



IJM



**CROSS BORDER RESPONSES
OF JUSTICE SYSTEMS
TO FORCED LABOR
AND LABOR TRAFFICKING
in Thailand, Cambodia & Myanmar**



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ACRONYMS

CSO	Civil Society Organization
CTIP	Counter-Trafficking in Persons
FGD	Focus Group Discussion
FL	Forced Labor
IJM	International Justice Mission
MLAT	Treaty on Mutual Legal Assistance in Criminal Matters
MoL	Ministry of Labor
MoLVT	Ministry of Labor and Vocational Training
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
MoU	Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security
NCCT	National Committee for Counter Trafficking
NGO	Non-Governmental Organization
RCG	Research and Communications Group
SOPs	Standard Operation Procedures
TIP	Trafficking in Persons



EXECUTIVE SUMMARY

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This report assesses the level of co-operation and coordination of the Thai, Cambodian and Burmese justice systems in responding to cases of cross-border forced labor and trafficking in persons (FL/TIP) occurring between the respective countries. These three countries form part of an integrated regional economic development system which relies heavily on migration to Thailand from neighboring countries in order to provide low-cost labor to Thailand's labor-intensive industries. Therefore, considering the countries in isolation provides a limited assessment of the overall effectiveness of the justice systems, which must inherently respond to cases of FL/TIP that involve recruitment and exploitative practice across legal jurisdictions.

This report accompanies a three-country study carried out in 2022, assessing the performance of, and confidence in, the justice system response to cases of FL/TIP in Thailand, Cambodia and Myanmar, respectively, with particular emphasis on Thailand's seafood sector. As part of this study, two country-specific reports were produced, detailing how justice system actors are performing their roles in preventing, investigating, and prosecuting FL/TIP cases, as well as working with victim support agencies to provide repatriation, remedies and other forms of support to FL/TIP victims. An additional literature review was carried out in relation to Myanmar to help inform this regional report. These reports also examine the coordination and cooperation of key justice system actors in both domestic and international settings. Accordingly, this report summarizes the regional level findings of these studies, drawing together findings relating to the coordination and cooperation of key justice system actors at the international level.

♣ KEY REGIONAL FINDINGS

- **Migration channels are not designed to adequately address the structural vulnerability of migrant workers**

For more than two decades, Thailand's regionally dominant economy, and the ongoing demand for labor in many of its industries, have made it an attractive destination for migrant labor hoping to remit money home. Despite the mutually beneficial nature of cross-border migration to Thailand and the primary countries of worker origin - Myanmar, Cambodia and Laos - structural factors associated with the labor migration process create huge vulnerability for migrant workers. Recognizing that this vulnerability is often associated with the irregular migration status of many migrant workers, the respective governments have attempted to create and expand legal migration channels (known as Memorandum of Understanding (MOU) channels) and work closely together to register workers already in Thailand, thus bringing them under the same legal umbrella.

However, despite attempts by the three countries to eliminate or regulate worker recruitment fees, many of those migrating through the MOU channels face considerable debt, effectively binding them to their workplace, which is further exacerbated by difficulties in changing employers. Being in a situation that they cannot realistically leave makes workers extremely vulnerable to FL/TIP and related forms of exploitation. There remains a general lack of access to remedy for migrant workers, there is currently little evidence that legal migration channels are safer than irregular ones, despite ongoing government efforts to improve the situation.

Most of these factors are not new and have been well-traversed by previous studies and reports. However, it is clear from the country studies that efforts to strengthen the criminal justice response to FL/TIP cannot progress without addressing the current migration policies and practices that create an enabling environment for perpetrators of FL and TIP.

Moreover, vulnerability to FL/TIP associated with these migration flows have been exacerbated in recent times. Firstly, the 2021 Myanmar coup has left Burmese migrants with little support from their government and in many cases, fleeing untenable circumstances at home. Secondly, the impact of the COVID-19 pandemic has decimated labor markets and interrupted migration patterns, adding risk to regular and irregular recruitment channels.

- **The Thai justice system is not practically accessible to migrant workers**

The studies found that in general, migrant workers are unwilling, discouraged from, or do not know how to access the Thai justice system when they are victims of exploitative employment practices, and those who do, face a long and uncertain process to seek justice and remedy from their employer. Instead, migrant workers are more likely to choose to find alternative employment and move on with their lives, rather than enter the justice system. Where victims are able to obtain some form of remedy, this tends to be through civil or informal processes, enabling victims to access at least some form of compensation but providing little disincentives to perpetrators.

Where victims have been repatriated and try to make a complaint about TIP or FL in their home country, the Thai criminal justice system is even less accessible, with limited ability for the complaint to be referred to or properly investigated by Thai officials.

