand.

² Returnee women workers were participants in a focus group of civil society and unions in Myanmar.

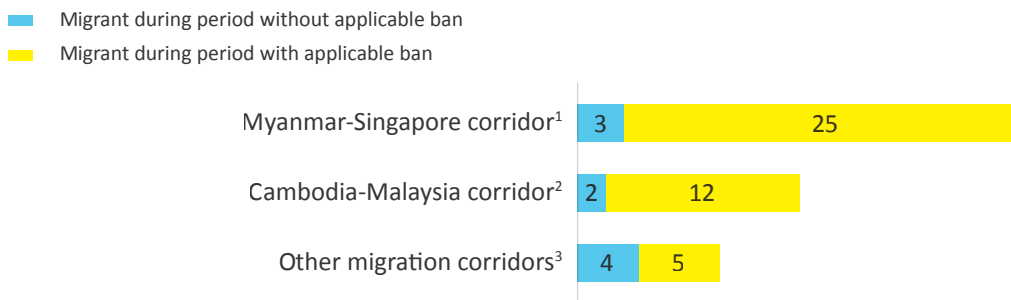
³ Stateless women domestic workers from Thailand in Malaysia.

Note: The table gives details of interviewees who were and were not in the study's specific geographical focus, namely the migration corridors of Myanmar–Singapore and Cambodia–Malaysia. Those outside of the corridors were interviewed strategically – some were women who migrated under migration restrictions; others were trying to access remedy in their countries of origin.

Of the 51 women migrant worker participants, 43 (or 84 per cent) were migrants during the bans on migration for domestic work from Myanmar or Cambodia (see figure 4).

Some of these workers migrated for the first time under the ban, and others had gone before the ban, but were in the country of destination and/or returned home for a visit during the ban period. The latter in countries of destination were potentially affected in terms of working conditions affected by the ban, and in terms of the restrictions they faced at airports that kept them from returning to their jobs once they had come home for a visit.

Figure 4: Women migrant worker research participants disaggregated by those who were migrants during bans



¹ 2014 Myanmar ban on domestic workers migrating to any country.

² 2011 Cambodia ban on domestic workers migrating to Malaysia.

³ Domestic workers from Myanmar in Thailand. Myanmar's 2014 restriction on women migrating for domestic work applies to all countries of destination, including Thailand.

2.3 Ethical considerations

Interviews and focus groups began with a process of informed consent, covering interview topics, interviewees' right to decline to answer any questions or end the interview at any time. All interviewees were over 18 at the time of interview, though many spoke of experiences working as adolescents under 18. In Singapore, some women took up the option to decline participation. Assurances of confidentiality were given for women migrant workers, and the researcher asked other participants if they would like to remain anonymous or keep any data or opinions they reported confidential. As shown in some footnotes and quotes, interviewees or their statements are anonymized where requested. Some footnotes leave out location, or day of the month in which the interview took place. Partners organizing focus groups with women migrant workers had referral information to hand in case a participant requested assistance or disclosed a need for protection.

2.4 Limitations

The research scope did not allow for a broad-based survey, and the findings from domestic workers' experiences presented here cannot be read as representative. While not generalizable, they are consistent with trends identified in other studies and reflect the experiences of women interviewed here.

The primary research data is necessarily from one point in time at the end of 2016. It is limited by not having large-scale comparative data over time, which would allow more thorough evaluation of pre- and post-ban social, economic, and political scenarios. It relies on other studies, stakeholders (migrants and others), and media articles for comparisons over time where possible.

Sampling biases included that the researcher was in Singapore on a workers' day off (Sunday), thus a greater number of workers were interviewed in Singapore than in other locations. Given the short time scale and limited resources for the study, it was not possible to ensure equal numbers of people were interviewed in each country. Decisions on participant inclusion were dependent on contacts in each site. Some migrant worker interviewees were known to participating organizations before the study. Others were individuals whom the researcher found at sites where domestic workers are known to gather on their day off. Those who had a day off also had relatively good working conditions compared to those who had sought NGO or union assistance. It was valuable to interview workers with

varied experiences. Similarly, among returnees some had good experiences and were preparing to return to the destination country, and others sought NGO or trade union assistance to access remedies for violations.

Largely out of the parameters of this study (though briefly described in chapter 4. Policy map of restrictions) and deserving of further research are the following:

- restrictions on women’s migration from Indonesia, the Lao People’s Democratic Republic, the Philippines, Viet Nam, and South Asian countries;
- restrictions on women’s migration to Cambodia, Thailand, East Asia, and the Middle East;
- other gender-, age-, religious-, marriage-, ethnicity-, disability- or work sector-based measures;
- gender-based restrictions in countries of destination;
- policies restricting and/or criminalizing entertainment and sex work;
- religious policy;
- omissions in policy;
- cultural, social, familial, and religious norms that serve to restrict women’s movement; and
- impacts on women who did not migrate due to the ban (as well as impact to their families and communities).

2.5 Terminology

Ban/restriction: In this report these terms refer to a barrier to movement and/or work. Restrictions on labour migration in the region are called many names, including a moratorium, ban, freeze, suspension, restriction, and embargo. This report primarily uses the terms “ban” and “restriction”, and uses them interchangeably.

Country of destination: Country to which a person migrates to live and/or work.

Country of origin: Country a migrant originates from, typically her or his country of nationality.

Domestic work: Work performed in or for a household or households, within an employment relationship (per Article 1 of the ILO Domestic Workers Convention, 2011 (No. 189)). In this study, as per common understanding in the countries studied, domestic work is more narrowly termed and does not include caregiving-only roles, or external cleaning services. Both, however, are considered domestic work under Convention No. 189.

Duty bearer: Actors who have a responsibility to carry out certain duties in accordance with their official role. In most circumstances this also requires the actor to respect, promote and realize human rights. In this study duty bearer refers primarily to government officials, employers and recruitment agency representatives.

Gender: Socially constructed differences between women and men, and the social roles and relationships between them. These can change over time and are not biologically determined. **Gender values and norms** are ideas that people have on how women and men should act.

Intersectionality: Typically, the intersections of gender with other areas of exclusion, such as ethnicity, age, marriage status, disability, nationality, documentation/legal status, class, religion, etc. **Intersectional analysis** looks at how multiple areas of exclusion compound injustices, discrimination, and social inequalities.

Irregular migration: This term usually refers to entry, stay or work in a destination country without documentation or permission to do so. In this research study, however, the term also refers to the exit from an origin country without documentation or authorization from the State.

Maternity protection: Protections ensuring equality of opportunity for women and enabling women to combine productive and reproductive roles. Protections in the ILO Maternity Protection Convention, 2000 (No. 183) and Maternity Protection Recommendation, 2000 (No. 191) include: maternity leave, cash and medical benefits, health protection, employment protection, non-discrimination in employment, and rights to breastfeed. ILO Convention No. 189 calls on member States to ensure domestic workers enjoy social protection, including with respect to maternity (Article 14).

Migrant worker: A person who is to be or has been engaged in a remunerated activity in a State of which he or she is not a national.¹

Protectionism: This perspective perceives women as inherently in need of protection, particularly protection from violence and exploitation, and limits their mobility and freedoms to achieve that protection. The alternative to protectionist restrictions on women are measures which at the same time: 1) guarantee robust rights protection to ensure that causes and consequences of violations are addressed (versus not letting women migrate or work for fear of potential violations); and 2) increase mobility and freedoms. Women-restrictive “protectionism” can be contrasted to “protection of rights”.

Paternalism: An approach of control over another person as if by a benevolent parent (Blackburn, 2008). Paternalistic measures direct, interfere with, or limit a person’s choices, taking care of women, children, or other perceived “subordinates” who presumably cannot or do not know how to act in their own best interests.

Recruitment agency/recruiter: Employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, operating within or outside legal and regulatory frameworks.²

Undocumented migration: This term usually refers to entry, stay or work in a destination country without the correct documentation. In this research study, however, the term also refers to the exit from an origin country without documentation from the State.

Women’s empowerment: Women’s empowerment is women’s increased participation, power, and decision-making in all aspects of life. It is a necessary element in achieving gender equality. Women’s empowerment is usually interpreted as something that must be given to women. This study, however, understands empowerment as a process where women are active agents in transforming power structures and creating the necessary conditions for equality.

¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

² See ILO, 2016c.



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“If there was a ban, I would be afraid to go without documents. I might not go.”

Returnee domestic worker, Kampong Cham

3. Women's migration in ASEAN

Of the estimated 9.8 million migrants in ASEAN Member States, 6.8 million are from other ASEAN Member States (UNDESA, 2015). Nearly 3 million of those migrants are women. In a slightly broader geographical category of South-East Asia and the Pacific, just over 2 million women migrant workers worked as domestic workers in 2013, making up 24 per cent of the worldwide total of women migrant domestic workers (ILO, 2015b). In the same year, men made up nine per cent of migrant domestic workers (210,000 persons) in South-East Asia and the Pacific (ibid). The sector has a higher proportion of women in South-East Asia and the Pacific than in other regions. In Asia-Pacific more broadly, the number of domestic workers has increased over time, escalating by 58 per cent from 1995 to 2010 (ILO, 2013a).

About 65 per cent of women workers (both migrant and non-migrant workers) in ASEAN are in precarious employment, characterized by inadequate earnings, low productivity, and difficult conditions of work that undermine workers' fundamental rights (UN Women, 2013a). The political economic model to drive growth and intra-ASEAN competition encourages a flexibilization of labour in the region, negatively affecting the working conditions of women migrant workers who work at the base of value chains (IWRAP et al., 2016). The ASEAN Economic Community prioritizes mobility for only seven professions and one sector (tourism), involving an estimated 1.5 per cent of workers in ASEAN (ILO and ADB, 2014).¹

Table 1 lists data on registered migrant workers in all occupations in selected countries. Official data is not available for unregistered migrants, and is underestimated in many cases.²

¹ There has been political standstill on the regional policy frameworks relating to the 98.5 per cent of workers who do not work in the eight specified professions/sectors. In 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and established the ASEAN Committee on the Implementation of the Declaration (ACMW) in 2008. This committee has not, however, been able to agree on an ASEAN Instrument on the Protection and Promotion of Migrant Workers. Drafts have notably not been gender-sensitive.

² Underestimation of this data in several of the countries is due to: 1) lack of data on irregular migration; and (2) lack of capacity to collect and analyse administrative data accurately. Correspondence, ILO Bangkok and ILO Yangon, 2 Feb. 2017. See note in table 1 on Myanmar Census; ILO, 2015e.

Table 1: Annual outflows of nationals registering to work abroad by gender, selected ASEAN Member States, 2015

ASEAN country	Total deployment	Deployment of women migrant workers	
		Total	Percentage
Cambodia	25 541	9 901	38.8
Indonesia	275 736	166 771	60.5
Lao PDR	50 712	27 176	53.6
Myanmar ³	64 769	12 613	19.5
Thailand	117 291	22 859	19.5
Viet Nam	115 980	38 640	33.3

Source: ILO, 2016d.

A recent study on the gendered impacts of ASEAN integration finds that while technical and high-earning sectors (such as automotive or electronics) in ASEAN are expanding, women will see little benefit from that growth because women-dominant sectors, such as the garment industry, are largely stagnant. Sectoral gender segregation leaves women little chance of equally benefitting from economic growth in the region (ASEAN Secretariat, 2015). Gender-specific hiring is common in the domestic work and care sectors, as well as in the entertainment, sex work, construction, manufacturing, seafood processing, and hospitality sectors. National workers in countries of destination consider these industries unattractive because they afford low status, lack of safety, low pay, and other poor working conditions. For instance, the Executive Director of the Malaysian Employers Federation recently noted, “In our country, elementary occupations, namely cleaner, domestic helper, farmers, and sanitation in general, have a ‘branding’ problem. Most Malaysians perceive these as menial jobs and associate it with the employment of the poor and lower class group [sic]. To solve this problem, rebranding is of utmost importance” (Wei, 2016).

Domestic work specifically is hidden in private work spaces and is undervalued, seen as work that women “naturally” do, and thus not requiring any skill or commanding a living wage. Many employers do not see it as “work” (ILO and UN Women, 2016).

Further missing through the region is structured labour market analysis on available jobs and corresponding skills development for women, linked with educational opportunities. Such lack of organized planning in matching demand and supply results often in women migrating into low or unskilled jobs that correspond with low wages and limited labour protections.

Countries in the ASEAN region commonly address labour migration through bilateral memoranda of understanding (MOUs) (Elias, 2013). Some of these bilateral MOUs, including those that Malaysia signed during 2015 and 2016, include standard contracts.

3.1 Migration trends in the Myanmar–Singapore corridor

In 2014, 12,600 women from Myanmar were registered to work abroad (19.4 per cent of migrant workers registered), much smaller than the number of men (52,200) (ILO, 2016d). The 2014 Myanmar census suggests that the ratio of women among migrants is higher (at 39 per cent, with a total of 788,742 women) when undocumented migrants are counted (ILO, 2015e). Before 2008, less than 10,000 nationals from Myanmar were registered to work abroad every

³ The 2014 Myanmar census asked households how many people were abroad. Though there was underreporting due to fear of government reprisal, the census data captured significantly more migrants abroad and included numbers of undocumented migrants that the 2015 data on documented migrant deployment does not capture. The 2014 census data suggest that 2,021,910 Myanmar citizens are abroad, 39 per cent of whom (788,742) are women. ILO, 2015e.

year – all were men, as women were not allowed to migrate until 2009.⁴ The total number of migrant workers has grown rapidly since 2011 (ILO, 2015a). But the number of women registering to work abroad remains low compared to men.^{5,6} Women had been migrating long before the Myanmar Government officially allowed them to leave the country in 2009. Official programmes facilitating the regular migration of domestic workers began in 2013, with pilots of domestic workers migrating to Hong Kong (China) and Singapore (*Myanmar Times*, 2014). In total during 2013–14 when migration for domestic work was allowed in Myanmar, one agency officially sent 174 domestic workers to Hong Kong (China), and six agencies sent 130 women domestic workers to Singapore.⁷

In Singapore, very few migrant workers are undocumented – with the entertainment and sex work sector as a notable exception (Project X, 2015). The main sector of employment for women migrant workers from Myanmar is domestic work. The Singapore Ministry of Manpower (MOM) reports an overall number of 237,100 migrant domestic workers as of June 2016 (MOM, 2016c), but does not share data disaggregated by nationality. The Myanmar Government and an NGO estimate that about 40,000 domestic workers are from Myanmar (Zaw, 2016; Wa, 2015).

The fees that women pay to migrate to Singapore are substantial. A 2016 survey found that an average of six months' wages is deducted from domestic workers for migration-related costs, totalling 2,721 Singapore dollars (SGD, or US\$1,924⁸) (TWC2, 2016b). Interviews with domestic workers as well as recruiters in Singapore for this current research study found women paid more than was indicated in the TWC2 study – between six to eight months of wages to recruiters in recruitment fees and migration costs.⁹ ILO tripartite stakeholders reiterated in 2016 that “No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers”.¹⁰ The ILO Private Employment Agencies Convention, 1997 (No. 181) further states that “private employment agencies shall not charge, directly or indirectly, in whole or in part, any fees or costs to workers” (Article 7), with some exceptions that can be made only upon consultation with the most representative organizations of employers and workers.¹¹ A focus group discussion with recruiters in Singapore resulted in the recommendation that employers of domestic workers pay a “finder fee” to recruitment agencies. This fee would pay for the agency to find a suitable worker for the employer. The fee would not be tied to a specific worker – in other words, the employer will not pay for a specific worker, but pay for an agency's service of filling a post. Another interviewee suggested that fees could most safely be paid into a trust. The recruitment agency would only be able to access these after migrant workers have migrated safely and are in places of employment with work conditions that meet contract terms.

In addition to workers, employers also pay fees in Singapore. They pay recruiters a placement fee of SGD600–2,000 (US\$424–1,414) for the first two years and pay the Singapore Government a levy of SGD60–265 (US\$42–187), depending on how many dependents the employer has.

Interviews showed that some domestic workers are university educated or used to be business owners in Myanmar, but they can make significantly more money in Singapore as domestic workers. The earning potential in Singapore is significant for many women, who report being able to pay off family debts or build a house in Myanmar. Workers from Myanmar are sometimes preferred by employers, stereotyped as “unassertive, unaware of their rights, quiet, easier to bully”.¹² Working conditions in Singapore regularly fail to qualify as decent work under ILO's criteria.¹³ Domestic

⁴ An exception was allowed for women professionals.

⁵ However, numbers of women who take advantage of the amnesty-type registrations in Thailand reflect that women may actually be emigrating from Myanmar in near equal numbers; 43 per cent of Nationality Verification registrants from Myanmar as of July 2016 were women according to figures from the Thai Department of Employment.

⁶ On 1 December 2016, 30-day visa-free travel began applying to the Myanmar–Singapore migration corridor. Neither the Embassy of the Republic of Singapore in Myanmar nor a prominent Singaporean NGO thought that the opening would make much difference to movements in the corridor. Interview, Embassy of the Republic of Singapore to Myanmar, Yangon, 18 Aug. 2016; Interview, NGO, Singapore, 18 Sep. 2016. No English-language media reported on the policy change in early December 2016.

⁷ These agencies included My International and Nice Way International. Only one agency, Gold Mine, sent domestic workers to Hong Kong (China). Interview, Myanmar Ministry of Labour, Immigration and Population, Yangon, 19 Aug. 2016.

⁸ At the time of the study, the exchange rate was SGD1 = US\$0.707

⁹ Focus group discussion, Myanmar domestic workers, Singapore, 20 Sep. 2016. Interview, Association of Employment Agencies Singapore, 19 Sep. 2016.

¹⁰ ILO, 2016c, General Principle No. 7, noting that “the terms ‘recruitment fees’ or ‘related costs’ refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing, or location of their imposition or collection.”

¹¹ This process becomes particularly difficult in the domestic work sector, which tends to lack representative employer or worker organizations.

¹² Interview, NGO, Singapore, 18 Sep. 2016.

¹³ The ILO's Decent Work Agenda includes four strategic areas, with gender equality as a central tenet to all: promoting basic human rights at work; expanding job opportunities and quality; ensuring the freedom to organize and fundamental social protections; and promoting dialogue among social partners.

workers from Myanmar report working between 13 to 18 hours, on-call 24 hours a day. Many are not allowed to take their statutory day off per week.¹⁴ While other migrant workers can join (but not form) unions, domestic workers are not allowed to unionize. One union-affiliated organization representative highlighted the stigma and discrimination domestic workers receive from unions. From this interviewee's perspective, it is unthinkable that domestic workers would socialize or organize with workers in other sectors: "Can you imagine if domestic workers were able to go to the Union Club? It would be a psychological problem for us."¹⁵

3.2 Migration trends in the Cambodia–Malaysia corridor

Cambodia began formally sending migrant workers (only domestic workers) to Malaysia in 1998 in an effort to decrease unemployment.¹⁶ By 2015, 38.8 per cent (9,901) of Cambodian nationals registering to work abroad were women.¹⁷ Many migrant workers leave Cambodia irregularly (UN Women, 2013a).

One of the conditions Cambodian recruitment agencies have to fulfil in order to be issued a licence by the Ministry of Labour and Vocational Training (MOLVT) is paying a deposit of US\$100,000. Likely due to this financial requirement, large agencies may sublicense to four or five smaller agencies that do not have or want to pay such large amounts of upfront capital. Sublicensing is illegal under Cambodian law and dilutes accountability, including workers' access to redress.¹⁸

Malaysia's immigration admission policy vis-a-vis recruitment of migrant workers determines age, gender, nationality, employment sector, location, and duration of residence and employment. The Malaysian Immigration Department gives approval and a "Visa with Reference" (VDR) before arrival for documented migrants.¹⁹ Registered women migrant workers (from all countries, not only Cambodia) are primarily employed in domestic work (146,293), manufacturing (144,155), plantation (41,537), services (37,248), and agriculture (18,139).²⁰

In a 2015 survey of 69 Cambodian domestic workers in Malaysia, two-thirds of Cambodian domestic workers in Malaysia had the first six months of their salaries deducted in recruitment and migration costs, which totalled an estimated US\$1,000 (Strickler and Sophea, 2015). Working conditions in Malaysia regularly fail to qualify as decent work as it is understood by the ILO. Domestic workers are excluded from most labour protections in Malaysia, with the exception of right to a notice period upon termination.²¹ In a 2016 ILO–UN Women survey of primarily Indonesian and Filipina domestic workers in Malaysia, 25 per cent reported no rest day and respondents worked an average of 14.4 hours per day. The minimum wage of 1,000 Malaysian ringgit (MYR) (US\$226)²² per month applies to all migrant workers in Peninsular Malaysia, except domestic workers. New regulations are being drafted on domestic work in Malaysia, but they have been in draft form for several years. Drafts sighted fall considerably short of full compliance with international labour standards (particularly ILO Convention No. 18 and the accompanying Domestic Workers Recommendation, 2011 (No. 201); see ILO, 2016f).

Migrant workers are allowed to join but not form associations. The Malaysian Trades Union Congress (MTUC) has put forward two proposals to register a group of domestic workers with the relevant authorities. Both attempts failed with no sufficient reason offered (Marks and Olsen, 2015).²³

¹⁴ Focus group discussions, Myanmar domestic workers, Singapore, 18 Sep. 2016. See also HOME, 2015; HOME and MWRN, 2015; and TWC2, 2016a and 2016b. In interviews some domestic workers qualified that they did not necessarily want time off because they did not have good options for a place to go. Further they did not want to spend any money on travel or other expenses upon leaving the worksite. They suggested stakeholders look to provide services or other activities for domestic workers on their days off, with attention to travel arrangements.

¹⁵ Interview, union-affiliated organization, Singapore, 20 Sep. 2016.

¹⁶ Interview, Ministry of Labour and Vocational Training (MOLVT), Phnom Penh, 14 Sep. 2016.

¹⁷ Ministry of Labour and Vocational Training (MOLVT), data as of 21 Dec. 2015. This is compared to 64.8 per cent (19,300) in 2010. Of those migrating in 2010, the Cambodian Government reported that 11,918 were domestic workers migrating to Malaysia. The number of Cambodian women migrant workers rose steadily between 2006 and 2010 – exceeding the number of men for four years – but has significantly fallen since the 2011 ban imposed by the Cambodian Government on domestic workers migrating to work in Malaysia (See section 8.1. Effectiveness). However, the official data on documented migrant workers tells only a partial story of women's migration. A survey of Cambodians who returned en masse from Thailand in 2014 indicated that 53 per cent were women, as compared to the 37 per cent women among migrant workers registered through the MOU that year. IOM, 2014a, 2014b. Holliday, 2014.

¹⁸ *Prakas* on Private Recruitment Agency, MOLVT, No. 047/13, 13 Feb. 2013; Interview, NGO, Phnom Penh, 15 Sep. 2016.

¹⁹ Interview, Ministry of Human Resources, Putrajaya, 22 Sep. 2016.

²⁰ Immigration Department of Malaysia, data as of Oct. 2015.

²¹ 1955 Employment Act.

²² At the time of the study, the exchange rate was MYR1 = US\$0.226

²³ In April 2008, the Malaysian Trade Union Confederation (MTUC) brought a complaint to the ILO Committee on Freedom of Association on this issue. The Committee's recommendations can be read here: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2911366



—
“I was 16 and told to say I was 22 if the employer asked. The age on my document said 22, and used another name.”

Returnee domestic worker, Kampong Cham

4. International instruments related to restrictions on women's labour migration

Restrictions on women's migration, as seen in South-East Asia and elsewhere, are in contravention of a number of international laws. Country of origin and destination restrictions common in the region contravene rights to leave a country, rights related to non-discrimination against women, and the rights of migrant workers to employment with conditions equal to those of nationals. Under international law, women are not to lose their jobs when pregnant, nor are they to face discrimination in recruitment opportunities on the basis of pregnancy. International law guarantees maternity protection and non-discrimination at work on the basis of family obligations. Under ILO Convention No. 189, domestic workers should enjoy rights equal to those enjoyed by workers generally, taking into consideration the specificities of the sector. Further, the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) notes that labour laws and policies are to be extended to informal economy workers. Most explicitly, States should repeal sex-specific bans and discriminatory restrictions on women's migration in accordance with Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) commitments.

See key international law stating that restrictions on women's labour migration are contrary to human rights as below:

- The Universal Declaration on Human Rights, 1949 (UDHR), International Covenant on Civil and Political Rights, 1966 (ICCPR), Committee on the Elimination of Racial Discrimination (CERD), and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (MWC). UDHR Article 13(2), ICCPR

Article 12(2), CERD Article 5(d)(ii), and MWC Article 8(1) guarantee all persons the right to leave any¹ country.² Exceptions are applicable as per ICCPR Article 12(3) and must be non-discriminatory, including to women.³ The UN Human Rights Committee, in its 1999 General Comment No. 27 on free movement, stipulates requirements of proportionality to any exceptional restriction made, as well as maintenance of the essence of the right to leave.⁴

Human Rights Committee General Comment No. 27 (para. 17) includes a listing of policy and practices that will act to infringe upon the right to leave:

[L]ack of access for applicants to the competent authorities and lack of information regarding requirements; the requirement to apply for special forms through which the proper application documents for the issuance of a passport can be obtained; the need for supportive statements from employers or family members; exact description of the travel route; issuance of passports only on payment of high fees substantially exceeding the cost of the service rendered by the administration; unreasonable delays in the issuance of travel documents; restrictions on family members travelling together; requirement of a repatriation deposit or a return ticket; requirement of an invitation from the State of destination or from people living there; harassment of applicants, for example by physical intimidation, arrest, loss of employment, or expulsion of their children from school or university; refusal to issue a passport because the applicant is said to harm the good name of the country.