- **Cross-border criminal justice cooperation is occurring at a senior policy level, but not at an operational level with MLAT procedures not seen as fit for purpose**

Government officials spoken to during the Thailand and Cambodian studies, as well as respondents from organizations who worked closely with these officials reported that while there are some efforts by justice system actors to cooperate in a cross-border capacity, these efforts are hindered by inefficient processes and other barriers such as language, lack of information sharing and mistrust between agencies. Mutual legal assistance treaties (MLATs), while in place between the countries, are seen as slow and unfit for purpose in the context of dynamic investigations or tight prosecution timeframes.

While informal cooperation across borders in the investigation and prosecution process was reported, stakeholders expressed concerns that gains made in efficiency through this process may be undone by damage to the integrity of evidence obtained through these informal means.

Consequently, most cross-border cooperation on criminal justice issues relating to FL/TIP between Thailand and these two neighboring countries has come about at a non-operational, senior government or policy level.

- **Migrant sending countries struggle to get support from Thai authorities when they require assistance to investigate FL/TIP cases**

Investigation teams in Cambodia describe difficulties in investigating cases that involve crimes, victims or perpetrators located in Thailand. In such cross-border cases, both Cambodian and Burmese investigation teams require assistance from Thai investigators to collect evidence and build cases. However, they report that there is no mechanism to compel cooperation and support from Thai authorities and consider that in practice these authorities rarely display a willingness to comply with requests.

KEY RECOMMENDATIONS

This report concludes with several recommendations for ways in which the cross-border cooperation between the justice system of Cambodia and Thailand can be improved to more effectively serve the needs of victims, seek remedy for victims, and deter offenders of FL/TIP.

No specific recommendations are made in relation to the justice system of Myanmar, which is in a state of retrogression. Information obtained from the literature review suggests that in the current context, the points of entry to strengthen this justice system are non-existent, with an absence of political will to address FL/TIP and some current policies exacerbating or directly contributing to the problem. This is compounded by the active persecution by the military regime against any perceived threats, including against CSOs providing assistance to victims. At present, therefore, the biggest contribution to addressing FL/TIP for the citizens of Myanmar will likely be through strengthening protection for vulnerable migrants in Thailand (and other countries of destination such as Malaysia).

Details of recommendations are provided in the corresponding sections. They are:

1. **Implement and refine new SOPs with Thailand:** Cambodia and Thailand have recently signed new SOPs, aiming to bridge the gap between policy and practice. It is important that these are transparently implemented and feedback from stakeholders is incorporated to ensure they are effective and impactful.

2. **Remove barriers to participation in the Thai legal process:** Victims are often reluctant to engage with the criminal justice system due to financial and other barriers, including the length of time associated with the court process. Victims require further support to participate in the criminal justice system, including but not limited to income support and other financial support for meeting court and legal costs.
3. **Strengthen embassy support:** Cambodian embassies abroad may be strengthened via the introduction of a dedicated team, tasked with addressing FL/TIP issues and assisting workers to access grievance mechanisms and navigate cross-border legal processes.
4. **Set up a joint investigation taskforce:** a joint investigative taskforce, comprised of Thai and Cambodian law enforcement officials who are responsible for both proactive and reactive investigations of cross border FL/TIP cases, is recommended. Such a taskforce would enhance information sharing and build trust between the countries. It is also recommended that law enforcement cooperation, however possible, be fostered between Thailand and Myanmar.
5. **Create a data collection and sharing protocol:** data collection remains largely inconsistent and unreliable and is not readily shared or accessed between departments. Therefore, a central data collection protocol is recommended, to set out how FL/TIP data is to be recorded, stored, used, presented and made available.
6. **Focus on joint trainings:** Joint training sessions with various stakeholders within the FL/TIP system are recommended as a means of improving collaboration, building trust and developing networks. This concept could be extended across borders.
7. **Address design flaws of MOU migration channels:** Currently, the MOU system is not attractive to many migrant workers as it is expensive, time consuming, difficult to access, and does not guarantee migrants' safety. It is recommended that advocacy continues to the respective governments to address underlying structural issues, including the charging of excessive fees.



1

BACKGROUND AND METHODOLOGY

1 BACKGROUND AND METHODOLOGY

1.1 BACKGROUND TO THIS REPORT

Thailand is the major regional hub for economic activity in Southeast Asia, attracting large numbers of migrant workers from its immediate neighbors, Myanmar, Cambodia and Laos. IOM estimates that prior to the COVID-19 pandemic which disrupted migration patterns, Thailand was reliant on up to five million migrant workers to provide low cost labor to drive its economy in sectors such as fishing, seafood, construction, service, food processing and manufacturing.¹ With neighboring countries similarly reliant on remittances from migrant workers in Thailand to fund development, Thailand is considered to be the center of one of the world's regional migration systems.

Regulatory frameworks, worker management and policy implementation regarding migrant workers do however leave room for improvement, both in Thailand as a destination country and in the respective worker sender countries. Migrant workers across Thailand, Cambodia and Myanmar variously face a raft of labor abuses, exploitative practices and discrimination across recruitment channels, migratory journeys, and workplace settings. At the more serious end of the scale are cases of trafficking in persons (TIP) and forced labor (FL), often associated with debt bondage, where migrant workers face conditions described generally as modern slavery.

In recent years, study countries have received particular attention linked to the plight of Burmese and Cambodian migrant workers employed in Thailand's seafood industry. For many years fishermen from these states have been trafficked to work aboard fishing vessels at sea for months or years at a time and experience a broad range of serious labor abuses. The Thai Government has undertaken a range of reforms regarding the monitoring of the seafood sector and the management of migrant workers, after being downgraded in the 2014 US State Department Trafficking in Persons report, and subsequently facing threat of international trade sanctions from the European Union.

1.2 RESEARCH OBJECTIVES

In 2021 and 2022, through an ongoing partnership with Walmart Foundation, International Justice Mission (IJM) commissioned the Research and Communications Group (RCG) to carry out two mixed-methods research projects in Thailand and Cambodia with a literature review to be carried out in Myanmar. The purpose of these studies was to assess (1) the progress, performance and effectiveness of the justice systems of Thailand, Cambodia and Myanmar in response to trafficking and forced labor in all sectors, especially the Thai fishing and seafood industries, and (2) the extent of cross-border cooperation and effectiveness between the governments and justice systems of Thailand, Myanmar and Cambodia in addressing cross-border labor trafficking.

This report provides high level conclusions about regional perspectives in relation to the justice system effectiveness between Cambodia and Thailand and, Myanmar and Thailand. More detailed perspectives about the justice system effectiveness of each individual country can be found in the respective country reports for Thailand and Cambodia.

1.3 METHODOLOGY

The Thailand and Cambodia studies were carried out through the use of key informant interviews with government, non-government organizations (NGO) and civil society organizations (CSO) stakeholders, using semi-structured interviews and supported by document reviews. Stakeholders included government departments, police investigators, judicial prosecutors and judges. In total, 107 KII participants were spoken to, 62 in the Thailand study and 45 in the Cambodia study.

The study also included focus group discussions (FGDs) with migrant workers in each country. In Thailand, migrant participants in the FGDs had worked in Thailand, but were not identified victims of TIP or FL. The interviews focused on their migration to Thailand, working conditions while in Thailand and reflections on accessing the justice system for support. In Cambodia, FGDs focused on Cambodian nationals who had returned from working in Thailand, and their perspectives and experiences in the justice system in Thailand and/or Cambodia. 21 FGD participants were spoken to in Cambodia and 24 in Thailand.

Due to the political and security situation in Myanmar, it was not possible to carry out in-country research, accordingly an extensive literature review was completed instead. This review also provided a detailed update of the evolving situation since the regime change in 2021.

The three studies were considered in parallel with one another, with RCG consultants triangulating data, and then comparing and contrasting research findings. This helped inform the development of each study as well as providing a regional perspective. Taken together, these studies were used to draw conclusions about the overall effectiveness of cross-border cooperation between the justice systems of the countries.



2 THAILAND AND MYANMAR

2 THAILAND AND MYANMAR

2.1 LIMITATIONS

As previously noted, research was unable to be carried out in Myanmar due to security considerations, which posed a significant limitation on the study. Accordingly, this report does not include recommendations specific to Myanmar. The country report relies upon available literature, and relevant interviews carried out by the Thailand research team. A baseline level of justice system cooperation between the two countries could not be established given the marked priority-shift of the military regime currently in place, in comparison to that of the previous civilian authorities, away from responding to FL/TIP.

2.2 OVERVIEW

The military regime in Myanmar currently demonstrates no political will to address the national and cross-border forced labor and trafficking situation and in many ways is making the situation worse. For example, while not strictly related to the justice system, the Thailand study found that the 2021 military coup in Myanmar decimated the overall labor market and exacerbated poverty within the country, leading to a change in migration flow from Myanmar to Thailand. Where migrants coming to Thailand were previously of working age and seeking the economic rewards associated with labor migration to a stronger economy, migrants are now often not of working age and are migrating irregularly to Thailand due to the deteriorated security situation in Myanmar and fears for their own safety.

Ultimately the Myanmar literature review concludes that given the country's deteriorating human security situation, including persecution of CSOs providing assistance to victims perceived as threats to the military order, Thailand is currently best placed to be the focus of efforts to strengthen the response to crimes against Burmese citizens who have arrived in Thailand. It is also noted that even relatively recent information on the justice system response to TIP and FL in Myanmar may no longer be accurate or reliable, due to the dynamic nature of the country's political developments.