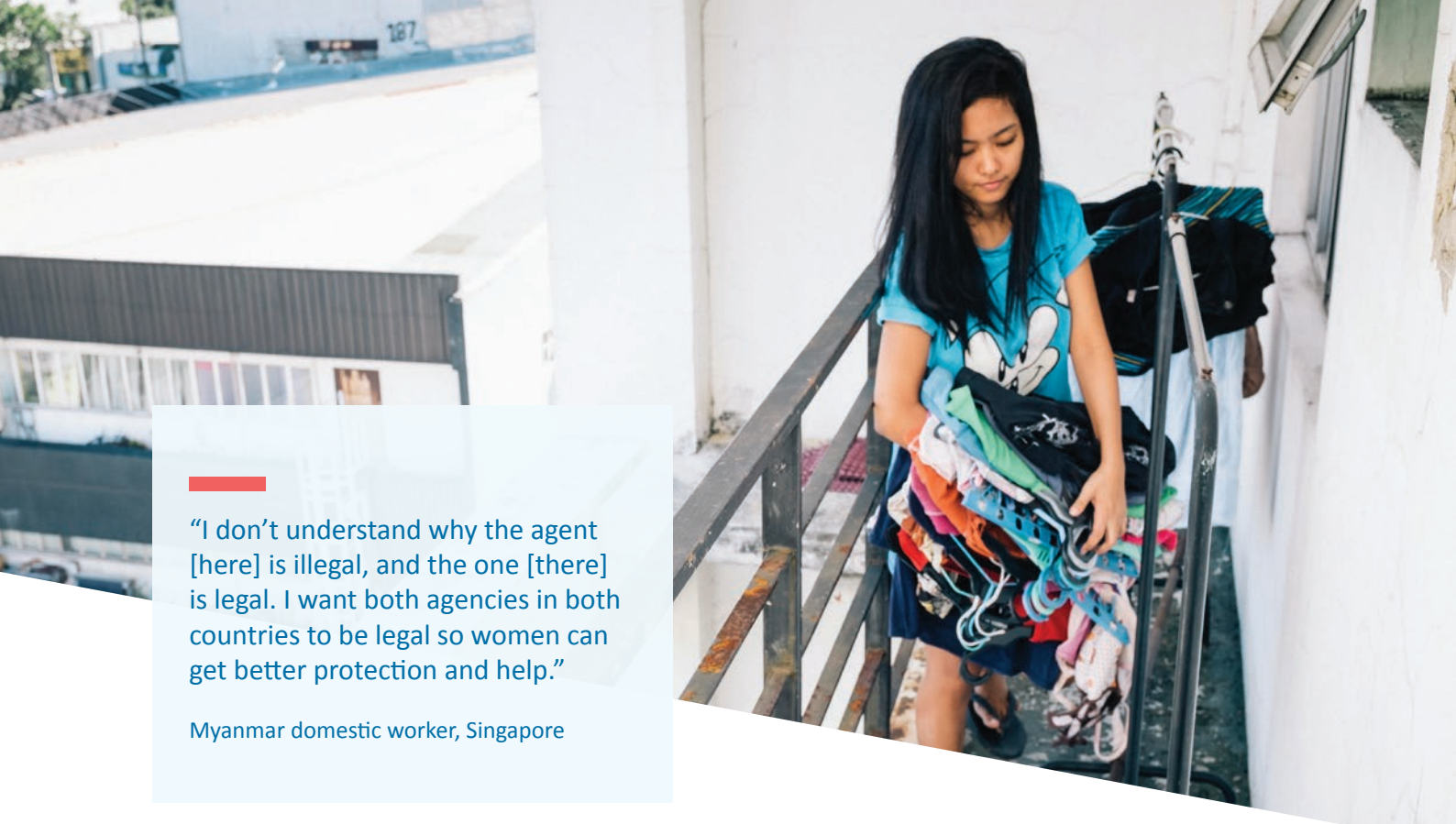
- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC): The MWC states that migrant workers, whether documented or not, shall enjoy treatment not less favourable than that which applies to nationals of the country of employment in respect of remuneration and other working conditions. The Convention explicitly specifies that each right applies to women and men, but it does not take into account gender-specific needs of migrant workers (Jolly and Reeves, 2005). Appeals to CEDAW General Recommendation No. 26 compensate for this gap.
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): CEDAW key principles of substantive equality, non-discrimination, and state obligation, apply to all forms of discrimination against women, including during migration. CEDAW General Recommendation No. 26 on women migrant workers includes the recommendation that “States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status. They should lift restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel” (Article 24(a)).
- International Covenant on Economic Social and Cultural Rights (ICESCR): Article 2, paragraph 2, prohibits discrimination, including on grounds of gender. The Committee on Economic, Social, and Cultural Rights particularly notes that pregnancy must not constitute an obstacle to employment, nor justification for loss of employment.

¹ UDHR guarantees the right to leave a persons’ own country.

² For extensive discussion of this right, see Gallagher, 2010, Ch. 3; Hannum, 1987; Pescinski, 2015; Harvey and Barnidge, 2007.

³ ICCPR Article 12 (3) does not permit restrictions “except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with other rights.” The latter includes, for instance, consistency with prohibitions on discrimination (Gallagher, 2010, p. 162).

⁴ General Comment No. 27, para. 16, states that restrictions must “be based on clear legal grounds and meet the test of necessity and the requirements of proportionality”. Further, General Comment No. 27, para. 13 states: “The relation between right and restriction, between norm and exception, must not be reversed.”



“I don’t understand why the agent [here] is illegal, and the one [there] is legal. I want both agencies in both countries to be legal so women can get better protection and help.”

Myanmar domestic worker, Singapore

5. Policy map of restrictions on women’s labour migration in ASEAN

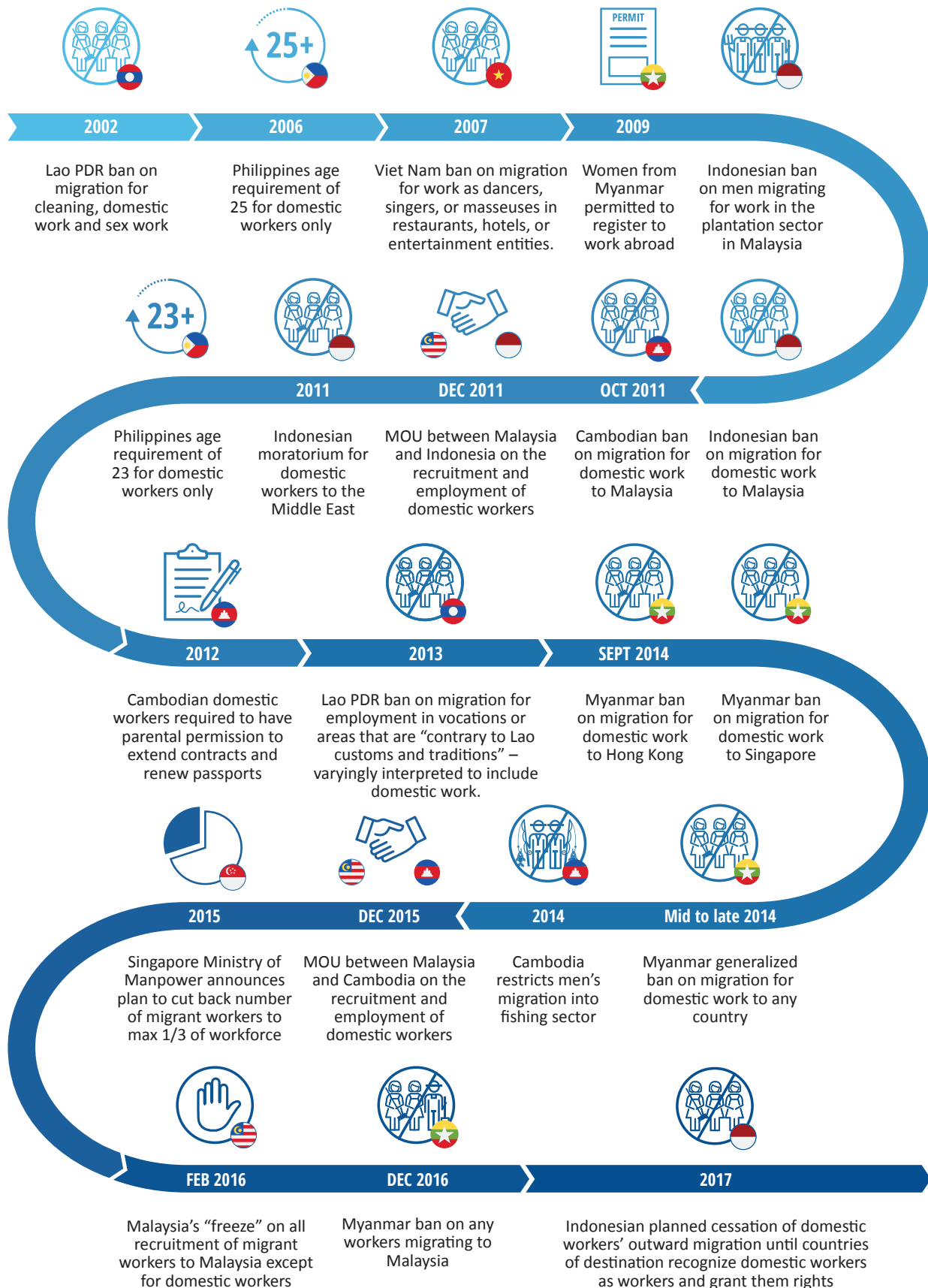
Details of current restrictions on women’s migration in ASEAN are in table 2 (country of origin restrictions) and table 3 (country of destination) below. Restrictions listed include policies set by national government bodies and officials. Policies range from formal law passed by national legislators, to letters communicating a restriction to recruiters, embassy staff, and government bodies of other countries. Some of these policies are strictly enforced; some reportedly not at all; and some are erratically or intermittently enforced.¹ Restrictions that are included are those that specifically target women, and women-dominant work sectors (see figure 5 for a timeline of gender-based migration bans and restrictions in ASEAN). Bans that target certain work sectors in South-East Asia focus primarily on domestic work, with some attention also to sex work and entertainment. Sex work is a women-dominant sector into which women migrants enter. Restriction of the sector unduly impacts women and therefore is included in the next sections.

5.1 Restrictions from countries of origin

Restrictions on women’s labour migration from countries of origin are based on age, work sector, country of destination, skill level (which is often a proxy for class), parental permission, and requirements that a minimum number of other women migrate together or work together at the destination worksite. Some restrictions are in the form of omission, where sectors for regular migration are established and do not include women-dominant sectors, such as domestic work. The gender-based discrimination is clear, as the restrictions target women.

¹ See sections 6.2 and 7.2 on communication, and footnotes in this section.

Figure 5: Timeline of gender-based migration bans and restrictions in ASEAN



The below table does not cover restrictions from South Asian countries of origin, from which people migrate to ASEAN.² Sri Lanka notably, for instance, bans women’s migration if they have children under 5 years old; if they do not have consent from their husbands; or if they have a disabled child.³ Nepal similarly bans women from migrating if they have a child under 2 years of age.⁴ The table below also does not cover restrictions on migration for marriage (see box 1).

Table 2: ASEAN country of origin restrictions on women's labour migration, 2016

Origin country	Destination country	Restriction
Cambodia	General	Minimum age for migration for domestic work is 21 (as opposed to minimum age for men and women into other sectors, set at 18 years old). ⁵
	Malaysia	15 October 2011: Suspension on the recruitment, training, and sending of domestic workers to Malaysia. ⁶ 10 December 2015: MOU agreed between Malaysia and Cambodia on the Recruitment and Employment of Domestic Workers, formally lifting the ban. As of March 2017, MOU implementation policy has not yet been agreed, therefore regular migration channels for domestic work to Malaysia have not opened. On 3 June 2016, MOLVT issued a letter to recruiters saying the ban was still applicable. ⁷ 2012 to present: Practice reported at the Royal Embassy of Cambodia to Malaysia is to call parents of domestic workers, regardless of women’s age, when extending employment contracts or renewing passports. Therefore, in practice, parental permission is required for domestic workers to extend their contracts and renew passports. ⁸
Indonesia	General	2004: Minimum age requirement for migrants working for an individual employer is 21 years old. ⁹ 2017: Domestic Worker Roadmap: planned cessation of domestic worker outward migration until countries of destination recognize domestic workers as workers and grant them rights. ¹⁰ The aim is for professionalization of workers as “cooks”, “nannies”, and other vocations, in an effort to limit abuses.
	Malaysia	2009–2011: Ban on migration to Malaysia for domestic work. ¹¹
	Middle East	2015: Moratorium for domestic workers to Middle East countries due to poor protection and conflict areas. Restricted countries include: Algeria, Egypt, Iraq, Islamic Republic of Iran, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Pakistan, Occupied Palestinian Territory, Qatar, Saudi Arabia, South Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. Sending migrant workers to these countries is categorized as human trafficking. ¹²

² For details on restrictions in Bangladesh, India, and Nepal, see UN Women, 2013b; ILO and GAATW, 2015; Timothy and Sasikumar, 2012. For a historical review of restrictions in South Asia, also see Abella, 1995; Lim and Oishi, 1996; Oishi, 2005.

³ It is important to note the potential role of disability as a driver of migration, particularly in situations where care expenses are high in either origin or destination, or when job prospects for disabled family members in origin are low. In Sri Lanka, in order to migrate, women must also fill in a Family Background Report. See Sri Lanka Ministry of Foreign Employment, Ministerial Circular 2015/1, August 2015, Available at: <http://www.foreignemploymin.gov.lk/downloads/Circulars/English.pdf>. Commenting on enforcement of this ban, a Malaysian recruiter noted: “Because of the rule in Sri Lanka, we’ve had women in our recruitment process, and then the Government goes to their house and finds a child, and it’s all lost.” Interview, Kuala Lumpur, 21 Sep. 2016.

⁴ Government of Nepal, 2016, *Guidelines regarding sending domestic workers on foreign employment*, 3(4). Second amendment as of 3 May 2016.

⁵ Ministry of Labour and Vocational Training (MOLVT) and ILO, 2005; Strickler and Sophea, 2015, p. 3; UN Women, 2013b, p. 161.

⁶ Circular No. 11 SRNN, dated 15 Oct. 2011 of the Royal Government of Cambodia on suspension of recruitment, training and sending female domestic workers to Malaysia.

⁷ MOLVT, Letter No. 1180, A suspension of sending workers to Malaysia, 3 June 2016.

⁸ Interview, Royal Embassy of Cambodia to Malaysia, 21 Sept 2016. Strickler and Sophea, 2015, p. 17.

⁹ Law No. 39/2004. This affects highly gender-selective hiring of migrant workers as domestic workers, carers, gardeners, drivers. See UN Women, 2013b, p. 184. As of Nov. 2016, Law 39/2004 is under revision. Revised legislation is expected in 2017. Correspondence ILO Jakarta 16 Nov. 2016.

¹⁰ The Government of Indonesia would like to send more “skilled” workers overseas in order to be better able to guarantee their protection in more formal sectors of work. Correspondence ILO Jakarta, 16 Nov. 2016. See also Cook, 2012.

¹¹ Upon issuance, the 2009 ban also included more broadly informal workers to Malaysia (including those to the plantations sector, primarily men). On 1 Dec. 2011 the Government of Indonesia repealed the ban after a Memorandum of Understanding was signed between Indonesia and Malaysia that ensures better protections for migrant workers and obligates employment agencies to uphold provisions of the MOU. The MOU guarantees a formal contract, day off, leave, fee structures, visa, migration through a registered recruitment agency, and dispute settlement. Correspondence ILO Jakarta, 16 Nov. 2016. See also UN Women, 2013b, p. 178.

¹² The Government of Indonesia will lift the moratorium when countries sign a MOU with Indonesia guaranteeing protection of Indonesian migrant workers. Correspondence ILO Jakarta, 16 Nov. 2016.

Origin country	Destination country	Restriction
Lao PDR	General	2002: Regular migration is effectively banned for cleaning, domestic work, and sex work. ¹³ 2013: Migration not allowed for “employment in vocations or areas that are dangerous to health and safety, contrary to Lao customs and traditions, or the laws of the Lao PDR, or any country in which safety cannot be guaranteed.” ¹⁴ Domestic work and sex work not named explicitly in revised policy. Room for interpretation left open, as categories are similar to those in 2002 policy.
Myanmar	General	Pre-2009: Women not permitted to register to work abroad. Mid-late 2014: Generalized ban on migration for domestic work to any country for first-time migrant domestic workers, encompassing and geographically expanding bans (as below) on migration for domestic work to Hong Kong (China) and Singapore. ¹⁵ Recruiters must place women workers in worksites where they will work together with at least five women. ¹⁶ Ideally five women also migrate together, but when there are not five women, the recruiter can prove that there will be at least a total of five women in the destination worksite. Particularly enforced for migration to Malaysia. ¹⁷ Women’s migration to Japan is exempt from this restriction because workers go as “trainees” not migrant workers. ¹⁸
	Hong Kong (China)	September 2014: Ban on migration for domestic work to Hong Kong (China).
	Singapore	5 September 2014: Five-month ban on domestic workers to Singapore. ¹⁹ May 2015: Ban re-imposed (though generalized ban on domestic workers to all countries, as above, was in place mid-late 2014, so this ban was already de-facto being implemented). ²⁰
Myanmar	Thailand	Circa 1996: Women from Eastern Shan State under 25 must be accompanied by a guardian to cross the border into Thailand. ²¹
Philippines	General	2006: Age requirement that emigrating domestic workers must be at least 25 years old. ²² 2011: Age requirement of 23 years old for domestic workers only (18 years old for other sectors). Exceptions allowed if “the employment terms and conditions of the household worker are compliant with the HSW [Household Service Worker] Policy Reform Package, protection of the worker is assured by legislation and adequate protective mechanisms are in place as may be determined by the Secretary of Labour and Employment or her duly authorized Representative.” ²³
Viet Nam	General	2007: Migrant workers are not permitted to work as dancers, singers, or masseuses in restaurants, hotels, or entertainment entities. ²⁴

¹³ Migration is banned for three categories: “disgraceful” work like as a cleaner, domestic worker, or porter; 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. Ministerial Decree No. 3824/MOLSW on “The Types of Jobs Prohibited for Sending Lao Workers to Work Abroad”. See ILO, 2008, p. 3; UN Women, 2013b, p. 204.

¹⁴ Article 38, 2013 Lao PDR Labour Law.

¹⁵ MOLIP interview, 19 Aug. 2016. MOLIP stated that the ban was from June 2014. Media articles and NGO reports state that it began in September, as in the rows in this table for Singapore and Hong Kong.

¹⁶ MOLIP interview, 19 Aug. 2016.

¹⁷ MOLIP interview, 19 Aug. 2016. The agency and labour attaché have to check employer-provided accommodation to see if men and women have separate dormitory areas before sending women workers to a worksite. MOEAF Interview, 9 May 2016.

¹⁸ MOEAF interview, 9 May 2016. Workers migrate under the Technical Intern Training Program (TITP). For more information see TITP website, available at: <http://www.jitco.or.jp/english/overview/itp/index.html>

¹⁹ HOME and MWRN, 2015.

²⁰ *Asia One*, 2015.

²¹ WLB, 2008. Correspondence, ILO Myanmar, 25 Jan. 2017.

²² 2006 Household Service Workers Reform Package, 16 Dec. 2006. Age increased from 18 years old.

²³ 2011 POEA Governing Board Resolution No. 4, 22 Aug. 2011.

²⁴ Decree 126/2007/ND-DP, 1 Aug. 2007. These sectors are women-dominant, therefore this decree predominately restricts women.

Box 1

Restrictions on migration for marriage: Cambodia

Cambodia has placed restrictions on women migrating for marriage to any country. In 2008, marriages arranged by recruiters and brokers were prohibited.²⁵ In 2014, the Cambodian Embassy and Consulates in China stopped issuing Single Status Certificates to Cambodian women, which are required for women to marry abroad.²⁶ However, implementation of this latter restriction by Consulates is reportedly mixed. Cambodian authorities also request that the Chinese Government require a deposit of US\$10,000 made into a Chinese bank account before issuing tourist visas to single Cambodian women. NGOs report that in 2016 women were stopped at airports for checks to see if they are migrating for marriage.²⁷ China also does not allow international marriage brokering. Thus, when Cambodian women migrate for marriage to China, they do so through entirely unregulated channels.

The relationship between marriage migration and the world of work is a complex one. Traditional marital roles dictate that domestic work is completed by the wife. Interestingly, there is evidence that marriage visas have been sought – at least in part – to enable Cambodian women to informally access the labour market in China. The converse is also highly likely; that marriage visas are used to access domestic workers, or women who are in a position where they must provide these services as a part of their marriage.

Source: UN-ACT, 2016

5.2 Restrictions from countries of destination

Restrictions on women's migration in countries of destination include policies that restrict who can enter the country, as well as what occupations women – or specifically migrant women – can enter. Restrictions also include policies that limit migrant women's ability to work in a country based on age, spousal permission, pregnancy status (job loss and deportation upon pregnancy; lack of maternity protection or sexual and reproductive health care), religion (required in policy for some domestic work positions), and education (not required for equivalent work in men-dominant sectors) (see table 3).

Women face restrictions on their sexuality through bans on pregnancy and on marriage to nationals in destination countries (Lan, 2008, p. 854). At the same time, women often find they have little recourse in cases of rape, belying that seeming concerns for their protection do not actually extend full protections to them in cases of sexual violation (Marin, 2012; MMN, 2015). Women's supposed "moral corruptibility" is often met with surveillance by the State and employers (Pande, 2014). Country of destination policy measures require, for instance, biannual pregnancy testing in Singapore and annual testing in Malaysia.

²⁵ 2008 Cambodia's Sub-Decree On Process and Legal Procedure of Marriage Between Cambodian Citizen and Foreign National, Articles 3 and 4. This is not discriminatory by gender, but affects women more in practice.

²⁶ As instructed by the Ministry of Foreign Affairs and International Cooperation (MOFAIC). Sophirom, K., 2014. A Single Status Certificate is also commonly known as a "No Marriage Affidavit", "Certificate of Freedom to Marry" or "Certificate of No Impediment to Marriage" and must be acquired before marriage abroad.

²⁷ Interview, Cambodian NGO, 15 Sep. 2016. See 7.1. *Rationale* and 7.2. *Communication* for further specifics.

Table 3: ASEAN destination country restrictions on women's labour migration, 2016

Destination country	Restriction
Brunei Darussalam	Women migrant workers are not allowed to become pregnant. Passing a pregnancy test is required before entry and at periodic intervals (UN Women, 2013a, p. 29). Sex work is banned (UN Women 2013a, p. 21). ²⁸
Malaysia	Gender-specific hiring. ²⁹ Country of origin-specific hiring for all sectors, including women-dominated sectors. ³⁰ Women migrant workers must be 21 years old. ³¹ 2008: Non-citizen wives must obtain a letter of permission from their Malaysian husbands granting them permission to work. ³² Women migrant workers are not allowed to become pregnant. Passing a pregnancy test is required before entry and when annual work permits are renewed (UN Women, 2013, p. 28). Non-Muslim domestic workers are not allowed to work in Muslim households (policy not strictly enforced). ³³ Sex work is illegal. Soliciting for prostitution or living on the earnings of a sex worker is illegal. ³⁴
Thailand	1998: Employment practice and norm of firing pregnant women migrant workers and of not granting maternity leave, contrary to the 1998 Labour Protection Act. ³⁵ The Act explicitly excludes domestic workers. ³⁶ 1996: Sex work is illegal. Procurement of sex workers and associating in the place of or for the purpose of prostitution is prohibited, as is the management or selling of sex in a "prostitution establishment" or public places. ³⁷

²⁸ Sex work is a women-dominant sector into which women migrants enter. Restriction of the sector unduly impacts women and therefore is included here.

²⁹ Employers submit a request that includes the characteristics of the migrant workers they want. Employers specify whether they want a man or woman. Interview, 22 Sep. 2016, Foreign Workers Division, Ministry of Home Affairs; Discussion, ILO Malaysia and Malaysian Employers Federation, 8 June 2016.

³⁰ A list available on the Malaysian Ministry of Tourism and Culture webpage lists eight approved countries: Cambodia, India, Indonesia, the Lao People's Democratic Republic, the Philippines, Sri Lanka, Thailand, and Viet Nam. <http://www.mm2h.gov.my/pdf/Guideline%20for%20Foreign%20Domestic%20Helper.pdf>. For the formal sector there are 15 approved source countries. International Division, Malaysian Ministry of Human Resources, 22 Sep. 2016. Explaining these choices, a Department of Immigration official noted that "Employers prefer those near their culture. Chinese want Vietnamese or Cambodians. Malaysians prefer Indonesians." Interview, 22 Sep. 2016. See Immigration Department of Malaysia, 2014.

³¹ Malaysian Foreign Employment Act.

³² WAO, 2012, referring to 2010 policy announcement on Permudah website (No longer available. Permudah is a government taskforce with a mandate to facilitate business in Malaysia) and Immigration Department confirmation that the policy applies to non-Malaysian wives, but not to non-Malaysian husbands. ILO correspondence with Malaysian activist (16 Nov. 2016) suggests that from questions posed to 20 foreign women married to Malaysians, half said their husbands' consent was required to access work permission, a few of whom said consent was only required for first-time employment. The informant said that non-Malaysian men are also required to get consent for work from their Malaysian wives.