2.3 POLICY COOPERATION

Thailand's Ministry of Labor (MoL) has a Memorandum of Understanding (MOU) with Myanmar to support migrant workers who have been victims of TIP or FL. This includes the facilitation of safe passage to the country of origin with a fund to support victims and efforts to prevent revictimization. However, respondents reported that in reality, victims receive minimal support via the MOU, and it is largely ineffective. The extent to which the political turmoil in Myanmar directly impacts the effectiveness of the MOU is also unclear from the study.

Bilateral meetings in relation to TIP were detailed by many respondents, with officials from the Thai MoL, Police and Immigration meeting their counterparts to discuss TIP cases. Emergency cases where assistance is required may trigger either government to call a special meeting, although again, it is unclear from the study how the political issues in Myanmar affects this.

The Burmese authorities' response to the cross-border exploitation of its population, which under the civilian government had become increasingly strident both individually and in partnership with Cambodia and Lao PDR is currently non-existent: bilateral cooperation on trafficking and broader migration issues, including labor migration is inactive, and support through Burmese diplomatic missions is inaccessible.

2.4 COOPERATION DURING INVESTIGATION AND PROSECUTION PROCESS

In general, official coordination at an operation level was reported to be slow and cumbersome, with Thai officials reporting mutual legal assistance treaties (MLATs) as the primary formal method for investigators to receive information from a neighboring country. However, official operational-level cooperation using MLATs is not a desirable option for Thai officials, given the amount of time and work required to access information from another country via mutual legal assistance treaties.

It is noteworthy that the slow nature of MLATs is not unique to Thailand and its neighbors, with MLATs in general seen globally as a slow and inefficient method to obtain information in investigations and prosecutions. The actual degree to which MLATs are used between Thailand and Myanmar, particularly given the current political climate in Myanmar, is unclear from the research.

Although they noted that improvements are needed, stakeholders cited informal cooperation between countries as the most efficient means of obtaining information, particularly for law enforcement officials, as well as for providing support to victims. One respondent, for example spoke about informal cooperation between Police in Thailand and the Royal Thai Embassy in Myanmar during the prosecution and post-prosecution process, where the embassy assisted with finding the family of a TIP victim so they could be repatriated.

2.5 POST PROSECUTION AND REPATRIATION

Post-prosecution repatriation between Thailand and Myanmar remains difficult in the current context and particularly fraught where it relates to cases involving Rohingya. Respondents in the Thailand study reported a large number of Rohingya TIP victims destined for Malaysia, who were instead offloaded in Thailand and then effectively used to extort money for the cost of their passage from their families and placed into conditions of forced labor when their families could not pay the money demanded.

While these persons were treated as victims of TIP/FL by the Thai government and generally afforded space in government-run shelters, respondents stated that the repatriation process to Myanmar is complicated, due to Myanmar's unwillingness to receive Rohingya returnees. This lack of cooperation from the Myanmar government has reportedly led to government level advocacy, NGO involvement and resettlements to third party countries such as Malaysia.² It furthermore makes repatriation difficult, given the immense vulnerability to TIP/FL faced by Rohingya, due to their status and displacement that often occurs within Myanmar.



3 CAMBODIA AND THAILAND

3 CAMBODIA AND THAILAND

3.1 OVERVIEW

Overall, survey findings suggest that there is a relatively strong policy framework in place for cooperation between Cambodia and Thailand on FL/TIP but that this is not matched by implementation in practice.

3.2 POLICY COOPERATION

As noted in the previous section, Thailand has MOUs with neighboring countries including Cambodia to support migrant workers who have been victims of TIP or FL. This includes the facilitation of safe passage to the country of origin with a fund to support victims and efforts to prevent revictimization. These countries also have a wider MOU on TIP and another MOU on migrant labor and further are party to a number of regional and global agreements that provide the basis for this cooperation.

However, despite the presence of these mechanisms, Cambodian government respondents reported that government officials do not have a clear idea of the specifics of the individual role of their agencies for cross-border collaboration. This is not limited to one aspect of the criminal justice system, but reported to be across the arrest, investigation, prosecution and shelter processes.

At a policy level, the Cambodia National Committee for Counter Trafficking (NCCT) meet with their Thai counterparts somewhat regularly. Respondents in the Thai study reported bilateral meetings related to TIP between Thailand and Cambodia, which involve representatives from the MoL, Police and Immigration, plus any other relevant authorities involved in TIP cases. These meetings continued during the pandemic, using video calls. Where emergency cases arise, the Thai Ministry of Social Development and Human Security (MSDHS) call meetings with their cross-border counterparts. NGOs and international organizations can be used to facilitate this process.

To operationalize cooperation, the Thai and Cambodian governments have agreed upon two sets of SOPs. In April 2019, the MSDHS of Thailand together with the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) of Cambodia established SOPs for Case Management of Repatriation and Reintegration of Victims of Trafficking in Persons between Thailand and Cambodia to ensure a standardized approach to repatriating and reintegrating victims of TIP.³ In 2021, the two governments finalized the agreement to establish these SOPs. In August 2022, Cambodia's NCCT and Thailand's MSDHS signed a deal to introduce SOPs relating to law enforcement cooperation against TIP.⁴ At this stage, however, there is a long way to go before these SOPs are incorporated into the daily practice of relevant officials.

Cambodian government respondents spoke of the role of the Cambodian embassies assisting with TIP and FL cases in a cross-border capacity through response to complaints and assisting with victim repatriation and referral. In the past few years, labor attachés from the Ministry of Labor and Vocational Training (MoLVT) have been stationed at embassies in Thailand for the specific purpose of responding to labor complaints or otherwise assisting workers. However, CSOs and workers spoken to during the Cambodian study described the embassy staff as being unhelpful or unresponsive to these matters. Informants said that Cambodian officials in Thailand are not as active in protecting the rights of their migrant workers as their Burmese counterparts (at least prior to the coup). While Burmese officials appointed to serve migrant workers in Thailand display a willingness and responsiveness to cases when reported, Cambodian responses were described at best as inconsistent. As well as strengthening the labor attaché role, some police stakeholders suggested that a dedicated counter-trafficking police post could be set up at the Cambodian embassy in Thailand to assist with investigation and increase responsiveness.

3.3 COOPERATION DURING INVESTIGATION AND PROSECUTION PROCESS

Trafficking in persons is widely recognized as a difficult crime to investigate, due to the crime often spanning multiple countries, with complaints sometimes made by victims upon their return home, rather than in the country where the main body of offending occurred. This difficulty was noted by both Thai and Cambodian government respondents. The introduction of the aforementioned SOPs on law enforcement cooperation against TIP appears timely, with the findings of the Thai study reflecting a general sense among law enforcement that cross-border cooperating is slow and difficult, due to the process required to use the MLATs and the lack of viable alternatives.

This view is echoed in the Cambodian study where cross-border collaboration in investigations is noted as lacking, meaning offenders are largely able to escape without consequence, despite significant evidence of offending being collected in Cambodia. Cambodian law enforcement respondents emphasized that their powers of investigation lie only within their own borders, and that upon receiving a complaint, they can only pass the information to their Thai law enforcement counterparts and hope that it will be acted upon. They lamented, however, that normally it is not. Cambodian respondents also reported that information is not readily shared by their Thai counterparts.

Cambodian government respondents suggested that specific attention needs to be paid to how countries could work together while investigating TIP and FL cases. Differing operational standards of, and laws relating to, investigation, identification and prosecution between countries also hinder cross-border operational activities. Cambodian respondents stated that these differences, even when slight, result in confusion and differences of opinion.

Cambodian respondents reported that officials in border provinces in Cambodia have better collaboration with their cross-border counterparts, which is not unexpected,

given the close geographical proximity between the officials from each country. These local authorities have managed to develop practices of collaboration over time by working together in practice at the local level. This has allowed them to build networks for sharing information and making contact, as well as creating procedures adapted to local context.

However, while border officials are more likely to be aware of changes in migration dynamics in their provinces, and able to respond quickly and collaboratively, there is a noted focus on irregular migration and border security, often at the expense of counter-trafficking in persons (CTIP) efforts.

Some Cambodian stakeholders suggested that joint investigation teams or taskforces would be preferable to relying on working relationships between individual investigators from their respective countries. The formalized and ongoing nature of a taskforce, it is felt, would be a more effective way to foster meaningful cross-border working relationships between investigators, through collaborative and ongoing efforts involving regular contact and investigation activities.