³³ See Immigration Department of Malaysia, 2014. Under criticism in August 2016, the Immigration Department Director-General announced to the press that this policy was only a "guideline" (Malay Mail, 2016). In interviews for this report, several recruiters said that the policy was not applied in practice. Interview, 21 Sep. 2016. The Malaysian Ministry of Human Resources responded in interview that there was enough demand from non-Malay families, and therefore no problem for non-Muslim domestic workers to find employment. Interview, 22 Sept. 2016.

³⁴ Section 372 of the Penal Code. See more details at "Malaysia", IDS, 2016.

³⁵ In 2012 the Royal Thai Government reversed a decision to deport pregnant women. The rationale for deportation had been to prevent child labour. See UN Women, 2013a, p. 29; Committee on the Elimination of Racial Discrimination. 2012. "Concluding observations: Thailand", CERD/C/THA/CO/1-3.

³⁶ For details of exemptions see UN Women, 2013b, p. 251.

³⁷ Prostitution Prevention and Suppression Act of 1996, especially Sections 5, 6, 7. For further details, see "Thailand", IDS, 2016. However, public health authorities have done outreach and campaigns for sex workers, including migrant sex workers with materials in migrant languages, since 1992. Correspondence, ILO Yangon, 2 Feb. 2017.

Singapore

Women migrant workers are not allowed to become pregnant or deliver a child in Singapore. Passing a pregnancy test is required before entry and at a health check every six months.³⁸ Women migrant workers do not have maternity protection.

Women migrant workers are not allowed to marry Singaporeans without approval from the Ministry of Manpower (MOM, 2015). The migrant marriage ban is a lifetime ban, with domestic workers forbidden to ever marry Singaporean citizens.³⁹

Domestic workers are required to:

- be women;
- be 23–50 years of age;
- have eight years of formal and certified education (required for domestic work sector only); and
- come from an approved source country or territory, which includes Bangladesh, Cambodia, Hong Kong (China), India, Indonesia, Macau (China), Malaysia, Myanmar, Philippines, the Republic of Korea, Sri Lanka, Taiwan (China), and Thailand (MOM, 2016b).

Employers can “blacklist” a migrant worker by writing a complaint to the Ministry of Manpower, which bans women workers from migrating to Singapore for up to five years.⁴⁰

Public soliciting of sex work is illegal, though sex work is not explicitly illegal. However, migrants cannot obtain a work permit for sex work (IDS, 2016; Project X, 2015).

Box 2

Gender-specific hiring: Employer discrimination and de-facto barriers to labour migration

Hiring practices that discriminate based on gender are common employer practice throughout the region. For instance, in a 2014 ILO survey of employers of migrant workers in the Republic of South Korea, 37 per cent said that sex was a criterion by which they choose workers (Rapid Asia and ILO, unpublished).

Some governments facilitate gender-based hiring in official processes for recruitment and hiring of migrant workers. For instance, in Malaysia employers submit a request to the government for a migrant worker recruitment quota. Quota request forms (to officially ask for migrant workers) include the option to choose desired characteristics of migrant workers, including specification of whether an employer wants a man or woman worker.

Discriminatory hiring practices such as these that are based on gender create effective barriers for people of certain genders to access employment in work that is considered “men’s work” or “women’s work”. For instance, men migrating to Malaysia are barred through this gender-based hiring from entering domestic work, and women are similarly barred in practice from entering plantation work.

Source: Interview, 22 Sep. 2016, Foreign Workers Division, Ministry of Home Affairs; Discussion, ILO Malaysia and Malaysian Employers Federation, 8 June 2016.

³⁸ MOM, 2015. Violators have their work permits cancelled and are deported. UN Women, 2013a, p. 28; UN Women, 2013b, p. 116.

³⁹ 2006 interview with H. Daipi, Singapore’s Senior Parliamentary Secretary for Manpower, in Varia, 2007.

⁴⁰ Interview Singapore NGO, 18 Sep. 2016; Strickler and Sophea, 2015, p. 22.

Box 3

From protection to substantive equality: Gender-based legislation in countries of destination

Labour laws in several ASEAN countries actively include protectionist policies, restricting women, including migrant women, from certain tasks, such as working underground or at heights on scaffolding. Historically, international labour standards related to women workers had dual concerns of:

- Protecting women workers from strenuous conditions; and
- Ensuring equality with men in opportunity and treatment at work.

Emphasis was initially on the first gendered protection-based objective, as reflected in current national labour protection laws in ASEAN. However, emphasis has shifted globally over the last 20 years to the latter, and even further to the promotion of substantive equality, or equal outcomes. In this shift, it is recognised that substantive equality for women depends on maternity protections, given women's reproductive role. The shift has called for changes in laws which restrict women from certain occupations and jobs (ILO, 1995, pp. 57-58; ILO, 2011, pp. 55-61).

In ASEAN work traditionally reserved for men and thought of as unsafe for women, such as fishing, scaffolding, and spraying pesticide, is often used as justification for pay discrimination as well as skilling opportunities and promotions (Napier-Moore and Sheill, 2016). Misplaced protectionism thus limits women's work opportunities. However, as a prerequisite to repealing any gender-discriminatory provisions in legislation through the region, it is essential that changes do not put women at risk. Occupational safety and health should not be compromised under any circumstances. Work should be safe enough for all genders.

The World Bank (2015) recently documented discriminatory laws globally that persist in preventing women, including migrant women, from accessing employment. The following are examples of protective labour legislation in ASEAN countries of destination:

- Malaysia: The 1955 Employment Act restricts women from taking up night work and work underground.
- Thailand: The 1998 Labour Protection Act restricts women from taking up certain work, such as working at heights, underground, underwater, or with explosive and inflammable material.

Age bars for migrant women in various sectors similarly are examples of protective legislation. In interview, the Malaysian Government explained that "the intention and spirit [of the age bar on women migrant workers under 21] is to protect".

Source: Interview, Foreign Workers Division, Ministry of Home Affairs, 22 Sep. 2016.

5.3 Other restrictions on migrants from or in ASEAN

5.3.1 Restrictions affecting all migrant workers from or in specific ASEAN countries

Some restrictions in the ASEAN region are not gender-based and apply to all migrant workers. These include, but are not restricted to:

- The Philippines: Frequent bans on nationals migrating to war-torn countries;⁴¹
- Malaysia: February 2016 "freeze" on all recruitment of migrant workers to Malaysia;⁴²

⁴¹ See historical tracking of Philippines Overseas Employment Administration (POEA) Governing Board Resolutions (2000–2016), available at: <http://www.poea.gov.ph/gbr/gbr.html>. These are supplemented by Memorandum Circulars, available at: <http://www.poea.gov.ph/memorandumcirculars/mc.html>. Philippines bans on outward migration are often country-based, usually in response to a crisis situation or non-compliance to requirements under the Migrant Workers Act. These are often temporary and the POEA Governing Board subsequently issues resolutions lifting the bans.

⁴² As of 19 February 2016. This "temporary ban" restricted new recruitment from all countries to all sectors apart from domestic work and "professional" sectors. Domestic workers continued to be recruited for and placed in work in Malaysia. Those already working in Malaysia were allowed to continue and renew their contracts and permissions of stay. However, it was reported that the Cambodian Government interpreted and applied Malaysia's ban to both new and old recruits, and did not issue permissions. Many people were reported to migrate illegally despite this restriction. Interview, Embassy of Malaysia to Cambodia, Phnom Penh, 15 Sep. 2016.

- Myanmar: December 2016 ban on any workers migrating to Malaysia;⁴³ and
- Thailand: list of 39 occupations prohibited for migrant employment in Thailand.⁴⁴

See chapter 4 on international law for discussion of allowed exceptions and rules of proportionality related to the right to leave one's country for non-discriminatory based restrictions.

5.3.2 Restrictions on men migrant workers from or in ASEAN countries

ASEAN States' responses to cases of abuse in some men-dominant sectors provide a benchmark for analysis on whether migrant worker exploitation and abuse is addressed differently dependent on the gender of workers. Compare, for instance, the short list of six restrictive responses in ASEAN to men's migration below to the long list of restrictive responses to women's migration in tables 2 and 3 (sections 5.1 and 5.2). Men's migration for work is far less restricted than that of women in the region, an inequality that gives women access to fewer livelihood options.

Restrictions applicable only to men migrant workers include the following:

- Cambodia: Men are not able to migrate regularly into the fishing sector.⁴⁵
- Lao People's Democratic Republic: Ban on migration for – typically men-dominated – work that does not develop skills, including carrying loads or manual digging.⁴⁶
- Indonesia: 2009 ban on men working in the plantation sector in Malaysia.⁴⁷
- Malaysia: Government facilitated gender-specific recruitment, excluding men from women-dominated sectors where employers explicitly express a preference for women workers.⁴⁸
- Singapore: Migrant men are not allowed to be domestic workers (MOM, 2016b). Seafarers are not covered under labour laws (MOM, 2016a).

5.3.3 Religious and cultural restrictions on women's labour migration

In addition to government restrictions, plural legal systems in ASEAN also regulate women's labour migration. UN Women's 2014 research on plural legal systems in South-East Asia described "quasi-state" and "non-state" legal systems, which include indigenous norms, customs, institutions in communities, and religion-based systems (UN Women, 2014). Some of these are quasi-state when they are not State-led but allowed by, or even incorporated into, the State.⁴⁹ Restrictions on movement and work in the region exist alongside government restrictions and include the following:

- In 2005 in Indonesia, the Council of Indonesian Ulama (MUI) issued a religious decree (fatwa) declaring women's migration for work un-Islamic.⁵⁰

⁴³ After disagreements about violence affecting Muslims identifying as Rohingya in Myanmar's Rakhine State, Myanmar's Ministry of Labour, Immigration, and Population (MOLIP) declared it will stop sending workers to Malaysia (Mon, 2016). The ban does not apply to migrant workers already in Malaysia. Correspondence, ILO Yangon, 14 Dec. 2016.

⁴⁴ Thai Royal Decree, Prescribing Occupations and Professions Prohibited for Foreign Workers, 1979.

⁴⁵ The 2014 Policy on Labour Migration for Cambodia states, "Whilst the Cambodian Government has not put a formal ban on recruiting and sending Cambodians overseas to work on fishing vessels, the Government has made several statements indicating they do not support regular migration through Private Recruitment Agencies into the fishing industry" (p. 5). Fishing is omitted from the list of sectors into which migrants are allowed to work abroad, an omission in policy. As the Cambodian Ministry of Labour and Vocational Training (MOLVT) stated: "We never sent people into fishing legally anyway." Interview, 14 Sep. 2016. The ILO reports that the restriction is not a formal policy, but an agreement between the Government and recruitment agencies (Tunon and Rim, 2013, p. 6). However, the GMS TRIANGLE project baseline survey in 2010 found that 29 percent of Cambodian potential migrant men wanted to work in the fishing sector, and a large number of fishing boats in Thailand's eastern seaboard are staffed by Cambodian men. In 2010 and 2011 nine per cent of Cambodian men registered in Thailand worked in the fishing sector (Ibid, pp. 6, 10). An ILO Migrant Resource Centre (MRC) reported: "Because of the ban on fishing, I had one case where a broker changed men's names to Thai names for the fishing sector." There have been discussions between the Thai and Cambodian governments about formalizing a system to send workers safely into fishing work. Recruiters are reticent to enter the sector however, with ACRA saying: "I really don't want to send workers to fishing. It is not safe and hard to protect workers." Interview, NGO, Kampong Cham, 13 Sep. 2016. Interview, Association of Cambodian Recruitment Agencies (ACRA), 15 Sep. 2016.

⁴⁶ Ministerial Decree No. 3824/MOLSW on The Types of Jobs Prohibited for Sending Lao Workers to Work Abroad.

⁴⁷ Correspondence, ILO Jakarta, 16 Nov. 2016.

⁴⁸ Employers submit a request that includes characteristics of the migrant workers they want. They specify whether they want a man or woman. Interview, 22 Sep. 2016, Foreign Workers Division, Ministry of Home Affairs.

⁴⁹ In quasi-state systems, "the state legal order recognizes non-state legal orders or incorporates them into the justice system without assuming control over them" (UN Women, 2014, p. 2).


⁵⁰ Religious decree No. 7/MUNASVI/MUI/2000, issued in 2000. The MUI rationale for the ban is that there is no protection for women working abroad. In 2011, MUI considered issuing a total ban on women's migration to Saudi Arabia, due to the frequent severe abuse cases as well as disproportionately punitive measures such as the death penalty. Correspondence, ILO Jakarta, 16 Nov. 2016. See also Wieringa, 2006.

- Some Lao People’s Democratic Republic communities charge fines/informal taxes to all migrants or their families.⁵¹
- In Malaysia the Sharia Criminal Offences Act allows for sex workers to be fined and whipped. Buying sex is also forbidden under Sharia Law.⁵²
- Cultural stigma on women’s migration for domestic work is particularly high in parts of Myanmar, which several interviewed women report is sufficient to restrict their migration (see section 8.6 below on women’s social and economic position at home).

Non-state or quasi-state restrictions can operate more or less well than State restrictions depending on the relative, context-specific social and political weight attributed to them by potential migrants and other stakeholders.

⁵¹ Correspondence, key informants, 14 Nov. 2016, 15 Dec. 2016. Communities impose an informal community “tax” on both documented and undocumented migrants. Reportedly, migrants’ families have to pay this tax yearly, with the amount varying among communities. In Champasak, for example, some districts or communities charge 300,000 to 500,000 Lao kip (US\$36–60) per migrant per year. Correspondence, key informant, 15 Dec. 2016.

⁵² Section 372 of the Penal Code. Section 21 of the Sharia Criminal Offences Act. See more at “Malaysia”, IDS, 2016.



"We are disappointed with the restriction/ban. It was put in place because... one or two per cent of migrant women suffer, but the Government cannot give employment..."

Myanmar migrant organization, Singapore

6. Restrictions on women's migration in the Myanmar–Singapore migration corridor

In 2014, the Myanmar Government banned women's first-time outward migration for domestic work to all countries. The Government reports that the restriction started in June 2014, and media and NGO reports note that restriction started in September 2014. The latter sources reported that a ban specifically on migration to Singapore began on 5 September and was initially for five months, and later re-imposed in May 2015 (Arnold, 2016; *Asia One*, 2015; *Myanmar Times*, 2014; HOME and MWRN, 2015). There was confusion about when the ban became generalized to cover migration for domestic work to all countries. See table 2 in section 5.1 above for other policy restrictions from Myanmar.

6.1 Rationale

As a rationale for the ban, the then Ministry of Labour, Employment and Social Security said that domestic workers were suffering abuses, including human trafficking, and that there were no agreed protective mechanisms, such as an MOU, with regard to terms of employment.¹ In an interview for this study, Myanmar Ministry of Labour, Immigration, and Population (MOLIP) representatives noted:

We want to provide job opportunities for women, but at the moment migration is not safe, so we do not dare to send the women migrants as domestic workers. Compared to Filipina migrants, Myanmar women lack language and are shy – afraid to talk about problems or complain. Until the destination country comes up with a comprehensive MOU to protect Myanmar women, we are not willing to send them. Any MOU must follow international standards, and the destination country's domestic law must protect domestic workers.²

¹ Wa, 2015; Interview, Embassy of the Republic of Singapore, Yangon, 18 Aug. 2016.

² Interview, MOLIP, 19 Aug. 2016.

This justification of protection and hope for the ban to act as political leverage to negotiate MOUs with destination countries was coupled with external pressures at the time. In 2014 the case of Erwiana Sulistyaningsih, a severely abused Indonesian domestic worker in Hong Kong (China), had reached international media and diplomatic attention (see Chan, 2014). Further, a prominent conservative Buddhist group in Myanmar began calling for reversals of the Ministry's policy that had begun allowing regular migration of domestic workers to Hong Kong (China) and Singapore in 2013.³ That call gained momentum from civil society. The ban was meant to be temporary, but it has not been as short-term as anticipated. One respondent noted that due to the 2015 Myanmar election, the Government was not willing to lift the ban at that time – political expediency justified the ban's continuation.⁴

6.2 Communication and immediate enforcement of restrictions: "There is a sign at the passport office"

Restrictions on migration in South-East Asia are often in the form of informal circulars or letters to stakeholders, and communication does not necessarily go beyond letters to recruitment agencies. In Myanmar one respondent said: "The ban started out as an unwritten policy. There is a sign at the passport office saying domestic workers can't go."⁵ MOLIP reports sending a letter to recruitment agencies to inform them about the ban.⁶ MOLIP's procedure for communicating these type of measures is to first inform recruitment agencies, and rely on them to let women migrant workers know; then later MOLIP officials give media interviews and communicate with CSOs.⁷ Myanmar Embassies in countries of destination also informed recruitment agency associations about the bans, expecting their compliance.

A rush to send domestic workers took place in Myanmar immediately after the ban, with the ILO receiving calls from domestic workers saying that a recruitment agency was sending them on a flight to Hong Kong (China) after the ban. If they chose not to go, some women reported that they were required to pay back US\$1,660 to their agency.⁸

The Myanmar Government clarified in an interview that: "Yes, the agencies continued [to send workers]. If the Department of Labour has banned or revoked an agency, they are allowed to still meet their quota given in the permission. We provide protection to these workers despite the ban because the agency signed a document ["Rules and regulations for sending domestic workers overseas"] saying they would take responsibility for the workers."⁹

The MOLIP document "Rules and regulations for sending domestic workers overseas" transfers responsibility to the recruitment agency. The Government argues they are providing protection because they require that recruitment agencies sending domestic workers sign it. As of end 2016, Myanmar recruitment agencies continue to advertise recruitment of Myanmar women for domestic work abroad – despite the ban.

6.3 Inter-country policy incoherence: Entry and work permits in Singapore

I don't understand why the agent in Myanmar is illegal, and the one here in Singapore is legal. I want both agencies in both countries to be legal so women can get better protection and help.¹⁰

Regarding the Myanmar ban, as far as the Singapore Government is concerned, that is a ban imposed by Myanmar. It is Myanmar's affair, nothing to do with Singapore.¹¹

The Singapore Government does not recognize Myanmar's ban on women migrating for domestic work. As one Singapore official explained, "We don't have a policy of banning Myanmar maids. We can't."¹² The Singapore Ministry of Manpower (MOM) similarly has told the media that "We urge [agencies] to comply with requirements imposed by source-country governments... However, Singapore is not able to enforce the laws of another country" (Ponniah, 2013).

³ Interview, anonymous international organisation representative, 17 Aug. 2016.

⁴ Interview, recruitment agencies, 17 Aug. 2016.

⁵ Interview, MOEAF, Yangon, 18 Aug. 2016.

⁶ The ILO and the researcher have been unable to acquire a copy or see this document.

⁷ Interview, MOLIP, Yangon, 19 Aug. 2016.

⁸ See also *Myanmar Times*, 2014.

⁹ Interview, MOLIP, Yangon, 19 Aug. 2016. Document on file with author.

¹⁰ Interview, Myanmar domestic worker, Singapore, 18 Sep. 2016.

¹¹ Interview, NGO, Singapore, 18 Sep. 2016. The NGO discussed further that the Singapore Government has this policy with regards to all country of origin migration regulations: "About Philippines' POEA [Philippines Overseas Employment Administration] system, Singapore says that is their [Philippines'] system. We can't be party to enforcing it. We can't enforce it for you [referring to the Philippines Government]."

¹² Interview, Singapore Government official, Aug. 2016.

In Myanmar, prospective women migrant domestic workers headed to Singapore receive an In Principle Approval (IPA) for domestic work in Singapore with a visa. Singaporean employment agencies apply for work permits through MOM. MOM issues the IPAs through the Immigration Department via email. The recruiter then prints out the IPAs and visas and gives them to women in Myanmar via Myanmar recruiters. Interviews indicated most women do not show these IPAs to Myanmar Immigration officers at the airport, but do show them to Immigration officers in Singapore. Upon arrival in Singapore, immigration officers retain discretion over who they allow to enter the country, as the IPA does not guarantee entry; nor does it guarantee a work permit. Once admitted to Singapore, women must pass a medical check before receiving a work permit.¹³

6.4 Singapore-imposed restrictions on women's labour migration

Women and men migrant workers in Singapore are restricted in terms of sexual and reproductive rights and rights to family life, as per details in figure 6 in section 7 and table 3 in section 5.2. In practice, immigration measures not only restrict marriage but also single women, who face a high level of scrutiny:

If you go to Singapore as a single female, the Immigration officer will spend more time with you. Rich, well dressed women too.¹⁴

Singapore requires that domestic workers be women between 23 to 50 years old, with eight years of education, and from an approved origin country (MOM, 2016b). Migrant women who do not fit these and other criteria are barred from entry or deported if in country (see list of requirements in table 3).

6.5 Inter-country policy incoherence: Age requirements

Women are allowed to leave Myanmar for work when they are 18 – a policy mismatch with Singapore's minimum age of 23 for domestic workers. MOLIP's Department of Labour states that during the period before the ban on migration for domestic work, Myanmar complied with Singapore's age ban on women under 23 years old migrating.¹⁵

However, women's ages are not always well documented in Myanmar and falsified documents are relatively common. Under the ban, if women make it to Singapore with passports that say they are the legal age to work and with certification showing that they have had the requisite years of education, the Singapore Government does not check this, even if officials may suspect otherwise. Responsibility is passed on: a Singapore Government representative said the Government relies on Myanmar recruitment agencies to check women migrant workers' ages.¹⁶

6.6 Lifting the ban

In 2016 there were indications that the Myanmar Government intends to lift the ban. In June 2016 Myanmar Overseas Employment Agencies Federation (MOEAF) reported that a parliamentary committee on domestic and overseas labour was considering lifting the ban (Nyein, 2016; Arnold, 2016). In August 2016, MOLIP announced that it was exploring ways to document undocumented domestic workers abroad (Zaw, 2016), that is, to register migrant domestic workers in a country of origin database and issue documents making their outward migration legal.

In an interview, MOLIP officials noted that wages for domestic workers are high in Singapore and Hong Kong (China), and that the Ministry is interested in making these work opportunities legally available for Myanmar citizens. MOLIP elaborated their plans and thinking behind this possible policy change:

We are now considering allowing domestic workers to deploy so we want to know what system is best. Then we will provide documents and allow migration legally. We are asking Myanmar Embassies to collect information on domestic workers – for instance when domestic workers renew passports. Data collection will also be through the Myanmar community in countries of destination, including through funeral service providers. MOLIP will raise awareness that this will be good for the workers, so they understand that the data collection will have a good impact for them.¹⁷

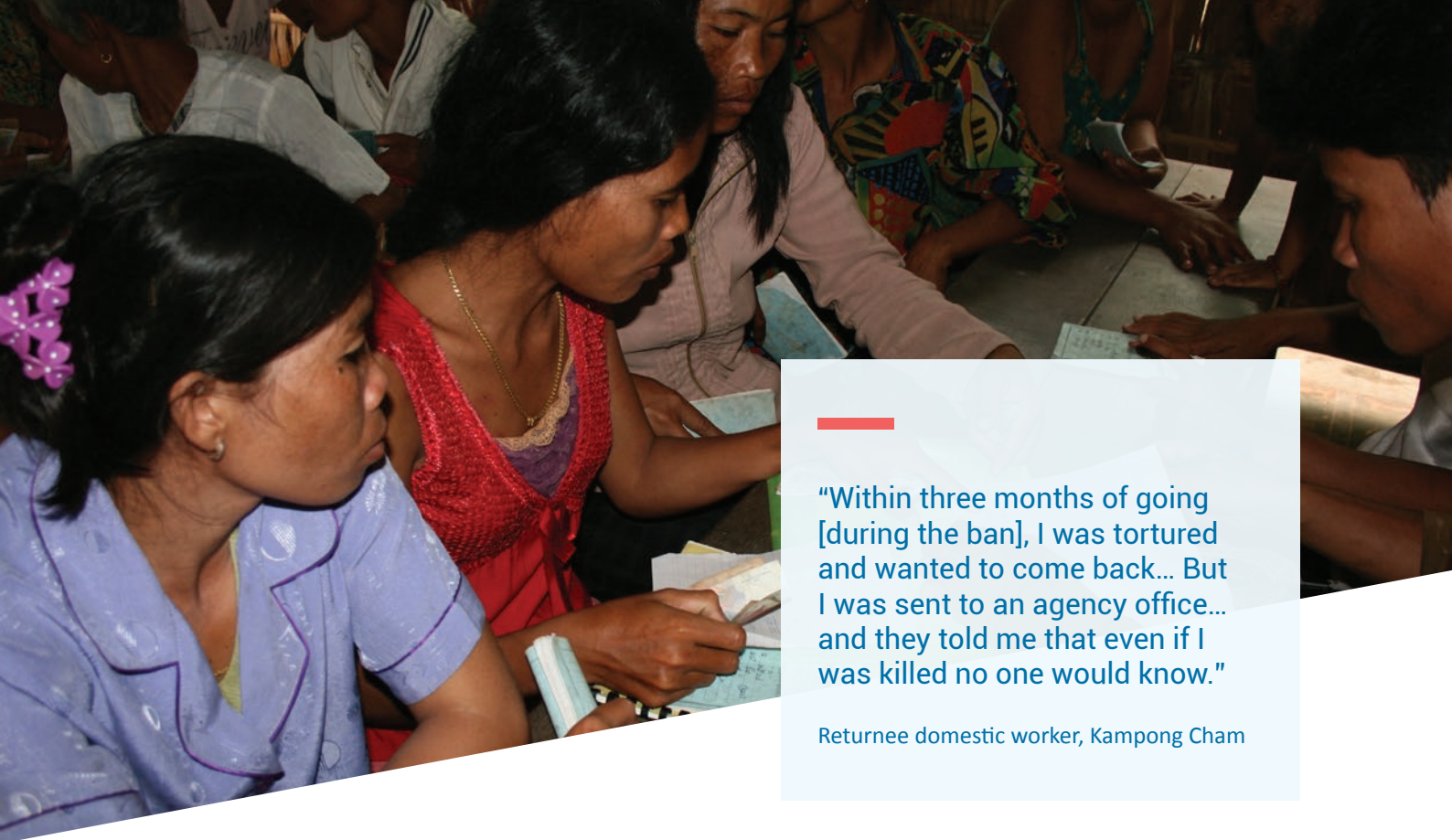
¹³ Interview, Singapore Government, Aug. 2016.