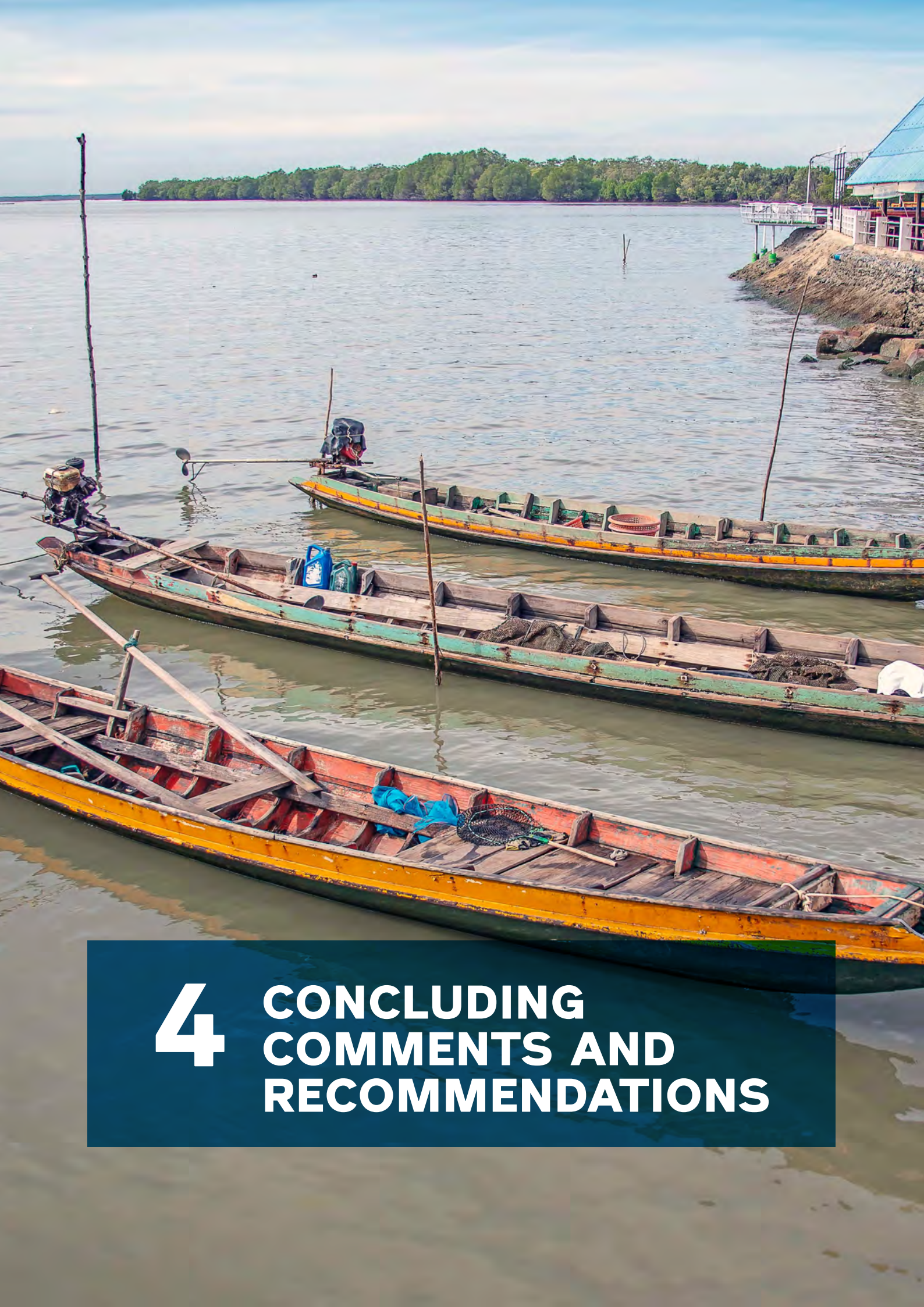
Both studies saw NGOs as being useful to cross-border cooperation, particularly where an NGO has a presence in both countries, and therefore working relationships with government officials in each country.

3.4 POST-PROSECUTION / REPATRIATION

The strongest area of cross-border collaboration between Thailand and Cambodia in both studies was reported to be repatriation of victims and referral to Cambodia's victim service providers. One interesting difference was that Thai non-government respondents tended to hold a negative view of the repatriation process, feeling that the requirement for victims to be returned across land borders is sometimes expensive and time consuming, when compared to being able to return them on a flight. In contrast, Thai government stakeholders and Cambodian stakeholders shared positive views on the cooperation involved between both countries.

One criticism from the Cambodian perspective is that Thai immigration officials often deport undocumented workers without screening them for FL/TIP, despite the fact that in many cases this is the cause of their undocumented status. These cases are left to be identified after deportation to the Cambodian transit center, by which time the opportunities to conduct effective investigation are already significantly diminished.

NGOs play a leading role in the cross-border repatriation process, assisting with service provisions on either side of the border, or assisting with returning family members of victims - an expense which might not otherwise be met by the government. The collaborative nature of the NGO networks means that victims are generally returned to Cambodia with some support in place. NGOs work closely with MoSVY at Cambodia's two transit centers, where ongoing communication with Thai officials and NGO partners is regularly used to streamline repatriation efforts and service provision.



4 CONCLUDING COMMENTS AND RECOMMENDATIONS

4 CONCLUDING COMMENTS & RECOMMENDATIONS

This section provides a set of concluding comments from a regional perspective in relation to the cross-border effectiveness of the justice systems of Thailand and neighboring countries Cambodia and Myanmar. It concludes with seven recommendations, detailing ways to increase the effectiveness of the cross-border justice system response between the countries.

4.1 CONCLUDING COMMENTS

COOPERATION BETWEEN THAILAND AND MYANMAR

An inability to carry out in-country research significantly hindered efforts to establish a baseline level of the justice system cooperation between the two countries. Available data suggests that even the most recent information on justice system responses to TIP and FL in Myanmar may no longer be accurate, due to the ongoing political developments in the country.