¹⁴ Interview, Embassy of the Republic of Singapore to Myanmar, Yangon, 18 Aug. 2016.

¹⁵ Interview, MOLIP, Yangon, 19 Aug. 2016.

¹⁶ Interview, 18 Aug. 2016.

¹⁷ Interview, MOLIP, Yangon, 19 Aug. 2016.



“Within three months of going [during the ban], I was tortured and wanted to come back... But I was sent to an agency office... and they told me that even if I was killed no one would know.”

Returnee domestic worker, Kampong Cham

7. Restrictions on women's migration in the Cambodia–Malaysia migration corridor

On 15 October 2011 the Cambodian Government suspended first-time migration to Malaysia for domestic work, as per Circular No. 11 SRNN of the Royal Government of Cambodia on suspension of recruitment, training, and sending female domestic workers to Malaysia (see table 2 in section 5.1 above for restrictions on migration to other specific countries). Renewals of permission for domestic workers already in Malaysia remained allowable. Protectionism towards domestic workers is also put forward through measures at the Cambodian Embassy in Kuala Lumpur. Since 2012 the Embassy has required parental permission before allowing domestic workers to extend their employment contracts in Malaysia or renew their passports. Embassy officials reported calling parents of domestic workers, regardless of women's ages:¹

Passports have two years' validity. For a domestic worker, before we renew her passport, we ask about her employer, and we call her family in Cambodia and ask if they want her to work. If the mother doesn't want her to continue, we don't renew her passport... Even if she is 30–40 years old, we don't allow her to renew. Some families' rationale is that they haven't had contact with their daughter or the daughter has been gone so long.²

On 10 December 2015, several years of bilateral negotiation culminated with Cambodia and Malaysia signing two MOUs,³ one on the recruitment and employment of domestic workers, and another for 'general' workers. As of March 2017, the text of the agreements is not officially public, as MOUs are classified under the Malaysia Official Secrets Act. The intent of the domestic work MOU is to reopen a regular channel for domestic workers' migration to Malaysia

¹ Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016; Strickler and Sophea, 2015, p. 17.

² Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016.

³ For some details of wording and editing of varying drafts of the domestic work MOU, see Cuddy, 2014.

with enhanced labour protections (Blomberg and Sothear, 2015). MOLVT sought CSO, UN Women, and ILO support and consultation in MOU preparation. A copy reviewed lacked some key rights provisions: the MOU gives employers the option of not giving workers a rest day; and it does not specify how much rest should be given daily or how often workers could communicate with their families. The MOU allows for employers to select workers based on biodata – a discriminatory hiring method. Further, workers are not allowed to marry, must be 21 or over, and may not migrate with or live with their family in Malaysia without permission.

In theory the December 2015 domestic work MOU lifted the 2011 suspension. However, MOLVT sent a letter to directors of private recruitment agencies on 3 June 2016 informing them that “the suspension of recruitment and sending of female domestic workers to Malaysia is still in force in accordance with the circular No.11 SRNN, dated 15 October 2011.”⁴ From December 2015 to March 2017, MOU implementation policy or Standard Operating Procedures (SOPs) had not yet been officially agreed,⁵ therefore regular migration channels for domestic work to Malaysia are not officially opened, and the restriction remains in place. Enforcement of policy, however, is fluid, and MOLVT noted in September 2016 that recruitment agencies are already sending domestic workers to Malaysia under the MOU despite the lack of established procedures (ILO, 2016e).

The Bilateral Task Team met in early December 2016 in Malaysia finalizing SOPs, action plans, and related instruments to be enforced after endorsement by relevant ministers in Cambodia and Malaysia in early 2017.⁶

As in Myanmar, the Cambodian Government reports that it is working on plans to document undocumented domestic workers in Malaysia. The Cambodian Ministry of Foreign Affairs is discussing a plan with the Malaysian Government, and the Cambodian Government would “need to ask domestic workers to report [themselves]”⁷ – a strategy that may not work in practice if migrant workers do not trust authorities or see value for themselves in going through a documentation process.

7.1 Rationale

The 2011 Cambodian Government circular justifies the suspension as follows:

The Royal Government has recently observed some negative news emerging from the sending of female domestic workers to Malaysia.⁸

At that time several Cambodian and Malaysian civil society groups, as well as media, documented abuses suffered by Cambodian domestic workers in Malaysia, and also in Cambodian training centres.⁹ In 2011 reports were published detailing restriction of freedom of movement and workers being trapped in recruitment training centres for months at a time.¹⁰ One observer notes: “It was not clear whether this ban was issued in response to the exploitative practices in Cambodia or the abusive conditions in Malaysia, or both. As such, there was little indication as to whether it would require a change in conditions in Malaysia or Cambodia to lift it” (Holliday, 2012, p. 465). Some CSOs applauded the ban.¹¹ Similar to the Myanmar Government rationale of protection and political leverage, the Cambodian Government notes that:

There were many problems occurring in Malaysia – that’s why we postponed sending domestic workers. At that time we discussed and agreed with Malaysia that we must have an MOU for management of domestic workers with technical assistance from UN Women and participation from all stakeholders on the MOU. It would be based on domestic and international law.¹²

⁴ MOLVT, Letter No. 1180, A suspension of sending workers to Malaysia, 3 June 2016.

⁵ A 18–19 July 2016 Task Team Meeting to discuss the SOP was inconclusive, with particular disagreement about setting a minimum wage for domestic workers, and fee structures for recruitment and training. Interview, Embassy of Malaysia to Cambodia, Phnom Penh, 15 Sep. 2016; Interview, MOHR, Putrajaya, 22 Sep. 2016.

⁶ Correspondence, ILO Phnom Penh, 14 Dec. 2016; Also see media reporting by Narim and Peter, 2016.

⁷ Interview, MOLVT, Phnom Penh, 14 Sep. 2016.

⁸ Circular No. 11 SRNN of the Royal Government of Cambodia on suspension of recruitment, training and sending female domestic workers to Malaysia, unofficial translation, on file with ILO.

⁹ Channel News Asia, 2011; Radio Free Asia, 2011; *The Cambodia Daily*, 2015; Human Rights Watch, 2011.

¹⁰ Ibid.

¹¹ Interview, Regional NGO, Bangkok, 25 July 2016; Interview, NGO, Phnom Penh, 15 Sep. 2016.

¹² Interview, MOLVT, Phnom Penh, 14 Sep. 2016.

Recruitment agencies in Cambodia reported that the ban meant that they could not be blamed for problems that happened to women in migration. One government official echoed this saying:

We are reluctant to recruit maids from anywhere because it is not easy to ensure the maids will be treated well. In a ban, it won't be us that are blamed. The Government can have someone to blame. You came illegally, it's your problem.¹³

This echoes what scholars have documented from the Indonesian–Malaysian corridor bans on domestic work as well, where bans result in “partially shifting the blame for abuse and violence onto migrants themselves. A consequence of this dominant discursive framework is that the possibility for successful and safe migration journeys is largely left to migrants’ sheer perseverance, courage, chance, and personality” (Chan, 2014, p. 6958). Bans are therefore a way to absolve oneself from responsibility, rather than working to make all industries safe enough so that no one risks losing face or being blamed, with stakeholders willing to share responsibility for safe migration of all migrant workers, including women.

7.2 Communication and immediate enforcement of restrictions

In Cambodia the Prime Minister issued a circular¹⁴ and announced the ban on television. Neither recruiters, nor women migrant workers or associations, were consulted beforehand in either Myanmar or Cambodia. MOLVT said the ban went into “effect immediately” as per the circular’s mandate, and recognizes that for one or two days after the ban, recruiters sent women who had already been through training.¹⁵ The Cambodian NGO LICADHO monitored outgoing flights at Phnom Penh airport, seeing women with domestic work recruitment agency uniforms leaving for Malaysia after the ban. Prominent recruitment agencies were among those that continued to send workers (Cambodian League for the Promotion and Defence of Human Rights, 2011).

In Cambodia, the Government is also aware that “recruitment agencies broadcast on radio in Cambodia advertising for women to come to Malaysia, and then they go by bus”.¹⁶ Malaysian domestic work recruitment agencies continue to have offices in Cambodia.¹⁷

7.3 Inter-country policy incoherence: Entry and work permits in Malaysia

Cambodia is one of the countries from which the Malaysian Ministry of Human Resources (MOHR) allows recruitment of domestic workers.¹⁸ Representatives from MOHR and the Ministry of Home Affairs note policy incoherence with Cambodia:

We don't have a ban on women coming in. We have no restriction.¹⁹

It is not a bilateral moratorium, but we have to respect the sending country. The ban will not stop people coming. There are still women coming, and we grant women work permits.²⁰

While they are not allowed to migrate from Cambodia legally, domestic workers to Malaysia have two options for regular immigration into Malaysia. In other words, they have two options for attaining legal documented status in Malaysia despite having left Cambodia without Cambodian Government labour migration documentation. The first is to migrate via a Cambodian recruitment agency that secures them Malaysian visas and work permits in partnership with a Malaysian recruitment agency. The second is that they enter Malaysia on a Social Pass, which they then convert to a Work Visa/Journey Perform Visa.²¹

¹³ Interview, Sep. 2016.

¹⁴ Circular No. 11 SRNN of the Royal Government of Cambodia on suspension of recruitment, training and sending female domestic workers to Malaysia.

¹⁵ Interview, MOLVT, Phnom Penh, 14 Sep. 2016.

¹⁶ Interview, Cambodian Government official, 21 Sep. 2016. Fact that recruitment agencies are still advertising confirmed by focus group discussion, returnee domestic workers, Kampong Cham, 13 Sep. 2016.

¹⁷ Interview, recruiter, Sep. 2016.

¹⁸ Interview, International Division, MOHR, Putrajaya, 22 Sep. 2016.

¹⁹ Interview, International Division, MOHR, Putrajaya, 22 Sep. 2016.

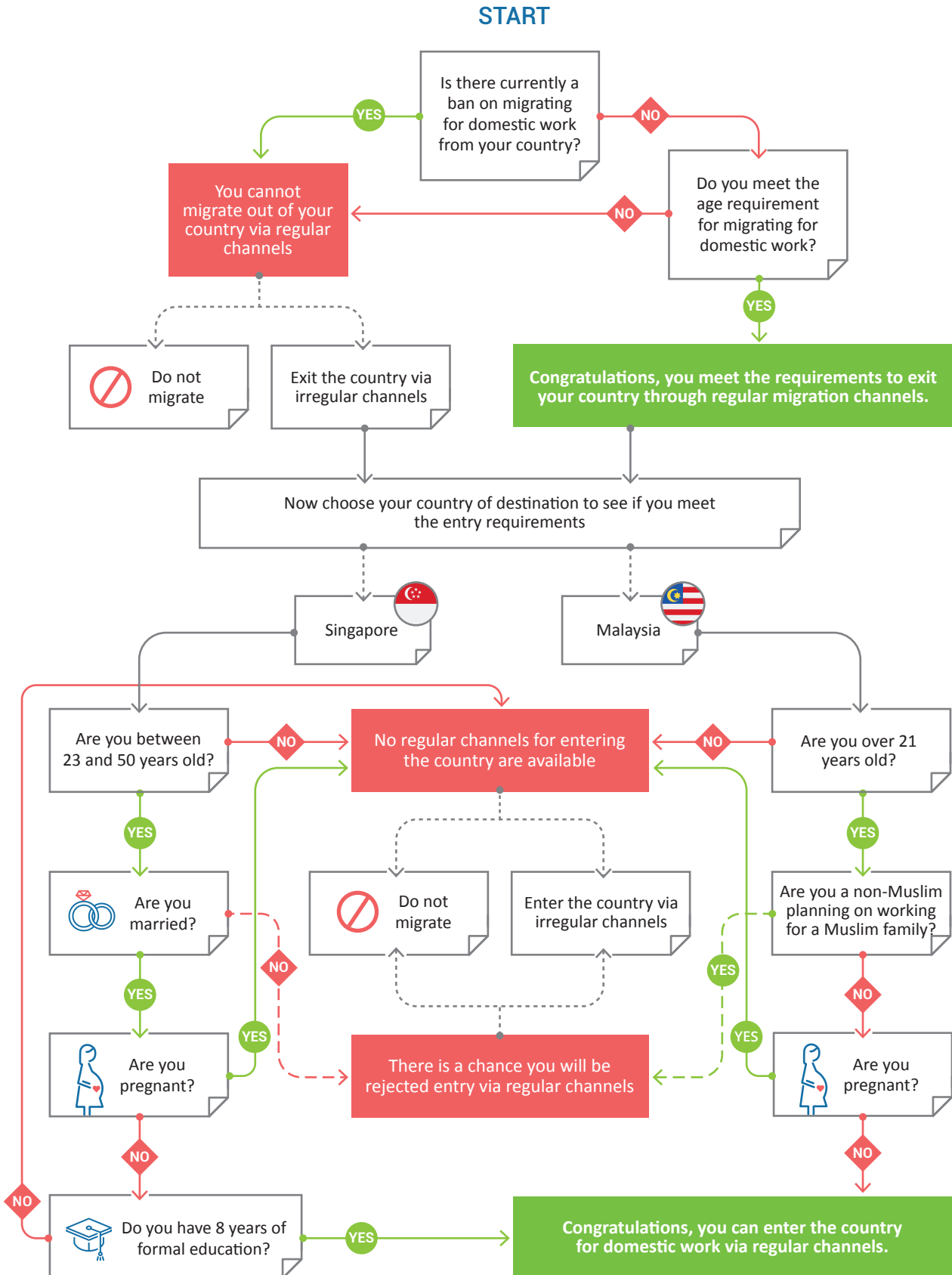
²⁰ Interview, Foreign Workers Division, Ministry of Home Affairs, 22 Sep. 2016.

²¹ Work visas are given on a case-by-case basis. Workers do not have to leave to convert the visa, but do need to have valid Social Passes upon application, i.e., have not overstayed their Social Passes. Interview, Foreign Workers Division, Ministry of Home Affairs, 22 Sep. 2016.

Figure 6: Exit and entry restrictions for intending migrant domestic workers



Follow the flowchart to see what exit and entry restrictions you would face when migrating to Singapore or Malaysia for domestic work



7.4 Malaysia-imposed restrictions on women's labour migration

Malaysia has several immigration measures that effectively restrict certain categories of women from migrating for work to Malaysia. Among other restrictions, as per table 3 in section 5.2, an age bar maintains that women migrant workers under 21 years old are not allowed entry.²² The list of countries of origin deemed suitable for domestic work in Malaysia is narrower than for other sectors.²³ There are also de facto gender-based restrictions in official recruitment processes (box 2 in section 5.2), and women migrant workers in Malaysia are restricted in terms of sexual and reproductive rights and rights to family life. Domestic workers have additional sector-specific restrictions (see figure 6 above and table 2 in section 5.2). New legislation has been proposed for domestic workers, entitled the Regulation (Terms and Conditions of Employment) on Domestic Servants 2014 (UN Women and ILO, 2016).

7.5 Inter-country policy incoherence: Age requirements

Women can apply to leave Cambodia for work when they are 18²⁴ – a policy mismatch with Malaysia's age minimum of 21 for women migrant workers.²⁵ While this policy mismatch is a significant issue, women who are under ages of both 18 and 21 are migrating and working in Malaysian domestic work.

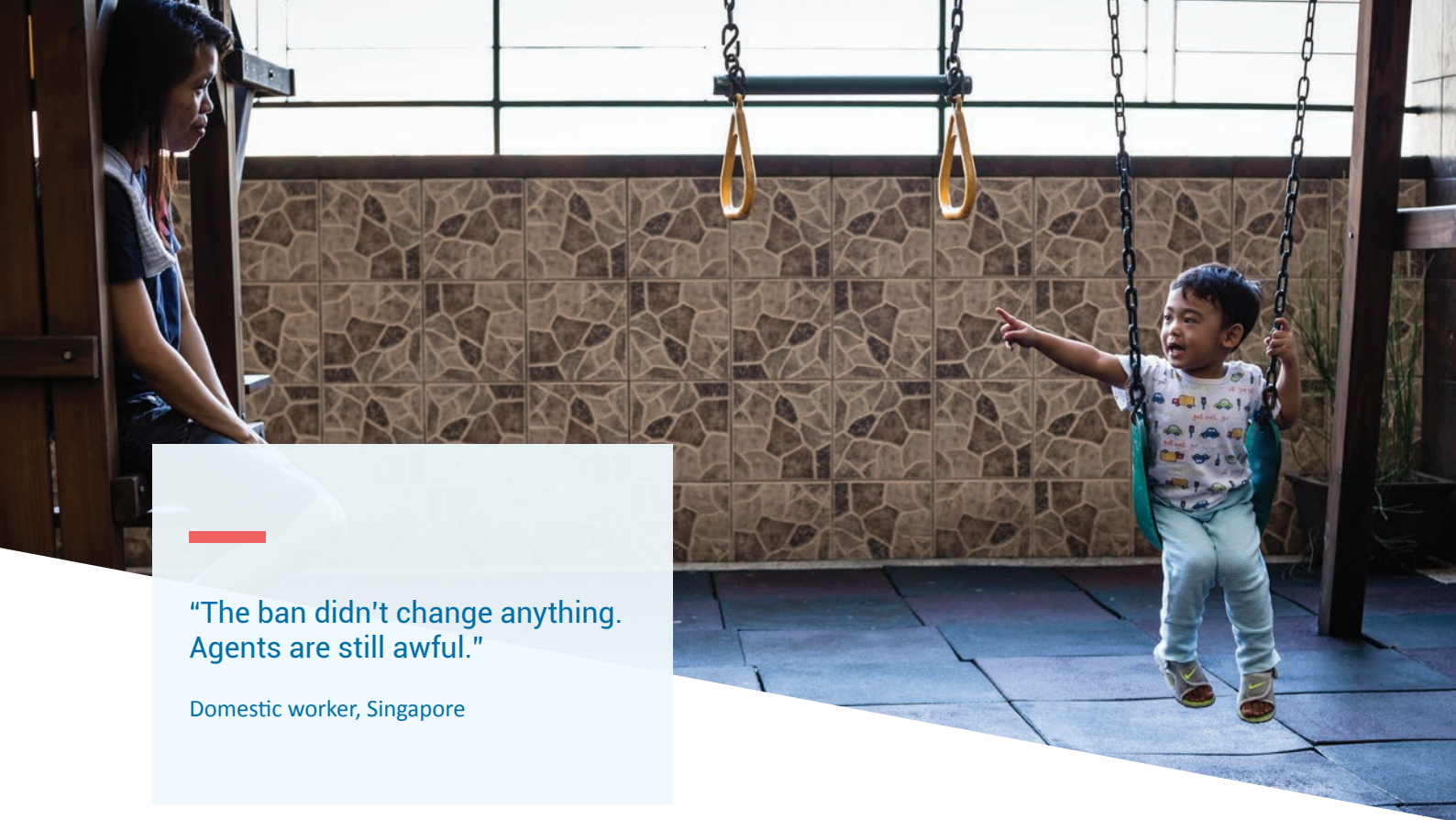
Though not representative, of the 14 Cambodian domestic workers interviewed for this study, seven were below 21 years old when they migrated. Four out of the 14 interviewees were below 18 years of age when they migrated. Not dissimilarly, a survey of 69 Cambodian domestic workers in Malaysia in 2015 found that 42 per cent were under 21 years old. Twenty-six per cent were under 18, a clear breach of Cambodia's law (Strickler and Sophea, 2015, p. 24). The International Organization for Migration (IOM) also reports girls aged 14 have sought help for abuses in domestic work (IOM, 2012, p. 10). See 8.3. *Regularity of migration* for discussion on compliance in practice.

²² Malaysia Foreign Employment Act.

²³ The Malaysian Government also sets parameters for countries from which migrant workers can be hired. Country of origin-specific hiring includes women-dominated sectors. There are eight permitted domestic work source countries. Cambodia is on the list. For the formal sector there are 15 approved source countries. Interview, International Division, Malaysian Ministry of Human Resources, 22 Sep. 2016. Explaining these choices, a Department of Immigration official noted that "Employers prefer those near their culture. Chinese want Vietnamese or Cambodians. Malaysians prefer Indonesians." Interview, 22 Sep. 2016. See Immigration Department of Malaysia, 2014.

²⁴ Article 4, Subdecree 190.

²⁵ Malaysian Foreign Employment Act.



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“The ban didn’t change anything.
Agents are still awful.”

Domestic worker, Singapore

8. Impacts of country of origin restrictions

The primary intended impact of the restrictions is to protect women by keeping them at home until the origin country government can put in place protective measures in the countries of destination. Thus this study looks at whether these country of origin intentions are being realized through the operation of these policies, and what other impacts the restrictions are having that policy-makers may not have anticipated, with effects on discrimination, freedoms, decent work, assistance, remedy, the labour market, and bilateral relations.

8.1 Effectiveness in reducing women's migration

While the bans have resulted in a demonstrable reduction in the number of women migrating for domestic work through regular channels, particularly from Cambodia to Malaysia, it is not possible to say if this constitutes a net reduction in numbers, as there is no conclusive data on the use of irregular channels. Anecdotal evidence indicates, however, that there has not been a reduction in migration.

The Myanmar Government and an NGO estimate that about 40,000 Myanmar domestic workers are in Singapore (Zaw, 2016; Wa, 2015). The Singapore Ministry of Manpower does not share data disaggregated by nationality, but reports 237,100 domestic workers in the country as of June 2016 (MOM, 2016c). The Singapore Government did not disaggregate this data before the 2014 ban either, thus comparison is not possible. Similarly, the Myanmar Government only ever officially documented women travelling to Singapore for domestic work in 2014 – with a count of 130 women domestic workers moving to Singapore that year. Myanmar opened itself to women’s emigration in 2009, but prior to 2014 the Myanmar Government did not disaggregate by sector, instead grouping sent workers in a “general worker” category.

Rather than a decrease in domestic workers from Myanmar entering Singapore, as might be expected after the ban, NGOs report increases of possibly 50 per cent over 2014–2015 (HOME and MWRN, 2015). As will be shown in section 8.2 on labour markets, this upward trend is partly due to the Philippines and Indonesia negotiating better pay and other terms for their nationals working in Singapore, and recruiters therefore shifting to Myanmar as a source of

cheaper workers, with fewer country of origin government demands. Unlike in Malaysia, very few migrant workers are undocumented in Singapore, as immigration enforcement is stringent on the small island state.

In 1995 a study on enforcement of restrictions on women migrants by the ILO Regional Adviser on Migrant Workers noted variation in effectiveness of bans as follows: “There is considerable variation on how they [bans] are administered. The enforcement of regulations depends on whether they are compatible with the prevailing socio-cultural milieu, with labour market realities and with the political system in place... Laws and regulations that run counter to economic realities are bound to be unenforceable unless existing socio-cultural norms and values reinforce them” (Abella, 1995, pp. 246, 252). This is not to say that more “enforcement” is needed, as that would continue to present a problem of State contravention of women’s rights in international law (see section 4. International instruments), but rather that “effectiveness” of bans is highly dependent on a variety of local and national socio-cultural, economic, and political factors.

In 2010 the Cambodian Government reported that 11,918 women were migrating to Malaysia for domestic work.¹ The ban resulted in a drop of Cambodia’s official numbers to 3,510 migrating to Malaysia for domestic work in total in 2011.² The ban came into effect on 15 October of that year. By 2012 there were only 70 women migrating regularly from Cambodia to all work sectors in Malaysia (MOLVT and ILO, 2014, p. 9), reflecting how dependent Cambodian migrant women in Malaysia were on the domestic work sector. Officially according to the MOLVT there has been no migration to Malaysia for domestic work since the 2011 ban, but the Malaysian Government reports a figure of 3,143 domestic workers from Cambodia registered in the country as of 31 August 2016.³ It is not known how many, if any, of these domestic workers travelled to Malaysia before the 2011 ban, but it is possible that some did. NGOs estimate over 10,000 Cambodian women were working in the sector as of 2015 (Strickler and Sophea, 2015, p. 1).

In 2010, prior to the ban, women accounted for 64.8 per cent of all Cambodian migrant workers (regardless of sector or destination) registered by the Cambodian Government as leaving the country through official channels. By 2015, after the ban, that proportion had reduced to 38.8 per cent.⁴ Domestic workers in interviews suggest that, subjectively, they observe fewer Cambodians in Malaysia than before 2011.⁵ If either of the figures of 3,143 or 10,000 Cambodian women in the Malaysian domestic work sector (as referenced above) are correct, this is a decrease from the 11,918 that the Cambodian Government registered in 2010, a figure which excluded undocumented workers. For a summary of these figures and data sources see table 4.

Table 4: Data before and after the 2011 Cambodian ban on migration to Malaysia for domestic work

Data source	Cambodian domestic workers in Malaysia	
	Before 15 October 2011 ban	After 15 October 2011 ban
Cambodia Government data ⁶	11,918 registered with Cambodian Government (2010) 3,510 registered with Cambodian Government (2011 – year of ban)	0 registered with the Cambodian Government (2012–16)
Malaysia Government data ⁷	Data not shared/available-	3,143 registered with the Malaysian Government (2016)
NGO estimate ⁸	No estimate available-	10,000 estimated registered and unregistered in Malaysia (2015)

¹ MOLVT data, as of 21 Dec. 2015.

² MOLVT data, as of 21 Dec. 2015.

³ Interview, MOHR, Labour Policy Division, 22 Sep. 2016. See section 7.3. *Inter-country policy incoherence: Entry and work permits in Malaysia* for description of access to documentation in Malaysia.

⁴ ILO, 2016d.

⁵ Focus group discussion, returnee domestic workers, Kampong Cham, 13 Sep. 2016.

⁶ MOLVT data, as of 21 Dec. 2015.

⁷ Interview, Ministry of Human Resources, Labour Policy Division, 22 Sept 2016. It is not known how many, if any, of these domestic workers travelled to Malaysia before the 2011 ban. See 7.3. *Inter-country policy incoherence: Entry and work permits in Malaysia* for description of access to documentation in Malaysia.

⁸ Strickler and Sophea, 2015, p. 1.

Studies on migration bans affecting women from Bangladesh, India, Indonesia, Nepal, and Sri Lanka confirm that to greater or lesser extents women from countries of origin migrate despite bans on their movement (see Appendix II). A 2015 survey found that bans did not prevent women in Nepal from migrating (ILO and GAATW, 2015). In a one-year exit survey at Jakarta’s main airport, an NGO found 1,020 women were migrating for domestic work for the first time, despite a ban (Yi, 2016). In Bangladesh, India, and Sri Lanka despite women’s migration bans in 1976,⁹ 1961, and 2000, respectively, women continued to work abroad (Oishi, 2005, pp. 71, 663; Lim and Oishi, 1996, p. 15). See box 4 for more on domestic worker perspectives on the effectiveness of bans.

Box 4

Migrant and returnee domestic workers on whether bans are effective deterrents

Public messaging about the restrictions, and associated stigma, have deterred some potential migrants from starting migration processes, and immigration checks, as well as non-permission from the Myanmar and Cambodian ministries of labour, have stopped others. From interviews with both Myanmar and Cambodian migrant women and returnees as well as other key informants, it is clear that the bans have both deterred some women and not deterred others. The bans’ effectiveness on deterrence is therefore mixed. Women and other stakeholders reported as follows in interviews:

Myanmar women have a lot of connections in Singapore. Even if there is no agency, they get a job, even if the government bans domestic work.¹

If there was a ban, I would be afraid to go without documents. I might not go.²

Before I came, I didn’t know about the ban. I also didn’t know there were so many women from Myanmar here. I wouldn’t have come if I’d known about the ban.³

There were some women in the training centre who decided to return home when they heard of the ban.⁴

If there are better conditions, we want to go again. Many would like to go.⁵

I’ve been working in a garment factory since I came back. I plan to go again when there is authorization to go there [Malaysia]. It is better to let people go, because many people want to go. Because of the ban, some people are going instead to [the Republic of] Korea and Thailand... I have an elder sister, who is going next month to Malaysia with documents already done.⁶

Sources:

¹ Interview, MOEAF, Yangon, 17 Aug. 2016.

² Interview, returnee domestic worker, Yangon, 17 Aug. 2016.

³ Interview, Myanmar domestic worker, Singapore, 20 Sep. 2016.

⁴ Interview, Cambodian returnee domestic worker, Kampong Cham, 13 Sep. 2016.

⁵ Focus group discussion, Cambodian returnee domestic workers, Kampong Cham, 13 Sep. 2016.

⁶ Interview, Cambodian returnee domestic worker, Kampong Cham, 13 Sep. 2016.

8.2 Labour market shifts: Race to the bottom?

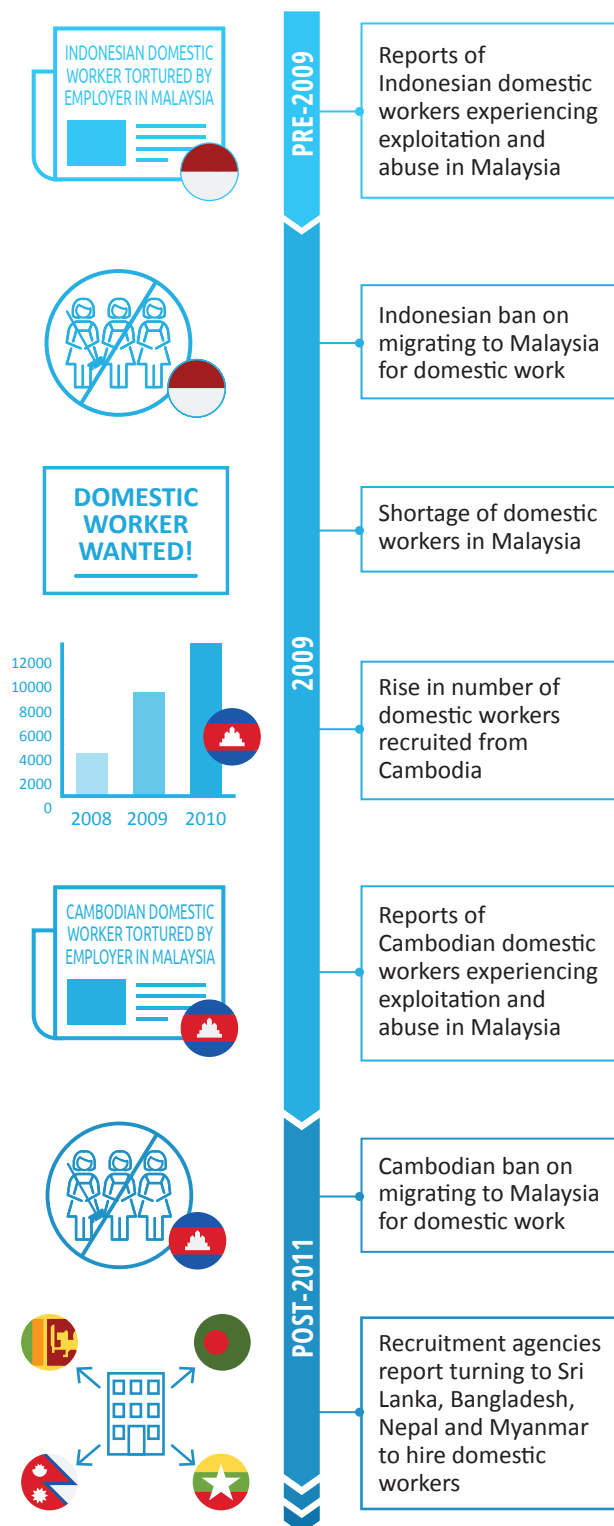
In Singapore one in five households hires a domestic worker (Hui and Tai, 2015), and it is estimated that the demand for domestic workers in Singapore – as well as in Malaysia¹⁰ – is estimated to rise in coming years as workforces age and national women workers, who have conducted unpaid domestic work in their homes, continue to enter the labour force (ibid.; Tan and Gibson, 2013). As the Philippines and Indonesia have demanded wage rises for emigrant domestic workers, Singapore began looking for new places to recruit in recent years, and Myanmar became a target market for workers willing to accept lower wages (Fai, 2015; *The Straits Times*, 2013).

Thus shifts in recruitment to other countries in the region take place after one country of origin insists on higher wages for their nationals abroad (see figure 7). Similarly, one country’s ban on women’s migration also can shift regional recruitment and the ASEAN labour market in a race to the bottom.

⁹ Or 1981, stakeholders disagree on date, see Oishi, 2005, p. 77, fn. 66.

¹⁰ There have been Government efforts to encourage low-income Malaysians to enter domestic work as a means of reducing dependency on migrants and increasing the number of women entering the workforce. MOHR began implementing a pilot project in 2016 named “Housekeeper”, which targets 10,000 welfare recipients for full or part-time employment (ILO, 2016e).

Figure 7: How migration bans have shifted domestic worker recruitment in Malaysia



The 2011 Cambodia ban could be argued to partly stem from labour market shifts after the 2009 Indonesia ban on domestic workers to Malaysia.¹¹ After the 2009 Indonesia ban, over 35,000 Malaysians were on waiting lists for a migrant domestic worker, and Malaysian recruiters targeted Cambodia for recruitment efforts (Gooch, 2011). Recruiters reported seven-month waiting times for hiring and said that domestic worker arrivals (from all origin countries) fell from 1,000 per month to 200 by January 2011 (AsiaOneNews, 2011). The number of documented Cambodian domestic workers migrating to Malaysia rose significantly after the 2009 Indonesian ban – with 3,360 workers in 2008; 8,114 in 2009; and 11,918 in 2010.¹² Subsequently, the numbers of women coming back with experiences of abuse rose in turn, leading to the Cambodian Government’s reaction of a ban on their migration, with dampening effects on women’s migration as per the section above. Malaysian recruiters needed to turn elsewhere after the 2011 Cambodian ban, and in interviews recruiters repeated that they have turned their efforts to Bangladesh, Myanmar, Nepal, and Sri Lanka.¹³ Country of origin governments also report looking for or “shopping” for better places to send workers.

Yet in ASEAN, as elsewhere globally, there is tension between labour market demands and populist politics in countries of destination. In 2015, Singapore’s Ministry of Manpower (MOM) announced that it planned to cut back the foreign workforce in Singapore so that migrants would not make up more than one third of the workforce (Ying, 2015). Malaysia sets similar targets: the Malaysia Plan (2016–2020) includes a target cap on the employment of migrants (maximum 1.5 million workers) and envisages a limit on the employment of low-skilled migrant workers pegged at 15 per cent of the total workforce by 2020 (ILO, 2016f). In addition to populist politics pushing these targets, they are also justified with economic arguments that a reliance on low paid workers is a disincentive for employers to invest in technology and raise productivity. Malaysia’s 2016 freeze on recruitment of all migrant workers – except domestic workers¹⁴ – also meant that Cambodian recruiters could not send domestic workers under other visa job categories. Adding extra labour market pressure, some sending countries, like the Philippines and Indonesia, want to cut down on nationals entering domestic work in Singapore and Malaysia; increase their wages and conditions; and reduce fees that can be charged to migrant workers (*The Straits Times*, 2015; and AsiaOneNews, 2014). Recruiters report that in

¹¹ There were, however, abuses in Cambodia that contributed to the restriction rationale, such as restriction of movement in training centres. See Rationale in section 7.1.

¹² MOLVT data, as of 21 Dec. 2015.

¹³ Interview, PIKAP, Kuala Lumpur, 21 Sep. 2016; ILO, 2016, p. 15.

¹⁴ Domestic workers were excepted due to Malaysia’s recognition of shortages in the sector and high demand.

response to that last aim of reducing fees paid by migrant workers, they will instead increase fees that employers pay (*The Straits Times*, 2015). The Association of Employment Agencies (Singapore) AEAS stated that Singapore “may no longer be an employers’ market” (Fai, 2015), but instead market power is shifting to workers who can command better conditions in a time of high worker demand. As one Malaysian recruiter explains below, Malaysia is similarly no longer a recruiters’ market (recruiters, in this case, are often classified in economic terms as a type of “employer”):

Indonesia imposed their moratorium in 2009, so we jumped to Cambodia, Sri Lanka, and the Philippines. In 2010 Cambodians earned MYR600–700 [US\$135–157] [per] month and were easy and accessible. Sri Lankans’ English was poor, so they were the last resort, and Filipinas charged US\$400, and not many employers could afford that. We were desperate to bring in women. Malaysia is domestic workers’ last choice though. Workers with better English go to Singapore, Hong Kong [China], Taiwan [China], even Japan and [the Republic of] Korea for a better salary. We are unable to meet the employer demand for workers – unless the Malaysian standard of living goes up and people can pay more for maids.¹⁵

It must be noted here that recruiter fees are not insignificant, and Malaysian employers could afford to pay more if this was not the case, or if direct recruitment was a viable and legal form of job matching. In interviews, migrant domestic workers regularly noted that they thought current recruitment fee levels were extortionate. Notwithstanding, during bans and oft-related labour market contractions, recruiters report losses, and many were forced to close. Among the 28 members of the Association of Cambodian Recruitment Agencies (ACRA), it is reported that only ten are still actively operating as of the end 2016, for ban-related reasons, among other explanations.¹⁶ At the time of the 2011 Cambodian ban, Malaysian recruiters also report losses:

I started investing in Cambodian recruitment over ten years ago. At the time of the ban I had booked 100 girls [sic] to come. For each girl [sic] I paid US\$1,000. So I paid US\$100,000, and none came. Police went to the training centres and sent women home. So our money was burnt. The Cambodian Government didn’t care about the investment.¹⁷

8.3 Regularity and safety of migration: “You are coming illegally. We are protecting you. You have to do what we say.”¹⁸

If regular migration is closed for too long [under a ban], it is not good. It makes people go illegally, without documents, or with illegal ones. And if they have problems in the destination country, they go to jail. If the illegal [sic] worker dies, who takes care? There’s no insurance.¹⁹

Stakeholders in both Myanmar and Cambodia report that smaller recruitment agencies or individual recruiters have replaced larger registered agencies after the bans, making it harder for authorities to follow the migration of domestic workers, and giving agents more power over women migrant workers that they can use with impunity, given lack of government oversight. NGO HOME’s Director has said that Myanmar women’s migration to Singapore through illegal recruiters has increased as “[legitimate] Myanmar agencies are not interested in sending domestic workers abroad because it’s such a sensitive issue” (Stuart, 2015). Noting the power that these agents have, a Myanmar migrant domestic worker is reported saying: “We get into difficulty because of the agents, but we can’t do anything about it because we don’t have legal passports or work permits. We have to do what the agency says” (Arnold, 2016). Cambodian NGO ADHOC notes that “illegal agents” are the prime beneficiaries under the bans (*The Cambodia Daily*, 2015).

From Myanmar there are several ways to circumvent the ban (see figure 8 for ways in which women in the region migrate despite bans, and the associated risks of doing so). Recruiters acquire fake Singaporean social or work visas. Migrant women or Myanmar recruiters apply online for the social visas to show at the airport in Myanmar, allowing them to exit and board a Singapore-bound plane. “Then they throw the social visas away on the plane, and in

¹⁵ Focus group discussion, Recruiters, Kuala Lumpur, Sep. 2016.

¹⁶ Correspondence, ACRA, 14 Dec. 2016. Malaysia’s 2016 freeze on recruitment of all migrant workers, in addition to Cambodia’s 2011 ban on migration of domestic workers to Malaysia, meant that recruitment agencies with a license only to send workers to Malaysia could not operate. Members of ACRA in this situation reportedly maintain small “stand-by” operations to handle communication with workers in Malaysia. Ibid. Further, some agencies that send workers to Thailand have lost business as Thailand set up one-stop migration centres to facilitate registration and documentation, cutting out the need for some services that agents previously provided. Correspondence, ILO TRIANGLE II, Bangkok, 23 Jan. 2017.

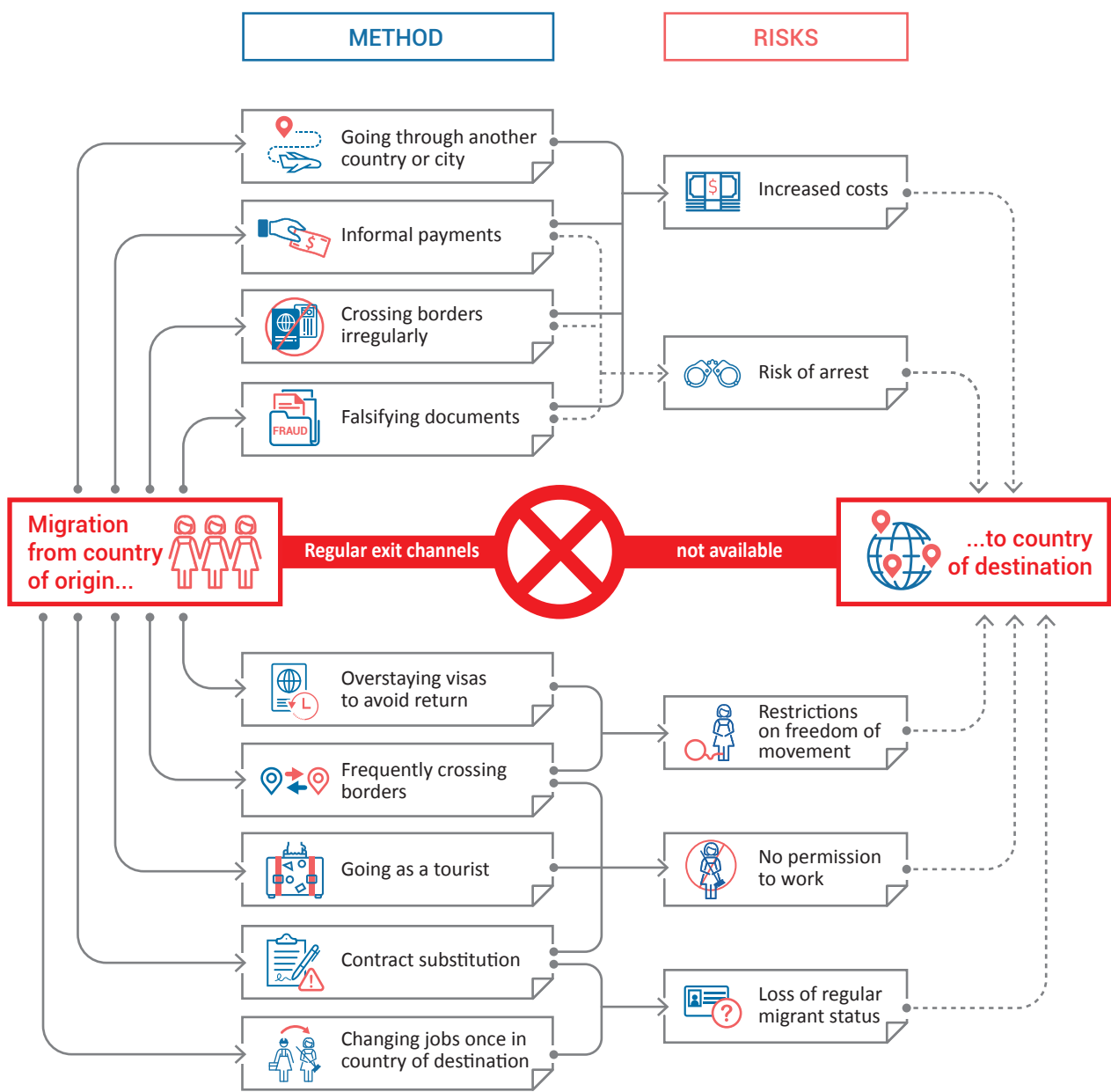
¹⁷ Interview, Recruiter, Kuala Lumpur, Sep. 2016.

¹⁸ Interview recalling ban-based threats from a Singaporean recruitment agent, Returnee domestic workers, Yangon, 18 Aug. 2016.

¹⁹ Interview, ACRA, Phnom Penh, 15 Sep. 2016.

Singapore they show the Singaporean IPA”, which a Singaporean recruiter has applied for and sent them.²⁰ Myanmar interviewees said recruiters told them to dress like tourists, with “sexy clothes”, make-up, and only a very small amount of luggage. The Embassy of Malaysia to Cambodia also said that many Cambodian domestic workers leave as tourists. Cambodians are allowed to stay in Malaysia for one month without a visa. Those who work in the north of Malaysia near the Thai border can simply leave for a day and come back, renewing their visa for one more month. Some people simply overstay visas, though this restrains their freedom of movement as they fear arrest.²¹

Figure 8: Ways women migrate despite bans and associated risks.



Some women report taking indirect routes to avoid detection. Women from Myanmar report having flown to Mandalay and then to Bangkok before Singapore, averting Yangon’s checks and expressing confidence they or recruiters could

²⁰ Interview, Singapore government, Aug. 2016

²¹ Interview, Embassy of Malaysia to Cambodia, Phnom Penh, 15 Sept 2016.

bribe officials via this route.²² Domestic workers from Cambodia reported going overland through Thailand to Malaysia, sometimes making informal payments to officials on the journey. Some Cambodian women are recruited to a job in construction in Thailand, and after one to two months are recruited to domestic work in Malaysia.²³ Similarly some are recruited to an agriculture sector job in Malaysia. If the conditions are too hard and they ask their agent for help, agencies frequently offer to switch them to domestic work, as there is high demand for domestic workers.

Another way recruitment agencies facilitate circumvention of the ban is by applying for Singaporean and Malaysian visas in non-domestic work sectors, such as factory, agriculture, or cleaning services,²⁴ so that women migrant workers can exit their countries legally. However, once in the destination country, the recruitment agencies place the migrants in domestic work – clear cases of contract substitution. Sometimes women know they will be going into domestic work, and sometimes recruiters deceive them:

I was recruited for a carer job, but during the training in Yangon, I began to notice that the training was for domestic work, not a carer position. But I'd already paid money to the agent, so I decided to go to Singapore anyway. At the Yangon airport there was a problem because the agency had used fake IDs to change our age. Immigration did not allow the 15-year-olds in our group to go. The agency discussed this with Immigration, bribed, and then Immigration let us all go through.²⁵

One group of Myanmar recruiters says they have to lie to the girls [sic], and say they will be working as a hairdresser or in a shop. Other recruiters say they can't do pre-departure training because training and deployment of domestic workers is illegal in Myanmar. So women will come here to Singapore, and [many] will change employers one time at least [because they are not in the job they signed up for and have not received any skills or language training]. They won't be successful, and there is a cost to the women for doing that: She'll be charged one month's salary. The ban equals misleading women and no training.²⁶

Recruiters, domestic workers, government, and civil society interviewees all report that under the bans, women migrate for domestic work primarily under recruitment agencies that are unauthorized in countries of origin. One Myanmar domestic worker reported that the Myanmar agency she was contracted with was only licensed to send men workers to Malaysia, but the wife of the head of the agency sends domestic workers (including her) to Singapore.²⁷ A Cambodian domestic worker said: "The agency is legal, but they illegally deploy domestic workers."²⁸ Other legitimate recruitment agencies let unregistered agents recruit in their companies' name and under their companies' licenses.²⁹ Corresponding recruitment agencies in countries of destination plead ignorance, saying "We don't know if the Myanmar recruiters [who send us workers] are registered",³⁰ and as there is a shortage of workers, no recruiters reported making efforts to find out. The same is true for destination country recruiters vetting/choosing partner agencies in countries of origin, which has serious implications for the quality and means of recruitment in origin:

[Interviewer: How do you choose origin country agencies to work with?] We are desperate, so we'll go for any agent who promises us workers.³¹

Women and recruitment agencies reported in interviews that they regularly pay bribes for women to leave both Myanmar and Cambodia, though a few did report getting through departure areas at airports without paying a bribe if they said they were going for tourism or to see family. Major Myanmar national airlines are reported to take bribes, and workers usually travel with regional, low-cost carriers.³² Some workers who were going for a second time and had work permits from Singapore or Malaysia, reported being let out of Myanmar without problem, however there are also reports that such workers are stopped and prevented from leaving. The Singapore Embassy in Yangon receives calls from Singaporean employers asking for officials to intervene at the airport so that their domestic work employee can board the plane and resume her work position. One Myanmar interviewee reported: "With the ban, women are paying bribes to get through the airport. They pay at three points in the airport, paying between 100,000 to 200,000 kyat (MMK) (US\$76–152³³)."³⁴

²² The airline that flew the route from Mandalay to Bangkok has now stopped operating. Focus group discussion, Returnee domestic workers, Yangon, 18 Sept 2016.

²³ Interview, Returnee domestic worker, Kampong Cham, 13 Sept 2016.

²⁴ "Cleaning services" refers to a live-out job, working for a cleaning agency that sends cleaners to different houses or offices each day.

²⁵ Interview, Returnee domestic worker, Yangon, 18 Aug 2016.

²⁶ Focus group discussion, Recruiters, Singapore, Sep. 2016.

²⁷ Interview, Returnee domestic worker, Yangon, 18 Aug. 2016.

²⁸ Interview, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

²⁹ Focus group discussion, Recruiters, Phnom Penh, Sep. 2016.

³⁰ Focus group discussion, Recruiters, Singapore, 19 Sep. 2016.

³¹ Focus group discussion, Recruiters, Kuala Lumpur, Sep. 2016.

³² Interview, Singapore, 18 Sep. 2016.

³³ At the time of the study, the exchange rate was MMK1 = US\$0.00076

³⁴ Interview, Singapore, 18 Sep. 2016.

Some women report that agents took care of these payments entirely, and they did not pass money to any officials directly, or even know which officials were paid. Others said they paid directly:

The agent had said there is a ban so if you want to go, you have to pay the MMK250,000 (US\$190) bribe. I paid the MMK250,000 at [location G].

If women do not pay directly, as in the quote above, then costs are often passed on to women workers in terms of recruiters' fees, making migration more expensive.

This study also found evidence that the ban had shifted the demographic of women migrating for domestic work. NGOs in all project countries, as well as a recent media documentary, reported that more young women were migrating, an increased trend on the underage migration that had been taking place for many years already.³⁵ The ban has potentially enhanced and entrenched systems of production of fake documents in countries of origin. Once these systems are in place, very widespread, not scrutinized, and sometimes supported by individual government officials, it is easy for recruiters to recruit women under the minimum ages required by both country of origin and destination.