The 2021 military coup in Myanmar, coupled with the pandemic, decimated the labor market in the country, which has exacerbated poverty and led to an increase in migrants crossing to Thailand to seek not only better economic conditions, but also safer living conditions. These factors have led to an increased number of vulnerable people, with migrants to Thailand no longer being just those of working age, but also younger and older people seeking refuge from the ongoing political persecution.

Gains in cooperation and response to TIP and FL made under the previous civilian government now appear to be non-existent under the current military government. At an operational level during the investigation and prosecution process, mutual legal assistance treaties are in place, but are generally too slow, with informal cooperation preferred. The extent of this cooperation at the frontline level was unable to be adequately mapped, due to in-country interviews being inaccessible.

Standard repatriation MOUs are in place with Myanmar, allowing for victims of TIP to be repatriated by Thai authorities to Burmese authorities at land borders. The extent to which these victims then receive ongoing care and support is unclear, but indications are that this is limited at best. Further complicating matters are the ongoing issues around repatriating Rohingya, who are particularly vulnerable to TIP and FL due to their persecution and displacement in Myanmar. While the Thai government shelter

response to Rohingya is generally good, difficulties in repatriation have been identified, with Myanmar often refusing to take back Rohingya TIP victims, and therefore third-party resettlement in countries such as Malaysia having to be arranged.

The Myanmar literature review concludes that, in light of the current political and human rights climate in Myanmar, efforts and resources to assist Burmese victims of TIP and FL may be most effective if carried out within Thailand's borders.

› COOPERATION BETWEEN THAILAND AND CAMBODIA

In contrast, significant progress in the cross-border justice system effectiveness between Thailand and Myanmar was noted by respondents on both sides of the border since the conduct of IJM-supported baseline studies in 2016. While there are still inefficiencies, confusion and areas for improvement, significant effort have been made by both countries to implement frameworks to allow for effective cross-border cooperation.

Cambodia and Thailand have MOUs in place to allow migration into Thailand for the purposes of employment and also to facilitate the safe return of victims of TIP and efforts to prevent revictimization. Some Cambodian government respondents did, however, note that they were unclear about the specifics of their role in this process.

Cambodia and Thailand also cooperate at a policy level, with bilateral meetings held between representatives of the relevant agencies of the two countries on regular occasions. Both countries have also prepared standard operating procedures in several different areas including management of repatriation and reintegration and law enforcement cooperation. These SOPs are still to be integrated and implemented across all agencies, but their formation is generally seen as a positive sign of efforts between the two countries.

Cambodian respondents reported numerous difficulties in operational cooperation with Thai officials in the investigation and prosecution process, which lead to offenders often not being held to account for their crimes. These difficulties include different laws and operational standards, a lack of information sharing, and a general lack of intel being easily passed between the two countries. Positive operational efforts are however noted in border provinces.

The strongest area of cooperation between the two countries justice system is in the repatriation process. While Thai NGO respondents tended to hold a negative view of this process, other respondents in both countries felt that victims are generally afforded adequate support upon return to Cambodia - with NGOs playing a leading role in assisting this.

Overall, while there is still room for significant progress across all areas, there are positive signs identified across these studies that cross border justice system cooperation between Thailand and Cambodia is making progress.

The following section outlines recommendations arising as a result of consideration of the regional perspectives of this study and are primarily suggested with cross-

border justice system cooperation between Thailand and Cambodia in mind. Due to Myanmar's current political situation, it is unlikely any of these recommendations will be able to be progressed, however, should this situation significantly improve, many of these recommendations could be implemented between Thailand and Myanmar as well.

4.2 RECOMMENDATIONS

This section outlines seven specific recommendations which would enable better cross-border cooperation between Thailand, Cambodia and Myanmar.

1

Implement and refine new SOPs on TIP/FL between Thailand and Cambodia

A common theme from the studies is that while there is a relatively strong cooperation framework between the countries, with a number of high-level agreements on TIP and related issues, consistent implementation is often lacking. Cambodia and Thailand have recently signed new SOPs, aiming to bridge the gap between policy and practice. It is important these are transparently implemented and feedback from stakeholders is incorporated to ensure they are effective and impactful. As circumstances permit, Thailand and Myanmar could develop similar SOPs.

2

Remove barriers to migrant worker participation in the Thai legal process

Migrant victims find it difficult and unappealing to pursue legal cases in Thailand. On one hand, victims are often reluctant to remain abroad without income and appropriate immigration status, particularly where this involves mandatory stays in shelters. On the other hand, repatriated victims are keen to move on with their lives and find it difficult to remain involved in the justice process abroad. In both cases, victims need further support to incentivize them to pursue a claim through the justice process. It is recommended that victims are afforded further support in this regard, including financial support for victims prior to court proceedings, for attending court, legal support, and improved accessibility so victims can attend trials remotely. Further, feedback should be systematically collected from victims on their experience with victim support services and criminal justice processes, in order to identify key determinants of positive and negative experiences.