I was 16 and told to say I was 22 if the employer asked. The age on my document said 22, and used another name. The recruiter confiscated that passport.³⁶

Further, recruitment in Myanmar for domestic work has recently been concentrated in ethnic minority areas. Domestic workers and a Myanmar migrant NGO in Singapore report increased recruitment of Chin, Kachin, and Rakhine women, ethnic groups among whom education has historically been less available, job opportunities are particularly scarce, and for some there continues to be conflict in their home communities. There also is a reported emerging shift to gender-based recruitment of men, with Myanmar men being trained to be sent to Japan as "carers" and "nurse aides".³⁷ During and after their migration, follow up research should be done to find out if these men are actually engaged in domestic work or indeed in institutional situations as carers and nurse aides in Japan. Men may be receiving gender-based access to a highly-paid job market to which women are currently not able to access.

8.4 Working conditions: "They told me that even if I was killed no one would know"³⁸

Mixed impacts were reported as results from the Myanmar and Cambodia bans on migration for domestic work. On the positive side two interviewees (one in each migration corridor studied) reported that the bans caused some employers to appreciate and value workers. This could be because employers see that a State entity takes domestic workers seriously and they should follow suit, and/or because bans have at least been partially effective in restricting migration and demand is high, making it hard to get another domestic worker if one leaves.

The ban improves the employers' mind not to torture.³⁹

The ban is good because employers look down on us otherwise.⁴⁰

While a policy restriction may cause a few employers to improve working conditions of domestic workers, this cannot – and should not – replace extension of effective labour and social protections to domestic workers, or be relied on as a policy tool, as improved working conditions are not a consistent outcome. Some women reported that they saw no difference in working conditions over time, or did not think the ban affected their work in destination:

The [2014 Myanmar] ban didn't change anything. Agents are still awful.⁴¹

Other employers, as well as recruiters, were reported to have an opposite reaction – one of heightened control of domestic workers. Because it is harder to recruit under the ban and because there is high demand, interviewed women reported that recruiters are not allowing them to return home upon complaints of exploitation. As a further result of the ban, employers are also reportedly increasingly forcing workers to sign contract extensions in Malaysia

³⁵ See also Asia Foundation, 2011, pp. 18-20; *Al Jazeera*, 2016. See also 6.5. *Inter-country policy incoherence: Myanmar age for labour migration*.

³⁶ Interview, Returnee domestic workers, Kampong Cham, 13 Sept 2016.

³⁷ ILO correspondence with MOEAF, Yangon, 18 Nov. 2016.

³⁸ Focus group discussion, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

³⁹ Focus group discussion, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

⁴⁰ Focus group, domestic worker, Singapore, 18 Sep. 2016.

⁴¹ Focus group, domestic worker, Singapore, 18 Sep. 2016.

under threat of not receiving their salary.⁴² The threat has significant repercussions for workers, as the lump sum of two years of wages is often paid at the end of a contract for Cambodian domestic workers in Malaysia. Of women in the Strickler and Sophea 2015 survey, 77 per cent were paid lump sum cash at the end of their two-year contracts, rather than paid monthly. Malaysian employers interviewed by the ILO in 2014 also report that they retain domestic workers' wages (37 per cent of those surveyed) – for safekeeping or to prevent absconding.⁴³ This percentage of employer-reported wage withholding is less than rates reported by Cambodian domestic workers in the Strickler and Sophea study, but it still shows that the practice is far from uncommon.

In Singapore, interviewees and media report increased surveillance of domestic workers. The ban period coincides with wider availability of affordable CCTV systems, thus it is not possible to confirm causality of surveillance increasing specifically with any migration ban. Nonetheless, CCTV is an extra tool that employers can use to keep workers under watch. Among domestic workers interviewed, some said that employers stream CCTV recording to their computers at work, so they can keep track of the domestic worker all day long, and in one case find out the workers' mobile phone password. Singapore media reports that some employers put CCTV in the bathrooms or bedrooms of domestic workers (Hui and Tai, 2015; Au-Yong, 2016) violating privacy minimums for workers' accommodation.

A few interviewees were clear in saying that recruiters and employers justify heightened abuses because they know that there is less oversight of their actions under the ban:

Within three months of going to Malaysia [during the ban], I was tortured and wanted to come back to Cambodia. But I was sent to an agency office in Malaysia, and they told me that even if I was killed no one would know.⁴⁴

During the last five years under the ban, our own people [Cambodians] suffer because the employer doesn't pay [women's full salaries]. The Malaysian employer says: 'I don't care. Your government closed this option for you already.' Then the employer doesn't give enough salary because they know that no one will chase for the salary.⁴⁵

The impact of the origin country bans is heightened and compounded with restrictions applied by countries of destination, including those restricting pregnancy. Employers and recruiters say that women are not let out the employers' house because "no one will be responsible if women are pregnant"; that "a woman is not able to protect herself from pregnancy"; and that "if she doesn't do hanky panky, we protect her family at home [from her having an affair]".⁴⁶ One recruiter in interview assumed that pregnancy restrictions were a universal, global norm for migrant workers.⁴⁷

Importantly, due to policy incoherence between countries of origin and destination, nearly all migrant domestic workers in Singapore (all 26 women interviewed for this study) and some in Malaysia (only three of 14 interviewed) end up working and living legally with documentation in countries of destination. The policy incoherence, which enables women to have regular status and work permission in countries of destination, has the result of protecting some of the women migrant workers' rights. Women interviewed in Singapore particularly reported being able to turn to the Singapore Ministry of Manpower for help.

Due to scope restrictions, impacts from destination country restrictions can only be noted briefly here, and include:

- Gender-based destination country restrictions curtail women's rights and put women at great risk of abuse as well as adverse effects to their sexual and reproductive health.
- Bans on pregnancy can lead to unregulated and unsafe abortions.⁴⁸
- Interviewees reported that high age bars (which apply only to women) resulted in them or recruiters falsifying documents.
- Restrictions on the entertainment and sex work sector and incomplete coverage of domestic work in labour laws mean that migrant women in entertainment, sex work and domestic work are subject to labour exploitation with impunity.⁴⁹

⁴² Interview, Returnee domestic worker, Kampong Cham, 13 Sep. 2016; Tunon and Rim, 2013, p. 3; CLEC, et al., 2014, pp. 3 and 5.

⁴³ These were employers of domestic workers of many nationalities, not just Cambodians. ILO, 2014, p. 52.

⁴⁴ Focus group discussion, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

⁴⁵ Interview, ACRA, Phnom Penh, 15 Sep. 2016.

⁴⁶ Interview, Recruiter, Kuala Lumpur, Sep. 2016; Interview, Employer, Kuala Lumpur, June 2016.

⁴⁷ Interview, Recruiter, Kuala Lumpur, Sep. 2016.

⁴⁸ See relatedly, Napier-Moore and Sheill, 2016, for discussion of abortion in another destination country.

⁴⁹ For sex work, see Project X, 2015; for domestic work, see ILO and UN Women, 2016.

- Gender-specific recruitment and labour law leads to discrimination and maintenance of regressive gender norms and inequalities.⁵⁰

Domestic workers emphasized in interviews that they needed much more language training to facilitate communication with employers. The Singapore Government and many Singaporean NGOs provide skills training on domestic workers' day off. The rationale is not just one of upskilling a labour force, or the promotion of cheaper home (versus hospital) care,⁵¹ but also one of social control: "On their off day, domestic workers can mix with the wrong crowd and things can happen thereafter, so better that they spend time productively."⁵² Courses are also available in Myanmar from private schools,⁵³ and the Myanmar Ministry of Social Welfare, Relief, and Resettlement has reported that, while the Ministry has an aim to upgrade skill levels, they are cognizant that there will always be people who want to migrate into domestic work.⁵⁴ Courses available in both Singapore and Myanmar include nurse aide and caregiver qualifications. Domestic workers reported taking these opportunities in hopes of securing elder care work that some consider less onerous, or work in a hospital or other health-care institution. Interviews for this study found that some domestic workers did not find the courses attractive because they would have to pay fees, buy equipment and uniforms, and spend sparse rest time on the courses. One woman reported that at the end of training to become a caregiver, she would have to accept a lower salary for the first two years of work than she currently receives as a domestic worker.⁵⁵ However, another worker and an NGO reported that salaries were higher for nurse aides and caregivers.⁵⁶ Varying salaries in these sectors appear to present some women with better pay if they upskill, and others with less pay initially upon moving sector.

8.5 Assistance and information: "When you come, try to hide your phone, but if they take it, remember the embassy address..."⁵⁷

This section discusses what assistance has been available to domestic workers already in destination and those who have moved through regular – or irregular – channels after the bans.

8.5.1 Pre-departure

While some women in Myanmar and Cambodian training centres did migrate in the period immediately after the ban, many others were immediately sent home, which proved problematic as recruitment companies and potential migrant workers did not have time to prepare for the change in policy. It is also not clear which parties bore financial losses – recruitment agencies in countries of destination or origin, or workers:

Recruiters tried to negotiate with MOLVT but could not. The police came to check in recruitment and training centres and told us to send the domestic workers out. I had 100 workers. I had to pay their transport fee home. They already had visas. I had 32 workers with air tickets.⁵⁸

Police went to the training centres and sent women home.⁵⁹

There have been long-term implications of the bans restricting training of domestic workers. The women who currently migrate irregularly despite the ban, do so without training and/or must reside clandestinely in training/holding centres, the locations of which recruiters move frequently:

When the trainings are done by the Myanmar agency, we cannot stay in one place for long. They have to keep moving the domestic workers from one place to another, because the police will come because it is illegal, so it is not safe and women cannot really get proper training.⁶⁰

⁵⁰ See "Gender Norms" in Napier-Moore and Sheill, 2016.

⁵¹ An NGO reported that the Singapore government is promoting home based care because of its comparatively lower cost than hospital care. Interview, NGO, Singapore, 18 Sept 2016.

⁵² Embassy of the Republic of Singapore, Yangon, 18 Aug. 2016.

⁵³ Interview, Myanmar domestic worker in nurse aide training, Yangon, 19 Aug. 2016.

⁵⁴ Interview, UN Women Myanmar, Yangon and Bangkok, 18 Nov. 2016.

⁵⁵ Focus group discussions, Myanmar domestic workers, Singapore, 18 Sep. 2016.

⁵⁶ Interview, Myanmar domestic worker in nurse aide training, Yangon, 19 Aug. 2016; Interview, NGO, Singapore, 18 Sep. 2016.

⁵⁷ Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016. Recruiters and employers in both corridors regularly confiscate women's mobile phones.

⁵⁸ Interview, ACRA, Phnom Penh, 15 Sep. 2016.

⁵⁹ Interview, PIKAP, Kuala Lumpur, 21 Sep. 2016.

⁶⁰ Focus group discussion, Myanmar domestic worker, Singapore, 18 Sep. 2016.

Recruiters in countries of destination complain that under the bans women are coming to them without training, but they cannot do anything about this because their counterparts in countries of origin say that training is illegal. Reports before the ban suggested that the training received was inadequate, in addition to sometimes being exploitative or abusive (Human Rights Watch, 2011).

Country of origin embassies do make attempts to help workers, but given they have little power to effect enough protective measures for migrant workers in countries of destination, the Royal Embassy of Cambodia to Malaysia encourages women to hide their phones and memorize the Embassy's address: "We say to migrants: 'When you go back to Cambodia, tell your family to be careful and find out the company name and phone number. Read the contract carefully before signing.' We give people the Embassy's 24-hour hotline number [and tell them,] 'When you come, try to hide your phone, but if they [recruiters or employers] take it, remember the Embassy address and we'll pay the taxi fare. If you have a problem, try to escape any time, any way.'"⁶¹

8.5.2 Embassy assistance

In a focus group in Singapore, women were asked if they would go to their embassy for help. The question had to be explained several times, and then all three participants said, "No".⁶²

While many feel that approaching their embassy would be futile, embassies also struggle with the near impossible task of providing adequate assistance. Embassies particularly cite high caseloads of women who do come to them, as well as the added difficulty of not knowing where domestic workers are, who they work for, or if they are in the country at all, as they migrate irregularly under the ban without informing the embassy.⁶³ Embassies reported being understaffed for the rights protection work necessary.

The Cambodian Embassy in Kuala Lumpur has a shelter, which as of September 2016 housed 12 people. Consular officials go to employers' houses to negotiate terms, despite reporting being forbidden to do this by Malaysia.⁶⁴ They report attesting contracts, and when workers come to renew contracts, the Embassy asks employers to come. If the wage listed in the contract is less than the national minimum wage of MYR1,000 (US\$224) per month, they report amending the contract before approval. Officials also report going with Malaysian police to employers' houses in cases of reported abuse, and in cases of non-payment to demand employers pay back wages. These methods of going to employers' houses and directly negotiating higher wages for their citizens are laudable and should be replicated in other countries throughout the region. The Embassy's efforts could be enhanced and protection efforts compounded if contract terms could be enshrined in bilateral or, better still, multilateral agreements that the Malaysian Government is also mandated to enforce. Some recruiters give workers the Embassy phone number. As mentioned earlier, Cambodian Embassy officials also call the parents of domestic workers to ask their permission for contract renewal and continuation of work and stay in Malaysia.⁶⁵ This is a literally paternalistic measure for women of any age, whether the workers are 20 or 45 years old.

Recruitment agencies in Singapore give migrant workers a stamped envelope with the relevant embassy address on it, and tell them to "hide the envelope from employers and in an emergency to put their address and work permit number in it and send it to the Embassy by post."⁶⁶ The Myanmar Embassy in Singapore declined an invitation for interview, but other interviewees report that the Embassy has a 24-hour hotline (started mid-2016), works closely with a few NGOs in Singapore, and calls recruitment agencies to negotiate terms of employment in problematic employment situations.⁶⁷

Conflicts of interest and taking of bribes mar efforts of governments and their embassies throughout the region. A variety of interviewees, including government officials, volunteered information about government or embassy business interests in recruitment agencies – particularly government officials or their family members owning recruitment agencies. NGOs have reported this in a submission to the UN's Universal Periodic Review (CLEC, et al.,

⁶¹ Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016.

⁶² Focus group discussions, Myanmar domestic workers, Singapore, 18 Sep. 2016. Women who migrate irregularly under a ban are not visible in any data, and therefore their needs cannot be addressed by the country of origin.

⁶³ "People don't know their employers' names or address when they come here [to the Embassy]." Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016.

⁶⁴ Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016.

⁶⁵ Interview, Royal Embassy of Cambodia to Malaysia, Kuala Lumpur, 21 Sep. 2016.

⁶⁶ Interview, Returnee domestic worker, Yangon, 19 Aug. 2016.

⁶⁷ Interview, NGO, Singapore, 18 Sep. 2016.

2014), as have media (Pheap and Blomberg, 2014). Two of the quotes below relate to country of origin embassies, two relate to country of origin government officials, and one relates to a country of destination official, and are anonymized for confidentiality:

[Government official A] had a stake in a recruitment company.

[Government official B's immediate family member] runs over 20 recruitment agencies.

The owner of the recruitment company I'm doing training at is [government official C].⁶⁸

[Government official D's immediate family member] owns the biggest recruitment agency, sending over 1 million workers for the last three years. So [government agency X] wants to bring agencies into the MOU negotiations, as G-to-G plus, but [government agency Y] only wants G-to-G [i.e., government-to-government].

Sending countries have to be honest. They don't want direct hiring but G-to-G agreements because [government officials E and F] own agencies, so this pushes up recruitment costs because the governments are not negotiating MOUs in migrants' interests but their own.⁶⁹

Interviewees believed that these conflicts of interest mean that government officials are not advocates for migrant workers' rights, but their own or their families' financial gain. They also claimed that officials will use negotiations (see section 8.7) as an opportunity to further their own interests through ensuring recruitment agencies are not cut out of migration processes through direct hiring, or that regulation does not reduce recruitment fees. There is also a reported reluctance to include social partners and NGOs in MOU discussions.

One employee of a recruitment company reported further and severe direct implications for migrant domestic workers related to bribe taking. The recruiter reported that recruitment agencies regularly bribe officials from one embassy not to assist domestic workers who come to them for help. Instead, the embassy sends the workers back to the agencies:

My agency pays under the table to the [Country X] Embassy so the Embassy pushes workers back to the agency. Because of this, the employer is not scared [of any repercussions for mistreatment of workers]. The [Country X] Embassy won't make the agency [resolve labour abuse] cases because the agency gave them money already. The owner of our agency gives money every month in cash. There is a large amount of outgoing cash for this every month.

We also give to the [Country Y] Embassy but less. That Embassy is stronger.

The [Country Z] Embassy won't take bribes because of the strength of the [Country Z Embassy], but we give a little bit of money for certain cases, and we still have to settle the problem [resolve the labour complaint]. The [Country Z] Embassy will not send workers back to agents and will solve problems with the employer. Employers are scared of the [Country Z] Embassy.⁷⁰

8.5.3 Destination country assistance: Government inspection mechanisms, recruiter assistance, unions

Scope here does not allow for thorough detail of destination country assistance measures. For migrants who are documented in countries of destination specifically, the country of origin bans do not appear to significantly affect the assistance that countries of destination provide to migrant workers. Other reviews of country of destination assistance mechanisms have been conducted in ASEAN (ILO, 2016f). Destination country governments in this region display some promising practices. Interviewees in Singapore largely suggested that MOM provides enough credible and followed-through sanctions that more employers and agents do try to follow MOM policy than in other countries of destination in the region. While not conducting inspections of domestic workers' workplaces, MOM does inspect agencies' boarding houses. Unfortunately, this reportedly results in agencies "scattering workers to other places".⁷¹ More inspection mechanisms are needed, including in employers' households or with employers and workers in a third location, and crucially these need associated mechanisms to account for agencies pushing practices underground

⁶⁸ This connection gave this woman confidence that her migration would be safe and that she would have recourse.

⁶⁹ All quotes from: Interviews, Anonymized NGOs, government officials, domestic workers, Aug.–Sep. 2016.

⁷⁰ Interview, Recruiter, Sep. 2016.

⁷¹ Interview, NGO, 18 Sep. 2016. This is similar to the effect from country of origin officials' visits to training centres (See section 8.5.1. Pre-departure).

as a result.⁷²

Recruitment agencies are often the first place that domestic workers turn for help in an exploitative employment situation. Agent responses vary from being extremely helpful in fairly negotiating interests and in conflict resolution, to abuse of domestic workers with impunity.

I suffered very much with the employer. I asked the agent to refer me to the Embassy, but the agent beat me and confiscated my documents.⁷³

At the agency I was told to take all my clothes off to check if I had small papers hidden anywhere.⁷⁴

Because of the bans and other labour market and regulatory factors in the region, recruitment agencies are minimizing assistance and case handling. Assistance often disappears altogether if an agency closes. Singapore and Malaysia have a number of NGOs, union-affiliated groups, and religious institutions that assist many domestic workers directly with shelter, counselling, a hotline, and legal assistance. The National Trade Union Alliance Chamber of Cambodia (NACC) reports that provision of assistance for women migrating under the ban is particularly difficult because of their irregular status:

It's difficult to support domestic workers who go to Malaysia because they can't be found. Some employers do not provide signed contracts. When domestic workers seek help from us, it's difficult to resolve these complaints because the ministries say that they want to see the contracts first. If there was not a contract or the contract provided is kept at the agency and not given to worker, it is hard to take a case. The Government asks for a contract.⁷⁵

8.6 Women's social and economic position at home: Gender norms and unemployment

Restrictions on women's migration have ramifications for women who are prevented from migrating. Domestic workers' rights at home may be ignored as countries of origin try to use bans to enhance rights protections for women workers abroad (Elias, 2013). Women's reproductive and unpaid care work responsibilities at home are given scant acknowledgement by governments, much less financial recognition in the form of tax exemptions or benefits.

Developing economies struggle to provide sufficient livelihoods or a living wage for women workers at home – for both those who do migrate and return, and for those who are prevented from migrating. With discriminatory economic effect, women-restrictive measures result in women in countries of origin not being able to earn money to support themselves, their families, or their communities (Pescinski, 2015).

It's always better to work in our own country, but our country doesn't provide work. If the Government can create job opportunities and better pay, no one will consider working abroad. We can go as tourists... I earned MMK50,000 per month (US\$41) at the electronics factory. How can we survive?⁷⁶

We are disappointed with the restriction/ban. It was put in place because one or two per cent of migrant women suffer [in exploitative situations in Singapore], but the Government cannot give employment in Myanmar.⁷⁷

Not only are there no jobs, and no jobs with living wages, but also there is extensive workplace exploitation in countries of origin. The 2015 ILO Internal Labour Migration in Myanmar survey of over 7,000 internal migrants in the formal sector found that about 26 per cent were in situations of forced labour and 14 per cent in situations of trafficking (ILO, 2015c). Further, in Myanmar for instance, the CEDAW Committee 2016 concluding observations note concern "at the wide gender wage gap, the limited implementation and monitoring of the principle of equal pay for work of equal value and women's concentration in the informal sector of employment. The Committee is also concerned at the limited disaggregated data on cases of sexual harassment in the workplace and measures taken to address them. It notes with concern that the right to maternity leave is not applicable in all sectors of employment..." (CEDAW Committee, 2016).

Restrictions on women's freedoms to leave their country of origin have critical social consequences as well as

⁷² For further promising practices around the world related to compliance, see ILO, 2015d.

⁷³ Interview, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

⁷⁴ Interview, Returnee domestic worker, Kampong Cham, 13 Sep. 2016.

⁷⁵ Focus group discussion, NACC, 13 Sep. 2016.

⁷⁶ Interview, Returnee domestic worker, Yangon, 17 Aug. 2016.

⁷⁷ Interview, Myanmar migrant organization, Singapore, 18 Sep. 2016.

economic ones. The measures reinforce paternalistic, protectionist, and sexist gender norms because they reflect an overtly moral reaction to women's freedom of movement, which further reinforces the notion that being a woman is an inherent weakness – one best countered with male or State protection. They also reflect a moral reaction to the type of work women commonly do in countries of destination. In addition to stigma in Singapore and Malaysia (ILO, 2016c), stigma against domestic workers was found in both Cambodia and Myanmar, though much more strongly present among interviewees in Myanmar, with women in a focus group calling it “low-class work”.⁷⁸ Representatives from recruitment agencies added:

Many people think it is the lowest occupation and not suitable for Myanmar people. Many people think like this. The Government thinks that domestic work is not good for their image.⁷⁹

We need to move away from the idea that only low people come as domestic workers.⁸⁰

The stigmatizing stereotypes associated with domestic work, however, are not universal and vary within and across countries.⁸¹ In interviews of women in Yangon as well as Myanmar women in Singapore, many women said they were not able to tell their families or friends that they were doing domestic work, but lied and said they had another job. Myanmar recruitment agencies frequently advertise posts in other sectors and then place women in domestic work – a tactic to get around both the cultural stigma surrounding domestic work as well as the policy restriction.

Migration can be a means of escaping an unwanted or bad marriage, or abuse or violence in the home and community (Pescinski, 2015, p. 8; Kodoth and Varghese, 2012, p. 57; ILO and GAATW, 2015). One Cambodian domestic worker interviewed in Malaysia migrated before the ban, doing so to escape an abusive father.⁸² One recruiter spoke of this being a common reason for Cambodian women to move to Malaysia for work.⁸³ Bans on women's migration prevent women taking up one avenue for getting out of and well away from bad situations and the moral judgements that otherwise fall on women who leave their husbands.

For those women who do move and return back home, social costs of migration are largely ignored by States. Among other factors, the women who migrate despite bans are not supposed to have done so in the first place. Globally and more broadly, State attention to migrant workers upon return is limited (Surtees and de Kerchove, 2014). UN Women's 2013 study on valuing the social costs of migration in South-East Asia notes that while positive remittance values are often given policy, research, and media attention, “hidden social costs of migration” are ignored: care deficits experienced by families (in which social norms dictate that women provide all or most care);⁸⁴ human rights violations in labour migration that take a social toll upon return;⁸⁵ and the human capital costs of migrant workers with recognized or unrecognized skills leaving countries of origin (UN Women, 2013c). Interviewees for the present study also talked about the social toll of human rights violations that can last for years after women return to Myanmar or Cambodia. One interviewee had been severely exploited in Malaysia and returned with no money and pregnant as a result of rape. She had been beaten severely – frequently on the head – and has not been able to work upon return. She returned without any money and is homeless, living in extreme poverty and subsisting on crabs she catches in rice paddies.⁸⁶

Policy goal 16 of Cambodia's Policy on Labour Migration is that “productive return and reintegration of women and men migrant workers is enabled”. Unfortunately, according to recent analysis, Cambodia is not on target to meet this goal (Hodge, 2016). Cambodia's MOLVT recognizes there are gaps in service provision for migrant workers upon return and reintegration (MMN, forthcoming 2017). In Myanmar, civil society remains hopeful that the Government will soon enact its National Action Plan for the management of International Labor Migration 2013–2017 to better support job creation and access to financing for returnees, among other measures for reintegration (MMN, 2016a).

8.7 Labour diplomacy and bilateral agreements: Race to the top?

⁷⁸ Focus group discussion, Myanmar domestic workers, Singapore, 18 Sep. 2016.

⁷⁹ Interview, MOEAF, Yangon, 18 Aug. 2016.

⁸⁰ Interview about Myanmar domestic workers in Singapore, AEAS, 19 Sep. 2016.

⁸¹ Interview, UN Women, Yangon, 18 Nov. 2016.

⁸² Interview, Domestic worker, Kuala Lumpur, 17 Sep. 2016.

⁸³ Interview, Recruiter, Kuala Lumpur, 17 Sep. 2016.

⁸⁴ As UN Women (2013c) notes, reproductive labour is “transferred” in these so called “global care chains”, where caregiving work is transferred from one household and country to another.

⁸⁵ See how these are increased under bans in section 8.4. Working conditions.

⁸⁶ Interview, Cambodian returnee domestic worker, Kampong Cham, 13 Sep. 2016.

The Philippines was the first country in the region to establish a practice of “labour diplomacy” through withholding labour force resources in order to bargain for labour rights protections. Other countries in South-East Asia have since followed this practice (Elias, 2013). Countries of origin frequently put forward justifications of restrictions saying they will be able to use bans on women’s migration to increase their negotiating power with countries of destination, trying to ensure their workers are in a “race to the top”.

The findings from this research echo conclusions of other research, namely that the results of a “labour diplomacy” foreign policy approach are not consistent. Research on effects of the Philippines’ 1988 total ban on migration for domestic work showed it had mixed results in terms of policy pressure to improve migrant workers’ conditions in destination countries. Many destination countries for Philippine workers did immediately react to the restriction and requested exemptions to the ban. Sixteen of them then signed bilateral agreements with the Philippines, detailing work conditions and protections. However, other governments “retaliated” by slowing down visa processing for all Filipino nationals, affecting so many people that the Philippine Government reconsidered the ban. Countries where workers experienced most violations did not agree to any bilateral negotiations (Oishi, 2005). Interestingly, more recently the Philippines utilizes its ratification of Convention No. 189 to increase its bargaining power on behalf of domestic workers (see box 5).

Box 5

The ILO Domestic Workers’ Convention, 2011 (No. 189) and country of origin bargaining power

The Philippines has ratified ILO Convention No. 189, giving it more power when negotiating working conditions for domestic workers with countries of destination. Having committed to protecting domestic workers’ rights in the Philippines, other countries cannot fault Philippine officials for demanding similar protections for their workers abroad.

Source: Correspondence, ILO Geneva, 23 Jan. 2016.

Destination countries in ASEAN clearly say that “they don’t care”⁸⁷ about the ban-related origin country pressure, saying they cannot be swayed by this type of positioning and withholding of labour resources. Oishi (2005) writes that bans strain diplomatic relations. A Malaysian Government official concurred, adding that the policy inconsistencies between the restrictive bans and Malaysia’s issuance of work permits makes bilateral relations and negotiation difficult.⁸⁸

The 2011 Cambodia ban did lead to a process of negotiating the December 2015 MOU for the migration of domestic workers to Malaysia. SOPs were reportedly agreed in December 2016. Laudably, a broad group of stakeholders were consulted in Cambodia throughout the MOU development process, though not all feedback is evident in the most recently viewed version. The media reported that the Malaysian Government made rights-reducing redactions to early versions of the MOU, crossing out Cambodia-proposed text.⁸⁹

Singapore does not have bilateral agreements on labour migration with any country of origin, which leaves negotiation of conditions – such as wages – to be between employers and workers, and also leaves country of origin embassies with the difficult task of enforcing minimum wages and other standards outside their jurisdictions without country of destination backing. Arguably this allows a competitive race to the bottom by not guaranteeing equal standards for workers from different nationalities. Domestic worker interviewees and scholars point out that MOUs in the region also institutionalize inequalities between migrant domestic workers because some countries of origin are more successful in negotiating terms, including wages, recruitment fees, and mandatory days off (see box 6 for more).⁹⁰

⁸⁷ Interview, Government official, Sep. 2016.

⁸⁸ Interview, Malaysian Government, Sep. 2016.

⁸⁹ Focus group discussion, NGOs and unions, Phnom Penh, 14 Sep. 2016; Interview, NGO, Phnom Penh, 15 Sep. 2016.

⁹⁰ Elias, 2013; ILO, 2016e; Focus group discussion, Myanmar domestic workers, Singapore, 18 Sep. 2016.

Box 6

Not all bilateral MOUs benefit migrant workers

ILO research (2015f, 2013c) has found that when MOUs have been agreed in the Greater Mekong Subregion, they have had “limited success in reaching their objectives”. They have not resulted in fundamental changes to working conditions for migrants and at times have resulted in migrants incurring insurmountable debt. The MOUs solidify an agency-facilitated recruitment and job placement system, forcing migrant workers to go through agencies if they would like to move legally (MMN, 2016b). Research in Thailand suggests recruiters have captured the MOU process, benefitting financially from the MOU-established system, “with some even establishing themselves as the de facto employer for foreign workers and contracting out their labour to larger companies” (ILO, 2013c).

CSOs, however, have used the bans to their advantage where possible. As one Singaporean NGO says: “The Myanmar ban gives groups in Singapore the opportunity to say to the Government: ‘See there is a problem; Singapore needs to provide better protection, otherwise domestic workers will not come here.’”⁹¹ CSOs and researchers in countries of origin also use the opportunities to call on their governments to protect the rights of domestic workers at home, guaranteeing them conditions on par with other workers (Kimura, 2013; Elias, 2013). Finally, given labour market shortages in countries of destination, there are calls for destination governments to re-examine social protection systems that rely on migrant workers to care for the nation’s elderly and children, without robust systems of State-provided or sponsored elder and child care, or maternity leave for nationals, not to mention for migrants.⁹²

National labour migration policy has improved in Cambodia since the ban. CSOs in Cambodia say that in issuing a ban, “The Government recognized the problem instead of denying it. After the Cambodia ban we could discuss frameworks for protection. This led to an MOU with Malaysia and eight *prakas* (Cambodian ministerial orders).⁹³ Without the ban, the Government was defensive, saying there were not problems.”⁹⁴ Not dissimilarly, interviewees think that the ban has been useful to “send a signal” to Malaysia.⁹⁵ A recruiter in Malaysia says that though Malaysia has protective laws, they are not regularly implemented. After the ban, “MOHR labour inspectors are now awake about abuses.”⁹⁶

⁹¹ Interview, NGO, Singapore, 18 Sep. 2016.


⁹² Elias, 2013, p. 297; Interview, NGO, Kuala Lumpur, June 2016.

⁹³ Eight *prakas* adopted in February and September 2013 by MOLVT include; *Prakas* No. 045/13 Concerning the Use of Terms outlines the meaning of key terms used in Sub-Decree 190. *Prakas* No. 047/13 Concerning Private Recruitment Agency outlines the requirements of a private recruitment agency to be recognized as a legal entity from the MOLVT. *Prakas* No. 046/13 Concerning the Recruitment Process and Pre-departure Orientation sets minimum standards for private recruitment agencies in their legal responsibilities to migrant workers prior to being sent abroad. *Prakas* No. 249 Concerning Complaint-receiving Mechanism for Migrant Workers outlines the MOLVT complaints process for migrant workers. *Prakas* No. 250 Concerning Inspection on Private Recruitment Agency outlines the MOLVTs standards for inspections. *Prakas* No. 251 Concerning Penalty and Reward to the Private Recruitment Agency stipulates that private recruitment agencies will be inspected every two years, and that they must meet a certain minimum standard in order to continue to operate. *Prakas* No. 252 Concerning On-site Service of the Private Recruitment Agency and Repatriation outlines the private recruitment agencies’ responsibilities to migrant workers in destination countries and during repatriation processes. *Prakas* No. 253 Concerning Promulgation of Minimum Standards of Job Placement Services Abroad Contract stipulates all articles that need to be included in the contract between a private recruitment agency and a Cambodian migrant worker.

⁹⁴ Focus group discussion, NGOs and unions, 14 Sep. 2016.

⁹⁵ Ibid.

⁹⁶ Interview, Recruiters, Kuala Lumpur, Sep. 2016.

A photograph of an elderly woman with short, curly grey hair, wearing a striped tank top and dark pants. She is standing in a room, ironing a dark blue garment on a white ironing board. The room has a large window in the background, and the lighting is bright, suggesting daylight. The woman is looking towards the camera with a slight smile.

“Many people think it is the lowest occupation and not suitable ... Many people think like this... domestic work is not good for their image.”

MOEAF, Yangon

9. Other research on the impacts of restrictions on women's migration

Restrictions on women's migration are not a new phenomenon. Officials have historically applied policy restrictions as well as administrative procedures more stringently to migrant women than men (Abella, 1995). South-East Asian nations began putting in place outward migration restrictions in the 1970s, and began explicitly applying these to women in 1980 when Thailand banned all outward migration of women workers.¹ Appendix III illustrates recent history of bans in Asia, listing national policies restricting women's emigration circa 2000.² Notably ILO conducted a study on restrictions on women's labour migration in Asia in 1996 (Lim and Oishi). The findings and recommendations remain relevant, unfortunately underscoring that governments, recruiters, employers, and international actors have not made needed changes in the 20 years since that report was released. The 1996 ILO study's findings emphasize that neither women's migration nor restrictions on women's migration are new, and that they fail to protect migrating women workers' rights (see box 7 for example).

¹ Exempting migration to a few countries of destination. Abella, 1995, pp. 243–244.

² Restrictions in ASEAN, as of December 2016, are collated in tables 2 and 3. Gender-based restrictions have a longer history elsewhere. For instance, in the early 1920s, Great Britain had a restriction on migration for work of 16-year-old girls without a magistrate's approval. Gallagher, 2010, p. 161.

Box 7

No easy exit: Migration bans affecting women from Nepal

To date the most comprehensive, interview-grounded study on the effects of policy restrictions on women's labour migration was conducted in Nepal by ILO and the Global Alliance Against Traffic in Women (GAATW) in 2015. Its results are as follows:

- Various types of bans (namely, age bans and bans on all women migrants) did not prevent women from migrating and were discriminatory.
- Surveyed women stated that bans would not change their decision to migrate, even if irregularly.
- Women affected by bans said their migration had been hidden and irregular, through transit countries of India or Bangladesh.
- Women who moved during Nepal's 2012 age ban felt the ban did not positively change treatment by employers abroad.
- Alternatively, the restrictions placed women at greater risk of exploitation, where workers faced increased deception in recruitment and had less control in the migration journey.
- Women were hesitant about revealing travel plans prior to migration and no longer had access to pre-departure training or to the private insurance fund or the Welfare Fund, which provides compensation, in Nepal.
- Women reported that licensed recruitment agencies had less power during the ban periods, and unlicensed agents increased their presence in villages.
- Women had fewer economic opportunities, and fewer opportunities (such as through migration) to avoid early marriage or abusive relationships.

Source: ILO and GAATW, 2015.

Appendix II lists findings from the 1996 ILO study and other Asia-focused studies that explore the effects of policies restricting women's migration. This current ILO study of restrictions in the Myanmar–Singapore and Cambodia–Malaysia corridors echoes and adds to these findings. Further, there is a broad base of feminist and women's studies scholarship and of migration-focused research relevant to this topic, summarized in sections below.

9.1 Women's studies: Gender norms in labour migration policy and practice that restrict women

Gender norms prescriptive of women's actions and identities impact labour migration through mandating women "stay at home", maintain reproductive and care duties, defer decision-making power to men, not work outside the home, work in only certain sectors of the economy, or not engage in sexual activity outside marriage or outside their country of origin. Restrictions on women's movement are typically analysed by women's studies and feminist scholars as protectionist and paternalistic.

Protectionist labour migration policies assume women are inherently in need of protection, particularly protection from violence and exploitation.³ Many migration restrictions are pre-emptively protectionist, in other words, governments and other actors justify a need to ensure potential migrants do not put themselves in harm's way. Anti-trafficking discourse often further serves to justify these restrictions.⁴

Paternalistic measures govern women as if by a benevolent parent (Blackburn, 2008). They direct, interfere with, or limit a person's choices. Further, they aim to take care of women, children or other perceived "subordinates", who presumably cannot or do not know how to act in their own best interests. Kabeer (2007) shows that restrictions on women's migration impose a paternalism of the State, which Pande (2014) describes as "*conveniently paternalistic... paternalism without accepting responsibilities*".

³ See review of protectionist measures related to women's migration in Napier-Moore, 2010.

⁴ For more on preventative restrictions, see Anderson, 2012; GAATW, 2007; Pearson, 2004.

These controlling gendered ideologies particularly intersect with nationalism and religious fundamentalisms in the region. Women are often seen as symbolic bearers of the nation (literally, because they reproduce) and therefore “symbolic property of the nation, an embodiment of national pride that needs to be protected. Emigration policies then become a state project to solidify the state’s identity as ‘protector’ of its women” (Pande, 2014, p. 389).

The discrimination in migration restrictions based on gender is compounded by discrimination women face based on other intersecting social categories including age, ethnicity, class, religion, political affiliation, disability, nationality, migration status, work sector, marriage status, and so on.

9.2 Migration studies: Migration restrictions affecting migration patterns, safety, and employment relations

Studies on migration restrictions have shown that they result in people (of all genders) migrating with more risk of exploitation with relation to recruitment agents, and with increases in time costs, health costs, and broker fees since they must move and work irregularly:

- United States–Mexico 12-year econometric study – Increased border enforcement over time resulted in migrants shifting travel routes to less patrolled areas. This led to an increase in time costs, health/life costs, and migration brokers’ fees (Gathman, 2004).
- Occupied Palestinian Territory–Israel 40-year study – Because economic livelihood push factors in the Occupied Palestinian Territory were strong, numbers of migrants remained stable during 1996–2005/6 period of highest Israel immigration enforcement. Dependencies and power balances shifted to migration smugglers and Israeli employers. “The scarcity of work [in the Occupied Palestinian Territory] and increasingly severe controls over clandestine workers entering Israel, made Palestinian labourers even more vulnerable in relation to smugglers” (Parizot, 2008).
- Netherlands study – Increased destination country immigration enforcement did not reduce the number of irregular entries, but increased involvement of migration brokers (Van Liempt and Doornik, 2006).
- Observatories in Australia, the United States, and Europe – Increased deaths have been counted globally as border enforcement has hardened, and researchers looking at maritime deaths note women are 2.5 times more likely to die than men (Pickering, 2016; Australian Border Deaths Database, 2016; European Migrant Death Database, 2016; Arizona OpenGIS Initiative for Deceased Migrants, 2016).

Marshall and Thatun (2005) refer to migration restrictions producing a “push down-pop up” phenomenon, displacing a problem but not solving it. Scholars report increases in violence to all migrants and increased violence against women when migration restrictions increase (Gerard and Pickering, 2013; Ljinders and Robinson, 2013). Current research is being conducted into the experiences of pregnant women who face higher barriers to migration (Border Crossing Observatory, 2016). Risks of workplace exploitation also increase in situations when, as a result of clandestine movement, women work irregularly, particularly as domestic workers in isolated premises. Immigration controls in countries of destination undermine labour protections, actively producing exploitation: “Immigration restrictions and enforcement are not only insufficient to reduce migrant precarity [risk to abuses] but actively produce and reinforce it” (Anderson, 2010).

Under employers’ threats of informing authorities of a workers’ irregular status, migrant workers become undemanding and uncomplaining, fearing arrest and deportation. Unbalanced employer–employee relationships create the conditions for forced labour, human trafficking, and other workplace violations. Blame for abuses is placed on individual employers. “The problem then becomes bad employers, and the role of the state [in this case, both origin and destination States] in illegalising workers is passed over” (Anderson, 2010, bracketed text added).



“It would be great if we could have an MOU system that gave us both social protections and flexibility to not be tied to an employer.”

Myanmar domestic worker, Bangkok

10. Alternatives to restrictions on women's migration

Putting in place alternative policies to gender-based restrictions can be difficult. Measures must both adequately protect women migrant workers and be within the means available to State resources. Progressive strategies as per examples in this section and as per the Recommendations in chapter 12 of this report have the potential to reduce underlying risk factors and create systems that ensure safe migration and decent work for women workers (see box 8 for practical guides for the domestic work sector).

Box 8

Practical guides to develop empowering and rights-protective policy and practice in domestic work

ILO. 2016. *Formalizing domestic work* (Geneva).¹

ILO. 2012. *Effective protection for domestic workers: A guide to designing labour laws* (Geneva).²

ILO. 2016. *Labour inspection and other compliance mechanisms in the domestic work sector* (Geneva).³

ILO. *Domestic work policy brief series* (Geneva).⁴ Particularly see:

- Remuneration in domestic work (Policy Brief No. 1)
- Working hours in domestic work (Policy Brief No. 2)
- Coverage of domestic workers by key working conditions laws (Policy Brief No. 5)
- “Meeting the needs of my family too”, maternity protection and work-family measures for domestic workers (Policy Brief No. 6)
- Working time of live-in domestic workers (Policy Brief No. 7)
- Domestic work voice and representation through organizing (Policy Brief No. 8)
- Making decent work a reality for migrant domestic workers (Policy Brief No. 9)

¹ http://www.ilo.org/travail/whatwedo/publications/WCMS_536998/lang--en/index.htm

² http://www.ilo.org/travail/areasofwork/domestic-workers/WCMS_173365/lang--en/index.htm

³ http://www.ilo.org/labadmin/info/pubs/WCMS_429836/lang--en/index.htm

⁴ http://www.ilo.org/travail/info/WCMS_155773/lang--en/index.htm

In a country of origin example of alternative practice, Bangladesh lifted its restrictions on women's migration in 2013, recognizing their gendered discriminatory effect. It replaced the restrictions with the 2013 Overseas Employment and Migrants Act, which includes specific non-discrimination provisions (Pescinski, 2013). The Philippines (box 9) and Viet Nam⁵ have made recent legislative changes to protect national domestic workers.

Box 9

Philippines' Domestic Workers Act

In 2013 the Philippines passed a new domestic workers law, namely the Act Instituting Policies for the Protection and Welfare of Domestic Workers (Republic Act 10361). The Domestic Workers Act extends labour rights, benefits, and protection to an estimated 1.9 million national domestic workers in the Philippines. It provides for protection of domestic workers against abuse, debt bondage, and worst forms of child labour, and sets standards for minimum wages, hours, and days of rest. The Act extends social security and public health insurance to domestic workers and provides for response mechanisms to abuses and means to access redress.

Source: ILO, 2013b.

In a destination country example, rather than banning pregnant migrant workers, Hong Kong (China) guarantees migrant domestic workers ten weeks of maternity leave, a practice that others in the region should adopt when incorporating domestic work into labour law and ensuring women's rights in any sector. Migrant domestic workers in Hong Kong (China) are covered by the Employment Ordinance, 1968, which also applies to national workers. The Ordinance guarantees equality of treatment as well as employment protections, including the right to form and join a union. Hong Kong (China) employers must enter into a standard employment contract that mandates a minimum allowable wage (though this is lower than the statutory minimum for other employees), free food, accommodation, and medical treatment. With regard to destination countries in this study, Singapore has legislated for one day off per week for domestic workers.

Another destination country for ASEAN domestic workers, Thailand, enacted the 2012 Ministerial Regulation No. 14 entitling all domestic workers to one day off per week, traditional public holidays, 30 days of paid sick leave, and payment of unused leave and overtime pay for working on holidays. Protections are not complete, however, and domestic workers remain excluded from working hours limitations, overtime compensation, minimum wage coverage, the majority of provisions regarding the employment of young workers, and maternity leave and protections, including protection against termination of contract upon pregnancy. Domestic workers also have limited social security protections under the Social Security Act; Thai workers are partially covered under Section 40, while migrant domestic workers are completely excluded.⁶

Unlike migrant domestic workers, migrant workers in formal economy sectors such as construction and manufacturing currently have access to Thai social security schemes, as long as they have regular documentation. In addition, all migrant workers, including irregular migrants, are covered by the Workmen's Compensation Act. Though these policies are an example of good practice in the region, it should be noted that many migrant workers face difficulties in accessing their benefits in practice.

Examples of alternatives to restrictions are also seen in men-dominant sectors, practices which can also be applied to women-dominant work. Take the destination example of migrant men in the fishing sector: trafficking, forced labour, and severe exploitation in the industry in Thailand have been highlighted internationally in recent years (ILO and ARCM, 2013). Thailand has taken initial steps to make systemic changes for all workers – both Thai nationals and migrant workers in the fishing industry, including:

- Registering about 20,000 undocumented workers on fishing vessels (*The Straits Times*, 2016b);
- Training of labour inspectors and establishment of labour inspection mechanisms at three points: port-in, port-out, and at-sea;
- Reforming Thai legislation of working conditions, bringing it more in line with international standards, particularly the ILO Work in Fishing Convention, 2007 (No. 188).⁷

⁵ Viet Nam's Decree 27/2014/ND-CP9 (Decree No. 27) and accompanying Circular 19/2014/TT-BLDTBXH (Circular No. 19) govern employment conditions applying to domestic workers employed in Viet Nam. Decree No. 27 requires employment contracts to be signed by the domestic worker and their employer, and governs certain conditions, including accommodation expenses, minimum wages, bonuses, insurance payments, minimum rest, annual leave minimums, public holiday payments, and occupational safety and health.

⁶ Thai domestic workers can register themselves under Section 40 of the Social Security Act, which provides coverage for old age pensions and compensation in case of non-work-related illness and injury, invalidity, or death, depending on the monthly contribution made.

⁷ Ministerial Regulation 10 on work in fishing was passed with a minimum age of 18 years and requires regular rest hours and written contracts for all fishers.

These changes are the beginning of systemic reform. More are needed, however, as is suggested by the ILO and CSO reviews (ILO, 2017; Issara Institute, 2016; Hodal, 2016). The sector is also one that has international scrutiny due to supply chain connections to Europe or North America; domestic work – and several other women-dominant sectors – does not share that characteristic and therefore lacks similar lobbying leverage. Nonetheless, the lesson learned from these efforts is that systemic changes towards labour rights protections are possible where there is political and social will for change at domestic and international levels.

While these and other measures are useful examples of alternative State policy responses, women respondents to this study were clear that care needs to be taken to ensure that the protection mechanisms implemented as alternatives to bans do de facto benefit them and protect their rights, rather than put them at further risk of exploitation and abuse.

This study interviewed domestic workers in Thailand who migrated despite the 2014 Myanmar ban, which targets all countries of destination, not only Singapore.⁸ Once in Thailand, the workers applied through one of Thailand's various amnesty schemes for immigration and work permissions – a policy incoherence between Myanmar and Thailand. Through a broker, the women acquired Thai work permits, which list a fake employer in the construction or manufacturing industries, rather than listing their domestic work employer or the sector in which they actually work. Through illicitly making the best of this amnesty scheme and policy incoherence, domestic workers are thus not “tied” to one domestic work employer and have more freedom to leave exploitative situations without a large risk of deportation. When asked if they wanted Myanmar to lift the ban on migration of domestic workers, they said they only wanted this if the ban was not replaced with strict “tied” visa conditions:

I can change employer if I know the employer is bad; I don't have to wait until the employer hits me.⁹

Right now I can change employers on many bases [for many reasons] – not just because an employer beat me or I died.¹⁰

They also insisted that a bilateral MOU agreement between Thailand and Myanmar would inevitably create divisions with other nationalities of domestic workers, including Thai nationals, because it would set a minimum wage or other conditions for them that would not be equally applicable to others. They wanted pay and conditions to rise for all domestic workers not just for themselves, and feared social divisions and discord that would come with MOUs possibly setting different standards by nationality.

It would be great if we could have an MOU system that gave us both social protections and flexibility to not be tied to an employer. But if Thai domestic workers don't also get maternity leave and minimum wage, then it will be discriminatory and a cause of difference between us all.¹¹

In addition, because migrant domestic workers are excluded in Thai law from maternity leave and minimum wage, the workers in Thailand asked: “If we came through an official Myanmar–Thai MOU system, would those apply to us?”¹² The workers were concerned that not only would they give up freedoms through being tied to an employer, but they would not gain any meaningful social protections, without comprehensive reform of Thai labour law related to domestic work.

As evidenced by the concerns the Myanmar domestic workers had about Myanmar lifting the domestic work ban, any alternative that is put in place when a ban is lifted can be made significantly more evidence-based through consultations with the women migrant workers affected by policy changes. Their lived experiences of on-the-ground realities are essential to check that there are not any negative effects or collateral damage of well-intentioned policies or policy reforms meant to improve their migration and working conditions.


⁸ Focus group discussion, Myanmar domestic workers, Bangkok, 5 June 2016.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.



"I've been working in a garment factory since I came back. I plan to go again when there is authorization to go there [Malaysia]. It is better to let people go, because many people want to go."

Cambodian returnee domestic worker,
Kampong Cham

11. Conclusion

Policies restrictive of women's labour migration aim to prevent women working in dangerous, violent, or exploitative conditions. Some governments lack sufficient resources or will to put in place rights-protective and empowering measures to effectively reduce women's risk to abuse. In addition to restrictions being grounded in the assumption that women are "vulnerable" individuals who have little agency, this report demonstrates that unfortunately, restrictions on women's migration in fact heighten the risk of exploitation in many cases.

11.1 Summary of research findings

Below is a summary of research findings from this study. This list is followed by box 10, containing conditions that Cambodian and Myanmar domestic workers interviewed for this study said would better protect them from abuse while abroad.

- Myanmar and Cambodian women migrated for domestic work, despite the 2014 Myanmar ban on migration for domestic work and the 2011 Cambodian suspension on migration for domestic work to Malaysia.
- Migration restrictions limited women to irregular channels for exiting their countries of origin. This left an absent or partial "legal trail" for accountability in country of origin recruitment systems.
- The bans resulted in an increase of small, unregulated recruiters in Myanmar and Cambodia. During the bans, Myanmar and Cambodian migrant domestic workers faced increased deception in recruitment, including contract substitution.
- Myanmar and Cambodian migrant domestic workers interviewed said migration costs increased, as informal payments had to be paid at exit ports and when they transited through third countries.
- During bans, women migrant workers did not have access to protective elements afforded by regular migration, including pre-departure training, standard employment contracts, access to complaints mechanisms, or recourse to a regulated recruitment agency or origin government assistance.
- Duty-bearing stakeholders reported that the ban absolved them from responsibility for abuses that occur in

migration. In situations where women migrated despite the ban, duty-bearers said that blame for abuses now rested with women migrant workers since they contravened migration restrictions.

- Partly because it is harder to recruit and send workers under these and other restrictions in ASEAN, there is high employer demand for domestic workers. Interviewed women reported that recruiters were not allowing them to return home upon complaints of exploitation. Employers were also reportedly forcing workers to sign contract extensions in Malaysia under threat of not receiving their salary.
- Any single country's ban on women's migration shifts regional recruitment to other countries and potentially drives the ASEAN labour market to lower working conditions and wages.
- Women reported that bans increased class-based stigma attached to domestic work.
- Restrictions on women's migration can strain diplomatic relations, reportedly making bilateral relations and negotiation more difficult.
- Policy incoherence between countries of origin and destination meant that women who migrated through irregular channels had access to documented status in countries of destination, with access to assistance and redress that this afforded. Of domestic worker respondents in this research, all in Singapore (26 of 26 women interviewees) and a minority in Malaysia (three of 14 interviewed) had documentation in their country of destination. However, these countries of destination also applied further restrictions on migrant women's work. These restrictions discriminated against them based on their age, country of origin, spousal permission, pregnancy status, religion, and/or level of education.

Box 10

Employment conditions recommended by domestic workers

ILO Convention No. 189, Article 8, stipulates that migrant domestic workers should receive, before departure, a written contract that they can understand and that is enforceable in the country of employment, with specific conditions as per Article 7. Conditions that interviewed Myanmar and Cambodian domestic workers say will protect them from abuse abroad are listed below. All Articles cited are from Convention No. 189, demonstrating the overlap between international labour standards and what migrant domestic workers say they need.

- Set working hours of an eight-hour day, with overtime paid beyond that.
- 24 consecutive hours of rest per week (Article 10), and suitable periods of rest during the working day (Article 7), which allow for meals and breaks to be taken (minimum one hour of rest time per eight hours worked). Pay must not be deducted for rest periods.
- Access to mobile phone and/or internet usage during rest periods and in case of emergency.
- Entitlement to keep travel and identity documents in their possession (Article 9).
- Maternity protections, including paid leave and non-termination of work upon pregnancy.
- Clear description of tasks and location of work (Article 7).
- Salary paid monthly (Article 12) into the worker's bank account, not in cash at the end of a contract or withheld "for safekeeping".
- Safe, private, and secure accommodation (Article 13), including the option to live-out.
- Ability to freely leave and change employers without a fee.

In practice along the Myanmar–Singapore and Cambodia–Malaysia migration corridors the policies that restrict women's labour migration violate women's right to leave a country, right to freedom of movement, and right to non-discrimination. The measures have not solved systemic gaps in social and economic development in countries of origin that are key drivers of migration, nor have they enhanced access to equal opportunities, gender equality, or women's empowerment. Finally, the restrictions on women's migration have not changed migration or work environments to make them safer or rights protective for all people regardless of gender, which ultimately is the aim of both country of origin and country of destination stakeholders.

In many destination countries women migrant workers also find further nationalistic or protectionist restrictions (restricting not only their rights as migrants, but also their reproductive and marriage rights). Some governments back

these restrictions with justifications of not wanting their nationals to have children with women from other countries, or not thinking women are capable enough to do certain work or make decisions about marriage or work. In addition, excepting only a handful of countries globally, neither countries of origin nor destination have sufficiently moved to formalize domestic work and other informal sectors in which the majority of women work, bringing them fully under national labour laws and social security protection. Changes to further improve gender equality at work in ASEAN need to be coupled with countries promoting women's empowerment, education, training, and worker organisations that promote opportunities for decent and productive work.

Rather than attempting to stop all or certain women from migrating or working, alternative strategies can reduce underlying risk factors and make migration safer for all migrant workers, including – and especially – women. ASEAN women are migrating, and many are doing so at great risk despite restrictions on their rights to leave a country. States must urgently make women's migration and their work environments safe and equally accessible.



“If there are better conditions, we want to go again. Many would like to go.”

Cambodian returnee domestic workers,
Kampong Cham

12. Recommendations

The following recommendations emanated from this research. They are divided into two sections: the first directly addressing restrictions on women’s labour migration, and the second providing alternatives to restrictions that would build systems for safe labour migration opportunities for women migrant workers, and particularly for domestic workers in ASEAN, in line with international standards and research findings.

12.1 Recommendations regarding restrictions on women's labour migration

- In accordance with international law, including international labour standards, governments should repeal all gender-based restrictions on labour migration. All countries in the ASEAN region have signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Its General Recommendation No. 26 is as follows:

States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status. They should lift restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel.

- Accordingly, governments are recommended to adopt non-discriminatory clauses in labour migration policy and to guarantee freedom of movement and the right to leave a country.
- Documentation schemes affording amnesty to migrants should be extended by countries of origin and destination so that women who have migrated under restrictions can be recognized by governments and acquire documentation.
- Stakeholders should consult women migrant workers, through tripartite social dialogue, as part of the process of lifting bans and putting in place protective mechanisms.

12.2 Recommended alternatives to restrictions on women's migration

Domestic work specific recommendations:

- All ASEAN governments should sign and ratify the ILO Domestic Workers Convention, 2011 (No. 189) and update national laws accordingly.
- Governments should develop and implement measures for labour inspection with due regard for the special characteristics of domestic work (Convention No. 189, Art. 17). On-site labour inspections in places of employment, including full translation/inspection in the worker's own language, inspection of living quarters, and private interviews with workers are recommended. Off-site meetings with employers, workers, and inspectors should be arranged as an alternative. Governments could also consider having a labour inspector at health check institutions, with an aim to interview migrant workers privately when they report for these checks.
- Employers should respect live-in domestic workers' rights to privacy and freedom to leave the workplace/accommodation.
- Domestic workers should enjoy freedom of association and the right to collective bargaining. Stakeholders should specifically support regional and national domestic workers' movements, including unions, workers or migrants' associations, and other forms of organizing.
- Language, culture, rights, and vocational training are essential to equip women migrant workers with the skills and knowledge to facilitate positive worker–employer relationships, and for migrant workers to claim their rights in destination countries. All stakeholders should facilitate greater recognition of the skills and knowledge that women migrant workers bring to domestic work positions. Women note that language training is vital to a successful migration experience, as well as contributing to development of origin countries upon migrants' return. Language training should be provided in countries of origin and destination.
- Governments, trade unions, civil society, and other stakeholders should educate the public and employers on the social and economic value of domestic work.

Recommendations applicable to all migrant work sectors:

- A zero recruitment fee policy for all migrant workers, as per international standard set in the ILO Private Employment Agencies Convention, 1997 (No. 181), the accompanying Private Employment Agencies Recommendation, 1997 (No. 188), and the 2016 ILO General Principles and Operational Guidelines on Fair Recruitment, should be legislated and enforced.
- At least minimum wage paid to all workers – nationals and migrants; women and men; those employed in the formal and informal economy; and migrants with regular and irregular legal status. In case of wages above minimum wage, eliminate differentials based on gender, nationality, or any other identity category.
- Credible and enforced penalties for employers who violate policy, as well as referral, change-of-employer, and redress systems for migrant workers, should follow when abuses are uncovered through labour inspections and individual reports. Legislative changes are needed in countries of destination to allow migrant workers to stay in country during legal proceedings.
- Migrant workers who seek assistance should not be sent back to employers or recruitment agencies without the migrant worker's consent.
- Governments, workers' and employers' organizations and civil society organizations (CSOs) should establish appropriate dispute resolution mechanisms that will be available to all migrant workers regardless of nationality. Governments should not rely solely on recruitment agencies to resolve disputes and provide assistance.
- Governments should adequately regulate recruitment agencies, with machinery and procedures to investigate complaints, alleged abuses, and fraudulent practices. Regulation should specify obligations of the recruitment agency and the employer towards the domestic worker, and provide for penalties, including sanctions of agencies that engage in fraudulent practices and abuses.
- Employment protection and immigration enforcement should be separated to enable migrant workers to make complaints without fear of deportation. Extension of employment protections irrespective of migrations status protects the integrity of, and avoids the undermining of, a country's employment standards and rights.

- Governments, together with CSOs, should use referral systems and provide gender-sensitive services, including shelters, gender-based violence counseling (or sensitivity at a minimum), counseling in cases of gender-based or other discrimination, and access to redress mechanisms. Women staff of any service body need to be available for case management. Embassies and consulates should consider hosting regular official meetings for migrant workers – and particularly domestic workers – offering advice and support through networks of service providers.
- Women migrant workers should have access to sexual and reproductive health care, including safe and legal termination services; contraceptives; and pre-natal, birth, post-natal, HIV and other STI care. Redress and access to care in cases of rape, sexual assault, and harassment should be available to all migrant workers.
- Guarantees of minimum standards for worker protections may be more systematically and equally achieved if ASEAN governments jointly negotiate multilateral labour migration agreements. Further multilateral agreements should include South Asian and other relevant origin countries outside ASEAN. Countries of origin are particularly encouraged to work together to set minimum standards for all, so that competition does not undercut wages or working conditions. Nationality-based wage discrimination and inequalities are – in part – the result of the current system of bilateral agreements.
- Immigration and work permits need to progressively move to independence from a specific employer, in other words, not “tied” to an employer. Work permission tied to an employer creates a system where it is possible for employers to abuse migrant workers with impunity.
- A joint and several liability system for country of origin and destination recruiters should be created bi- or multilaterally to ensure there are no gaps in accountability as workers move through cross-border systems of recruitment and employment. Under a joint and several liability system all relevant parties (employers, recruitment agencies in countries of origin and destination) are jointly liable for abuses that occur during the migration process, meaning that recruitment agencies can be held responsible for violations by employers, and vice versa.
- Country of origin livelihood access, education, and rights protections for all persons – with an aim of women’s empowerment and gender equality – are essential to ensure that all persons have a genuine choice in migration and do not have to migrate out of necessity. Countries of origin should also provide return and reintegration support for returnee migrants.
- Country of origin and destination governments should provide all migrants with meaningful access to social security, including portable social security.
- Policies should specify that government officials working on labour migration and related issues, or members of their families, may not own or have interests in recruitment agencies. These should be complemented by enforcement of penalties for abusive practices like bribe-taking, as well as with incentives for transparent individuals and agencies. Practices encouraging transparency include: publication of bilateral and multilateral agreements and standard contracts; public blacklisting of agencies; and systems for workers to denounce violations, including online mechanisms.
- Countries of destination levies applied to employers hiring migrant workers should be eliminated, as it is difficult to ensure those costs are not passed on to workers.

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Appendices

Appendix I: Research participants

Research participants (158 total, of whom 13 are in multiple categories below)	Total interviewed	Location	Number interviewed, by location
Migrant and returnee women (See details in figures 2, 3 and 4)	51	Myanmar	8
		Singapore	22
		Cambodia	12
		Malaysia	4
		Thailand	5
Government officials	23	Myanmar	5 (3 Myanmar Government, 2 Singapore Embassy in Myanmar)
		Cambodia	3 (2 Cambodia Government, 1 Malaysia Embassy in Cambodia)
		Malaysia	15 (13 Malaysian Government, 2 Cambodian Embassy in Malaysia)
Non-government organization (NGO) representatives	32	Myanmar	9
		Singapore	9
		Cambodia	7
		Malaysia	5
		Thailand	2
International organization (including UN) representatives	23	Myanmar	3
		Cambodia	11
		Malaysia	1
		Thailand	7
		Philippines ¹	1
Recruitment agents	16	Myanmar	5
		Singapore	6
		Cambodia	2
		Malaysia	3
Trade union representatives	12	Myanmar	7
		Singapore	4
		Cambodia	1
Migrant group representatives	6	Thailand	5
		Malaysia	1
Religious leaders	3	Singapore	3
Academics	2	Malaysia	1
		Thailand	1
Lawyer	1	Myanmar	1

*Note that 11 persons are in multiple categories.¹

¹ Interviewed in Bangkok.

Appendix II: Effects of restrictions on women's migration, as reported in Asia-focused literature

Country	Restriction on women's migration	Effects, as reported in literature
Bangladesh	1976 or 1981 ¹ – Ban on emigration of “unskilled” women	“A significant number” of undocumented women worked abroad (Oishi, 2005, p. 77).
	Circa 2000 – Ban on outward migration for domestic work	Women, who were prevented from migrating, lacked employment possibilities in Bangladesh (Dannecker, 2005, p. 663).
Cambodia	2011 – Ban on outward migration of domestic workers to Malaysia	Complaints to NGOs rose in 2012, with women domestic workers reporting they were forced to extend their work contracts. By 2014 it was clear that women were migrating to Malaysia despite the ban, with at least 10,000 working in the sector (Strickler and Sophea, 2015, p. 1). Malaysian employers have sought to extend contracts of domestic workers (Tunon and Rim, 2013, p. 3).
	Age requirement of 21 years for migration of domestic workers to Malaysia (MOLVT and ILO, 2005)	42 per cent of domestic workers surveyed in 2015 were under 21 years old, and 26 per cent were under 18 at the time of migration (Strickler and Sophea, 2015, p. 3). Girls aged 14 have sought help for abuses in domestic work (IOM, 2012, p. 10).
Indonesia	Circa late 1990s – Requirement that husbands migrate with women domestic workers	Policy “unsuccessful” as most women migrant workers’ husbands did not have gardening or driving skills sought by employers (Oishi, 2005, p. 79).
	2009 – Ban on outward migration for domestic work to Malaysia	Indonesian women migrated despite the restriction. Malaysian employment agencies reported that domestic worker arrivals fell from 1,000 per month (pre-ban) to 200 per month (by Jan. 2011). Up to 35,000 Malaysian households were waitlisted to hire a domestic worker and average hiring “wait time” was seven months. Agents increased recruitment in Cambodia. The Indonesian Embassy in Malaysia found that domestic workers were more at risk of abuse when employed through informal arrangements and requested the Indonesian Government to repeal the ban. Some workers were able to acquire better paying work outside the government-sanctioned system (Elias 2013).
	2015 – Ban on outward migration of women for domestic work to Gulf countries	1,020 women interviewed between March 2015 and May 2016 at Jakarta’s main airport reported they were migrating for the first time for domestic work. About 90 percent of those interviewed went to Saudi Arabia, United Arab Emirates, Bahrain, Oman, Qatar and Kuwait (Yi, 2016, reporting on a Migrant Care survey).
India	1961 – Ban on outward migration of women for domestic work in Western Asia	Migration on a “large scale” took place despite the ban (Lim and Oishi, 1996, p. 15).
	2003 – Age ban requiring women to be at least 30 years old to work abroad as domestic workers.	Women have reported Embassies complicit in passport tampering (changing photos to those of different people), as well as authorities issuing emigration clearances without proper documentation. Women migrant workers report greater trust in unauthorized migration brokers than in the Government’s emigration mechanism. Migration costs “multiply” with irregular migration, and security risks are higher. Social stigma has increased for women recruited to be domestic workers, particularly single women. Analysis suggests that restrictions deflect attention from State intervention needed to protect rights in migration, as well as from exploitation of domestic workers in India itself (Kodoth and Varghese, 2012).

¹ Stakeholders disagree on date of this ban. See Oishi 2005, p. 77, fn. 66.

Japan	Immigration policy omission – No visa category for unskilled workers, including entertainment workers.	In 1981, Japan circumvented its own immigration law of non-admission by classifying entertainers as “skilled” in order to allow them to enter (Oishi, 2005, pp. 34-36).
Malaysia	2006 – MOU with Indonesia regulating domestic work allowed Malaysian employers to keep passports of domestic workers. Circa 2010 - Employers must pay a fine of MYR500 if domestic worker runs away (Killias, 2010).	Employer coercion was high in order to retain workers and avoid the fine applied to employers when domestic workers left the employment (known as the “run-away fine”). As they did not hold their passports, workers who left employers for any reason became illegal without documents, and could not leave the country without a passport (Killias, 2010).
Myanmar	Circa 2008 – All women were required to carry permits to travel between towns or near borders. 2014 – Ban on women’s outward migration for domestic work to all countries	With or without permits, women (particularly under 35) faced harassment and extortion at government checkpoints. Analysis suggests this harassment was heightened because of the restriction on women’s migration (WLB, 2008). Women continue to migrate. Women’s migration through illegal recruiters has increased, as “[legitimate] Myanmar agencies are not interested in sending domestic workers abroad because it’s such a sensitive issue” (Stuart, quoting HOME director Thein Than Win, 2015).
Nepal ²	1992 – Ban on women’s migration 2008 – Ban on all women’s outward migration to the Gulf 2010 – Ban on outward migration for domestic work to Lebanon 2012 – Age ban requiring women to be at least 30 years old to work in the Arab States as domestic workers 2014 – Ban on all women’s emigration for low-skilled work (called “Total Ban”) 2015 - Age ban requiring women to be at least 24 years old for emigration as domestic workers only to certain countries in the Arab States and South-East Asia	Women migrated irregularly (UNIFEM and NIDS, 2006). Around 30–40 Nepalese were estimated to fly to Gulf countries daily having transited through India. 20,000 to 25,000 Nepalese women were estimated to be working in Saudi Arabia, most irregularly (NIDS, 2010, p. 20). Due to policy incoherence between Nepal and Lebanon, the Lebanese Government issued 3,895 work permits to domestic workers from Nepal in 2010 following Nepal’s January 2010 ban (Hamill, 2011). Survey concluding that bans did not prevent people from migrating. Surveyed women stated an age ban would not change their migration decision, and that the 2012 age ban did not affect working conditions and treatment by employers abroad. Women migrated through transit countries. Many workers were deceived in recruitment and were not able to go through pre-departure training or to access Nepal’s private insurance fund or the Welfare Fund. Unlicensed agents increased presence in villages. Women’s economic opportunities were restricted without the option of legal migration, and they had fewer avenues through which to avoid early marriage and abusive relationships (ILO and GAATW, 2015).
Pakistan	1989 – Age ban requiring women to be at least 35 years old to work abroad as domestic workers.	Age ban removed Pakistani women workers from the overseas labour market for domestic workers, as commonly only women between 25 and 35 years old were hired (Gulati 1993, p. 33).
Philippines	1988 – Ban on all outward migration for domestic work 1991 – Age ban requiring women to be 23 years old to migrate to Japan as entertainers	Ban had mixed effects in terms of intention of pressuring countries of destination to improve employment conditions: Many countries requested exemptions, and within six months 16 governments signed bilateral agreements with the Philippines, detailing work conditions and protections. However, other governments “retaliated” by slowing down visa processing for all Filipino nationals, affecting so many people that the Philippine Government reconsidered the ban. Countries where workers experienced most violations did not agree to bilateral negotiations (Oishi, 2005, p. 65). The number of Filipino entertainers dropped from 59,000 in 1991 to 10,000 in 1993. Women lost jobs, and recruitment agencies lost money and business (Oishi, 2005, p. 66).

² See detailed timeline in ILO and GAATW, 2015, p. 6, Table 1.

Philippines (cont.)	1998 – Ban on emigration for au pair work to the European Union	Women emigrated irregularly and paid bribes to do so. Women lacked comprehensive protections and could not appeal to the Philippines Embassy without risking being “blacklisted” (Stenum, 2011).
	2006 – Stringent requirements under the Household Service Workers (HSW) Reform Package: Minimum age at 23 years old; ³ a National Certificate for Household Workers (HSW-NCII) issued by the Technical Educational Skills Development Authority (TESDA); country-specific Language and Culture Certificate of Competence or attendance issued by OWWA; no placement fees; and a minimum monthly salary of US\$400.	Scholars noted that these requirements effectively served as a ban because they were hard to meet (Battistella and Asis, 2011). Numbers of women migrating as domestic workers decreased from 91,412 to 47,878. ⁴ However, Government and recruitment agencies reported that this may be because domestic workers were falsely categorized in other job sectors; overall numbers of outward migrants did not decrease from 2006 to 2007 (Battistella and Asis, 2011). The Philippine Overseas Employment Administration (POEA) and the Philippine Overseas Labour Offices (POLO) reported domestic workers signing contracts with fewer protections, as well as salaries lower than POEA mandated wages. Some knowingly agreed to contract substitution to circumvent the POEA requirements. Migrant groups reported an increase in irregular emigration for domestic work (MPI, 2008). Women used fake or altered identity documents, or used irregular migration channels. ⁵
	Circa 2011 – Requirement that prospective Japanese employers in the entertainment sector hire at least 50 entertainers per year.	As most clubs in Japan only hire 25 entertainers, to circumvent the requirement, Japanese middlemen hire 50+ entertainers and assign them to various clubs. Women migrant workers’ dependence on brokers increased. In order to get their commission, the majority of brokers withhold wages until the women’s last day in Japan, deterring women from quitting, putting them at risk of non-payment, and rendering them less able to complain or question conditions (Parrenas, 2011, p. 332–3).
Sri Lanka	Circa 2000 – Ban on women’s emigration for entertainment work	Some women left the country on tourist visas in order to work as entertainers (Oishi, 2005, p. 71).

Note: This table represents a survey of a broad body of literature on restrictions on women’s migration. The author notes that some relevant literature may not have been found in the literature review.

³ 2006 Household Service Workers Reform Package. Age increased from 18 years old.

⁴ Philippine Overseas Employment Agency (POEA) figures of deployed domestic workers, as reported in Battistella and Asis, 2011, Table 4.

⁵ Philippine Overseas Employment Agency (POEA). 2007. Governing Board Resolution No. 14.

Appendix III: Restrictions women's emigration in Asia, circa 2000

Country	Restriction
Bangladesh	Ban on recruitment of women domestic workers. Ban on recruitment of entertainers but not on nurses, doctors, and engineers.
India	Women must be at least 30 years old to work as domestic workers in western Asia or northern Africa, with exceptions made on a case-by-case basis. Ban on recruitment of female domestic workers to Kuwait.
Indonesia	Women must be at least 22 years old. Restrictions regarding countries of destination for domestic workers and men/women ratios recruited by authorized agents may be lifted under certain conditions. Temporary ban on domestic workers to the Middle East.
Nepal	Women must be at least 18 years old. Selective ban on employment according to the country of destination.
Myanmar	Ban on recruitment of female workers, except in the case of professionals.
Pakistan	Women must be at least 35 years old to work abroad as domestic workers. Ban on recruitment of nurses.
Philippines	Domestic workers: Women must be at least 21 years old (for some countries the age requirement is higher; for others it is lower – the minimum working age is 18). Entertainers: Women must be at least 18 years old; selective ban on employment according to the country of destination; must complete required academic and skill testing, possess Artist Record Book, and undergo pre-departure showcase preview. Nurses: Women must be at least 23; must possess B.Sc. in Nursing and have one year of work experience in the Philippines.
Sri Lanka	Women must be at least 20 years old to work as domestic workers. Ban on recruitment of entertainers.
Thailand	Ban on recruitment of women except in the case of selected countries of destination. Entertainers must hold a diploma from a school of arts and a license, and must not perform in nightclubs.

Source: Oishi, 2005, p. 60, drawing on Abella, 1995; Lim and Oishi, 1996; IOM, 1999; and Oishi's own field research in 1999. Permission to reprint granted by publisher.

Protected or put in harm's way?

Bans and restrictions on women's labour migration in ASEAN countries

Restrictions on women's labour migration – ranging from outright migration bans to prerequisites relating to age and marital status – are one way in which states attempt to address the risk of exploitation and abuse faced by women migrant workers. Though intended to protect women from harm, gender-based migration restrictions violate numerous international legal standards addressing discrimination and equal opportunity, as well as the right to leave a country. *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries* was commissioned by the International Labour Organization (ILO) and UN Women to assess the effectiveness of gender-based migration restrictions in preventing exploitation. Focusing on bans suspending migration for domestic work in the Myanmar-Singapore and Cambodia-Malaysia migration corridors, the study analyses their impact on women prevented from working abroad, and on those who migrate irregularly due to restrictions. This pioneering research provides important evidence for repealing gender-based migration restrictions, and concludes with a number of recommendations for alternative strategies that protect and support women migrant workers.

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Projected Births and Migration in ASEAN Countries

ASEAN countries are projected to experience significant demographic changes over the next 50 years, driven by population growth and migration patterns.

Key findings include:

- Population growth: ASEAN countries are projected to experience significant population growth over the next 50 years.

- Migration patterns: Migration is expected to play a major role in shaping the demographic landscape of ASEAN countries.

- Age structure: The aging population in ASEAN countries is projected to increase significantly over the next 50 years.

- Gender inequality: Gender inequality remains a challenge in ASEAN countries, with women's labor force participation rates generally lower than men's.

- Healthcare access: Access to healthcare services is projected to improve in ASEAN countries over the next 50 years.

- Economic growth: Economic growth is expected to continue in ASEAN countries, driven by factors such as technological innovation and trade liberalization.

- Environmental sustainability: Environmental sustainability remains a challenge in ASEAN countries, with concerns about deforestation and air pollution.

- Education: Education levels are projected to improve in ASEAN countries over the next 50 years.

- Urbanization: Urbanization is expected to continue in ASEAN countries, with major cities like Jakarta and Singapore projected to experience rapid growth.

- Infrastructure development: Infrastructure development is projected to accelerate in ASEAN countries over the next 50 years.

- Regional cooperation: Regional cooperation is expected to strengthen in ASEAN countries over the next 50 years.

- Global integration: Global integration is projected to continue in ASEAN countries over the next 50 years.

- Technological innovation: Technological innovation is expected to drive economic growth in ASEAN countries over the next 50 years.

- Trade liberalization: Trade liberalization is projected to continue in ASEAN countries over the next 50 years.

- Investment: Investment is expected to increase in ASEAN countries over the next 50 years.