3

Strengthen embassy support to migrant workers in need of assistance

Reports indicate that support provided by the Cambodian embassy has strengthened in recent years since the appointment of a labor attaché, but remains limited and reactive. To support a more proactive and motivated response, Cambodian embassies abroad could be strengthened via a dedicated team tasked with addressing FL/TIP issues. This team could expand their roles in assisting workers across all stages of the FL/TIP process, including in accessing grievance mechanisms, changing jobs, assisting with cross-border

legal processes, and lobbying for any changes in policy and practice necessary to support a strengthened FL/TIP response.

The Thailand study also identified that unstructured and informal cooperation between Thailand and Myanmar via Thai embassies had previously occurred to assist a victim during the post prosecution process. This embassy support, utilizing Thai embassies could be promoted, in the absence of any strong cross-border efforts on the part of the Burmese government. Utilizing this support would be helpful particularly in the post-prosecution process to find support for victims of TIP and FL once they return home to Myanmar.

Set up a joint investigation taskforce between Cambodia and Thailand

Stakeholders identified that cross-border collaboration is currently limited during the investigative process. Counterparts lack the networks and working relationships to collaborate effectively, and existing mechanisms are not often used. The implementation of a joint investigative taskforce responsible for both proactive and reactive investigations of cross border FL/TIP cases on an ongoing basis, is recommended. This proposed team would be comprised of Thai and Cambodian law enforcement officials, who would be tasked with working collaboratively on cross-border investigations. The creation of a formal team would help to address issues surrounding a lack of working relationships, trust and information sharing between countries.

While a formalized joint taskforce between Thailand and Myanmar may be unable to be established in the current political situation, cooperation, however possible, should be fostered between both countries on TIP cases, whether through the use of the MLAT or informal means.

Create national FL/TIP data collection and sharing protocols

In recent years there have been improvements to the way that case data is collected and stored in both Thailand and Cambodia, particularly within the judiciary itself and in departmental initiatives. Across the judicial system, however, data collection is patchy, and is not reliable for the purposes of measuring and monitoring performance. Data collected on victim identification is not easily reconciled, with many people counted twice between departments. Data is not readily shared and accessible between departments and case updates are not reported back to police once they are referred to court.

It is recommended that an overall data collection protocol be established, setting out specifically which FL/TIP data is to be recorded, by whom, and how it will be stored, used, presented and made accessible. The protocol should be designed with input from all relevant officials and departments. If Thailand and Cambodia were to do this in parallel, this could further facilitate sharing of data across the two jurisdictions.

Once established, this data collection and sharing model could be replicated between Thailand Myanmar when an improved political situation allows.

Increase the focus on joint cross-border trainings

6 Stakeholders underlined the importance of having a good working relationship with their counterparts in other countries. However, they generally reported a poor understanding of the various roles played by these counterparts across the justice system and highlighted the limitations that this lack of understanding places on mutual understanding and collaboration. Interviewees in the Cambodian study commonly recommended joint training sessions with participants from various roles across the FL/TIP justice system - including police, local authorities, judges, and prosecutors, social affairs and service providers - as a way to improve collaboration, noting the importance of building mutual trust and developing networks.

This concept could be extended across borders. Scenario-based and practical trainings with both Thai and Cambodian officials would be beneficial to not only build capacity of these officials in a consistent manner, but also help foster relationships across the border. The trainings could also include updates about forms of trafficking and mutual information sharing and additional skills for supporting victims.

Address flaws in the design and operation of MOU migration channels into and out of Thailand

7 For the MOU channel to be effective it must suit the migration needs of its users across multiple dimensions. Currently, the MOU system is not attractive to many migrant workers as it is expensive, time consuming, difficult to access, and does not guarantee migrants safety. Despite attempts to address the charging of recruitment fees to migrants, most migrants not only pay fees but do so at levels well above the actual costs of recruitment. For the victims who return to Myanmar under the MOU system, they receive limited support at best.

For the MOU to be changed it would take significant commitment from all governments, with particular emphasis on (1) the Cambodian government preventing the charging of excessive fees and increasing monitoring of recruitment agencies and processes and (2) the Myanmar government making a commitment to provide victim-centered support to TIP and FL victims upon their repatriation and (3) the Thai government being prepared to provide migrant workers with meaningful access to full rights in Thailand, including the ability to organize themselves and to change jobs without permission of the employer. It is recommended that advocacy continues to governments of the respective countries to address these structural issues.

Endnotes

1. <https://thailand.iom.int/migration-context>
2. *This issue was cited by both government and non-government respondents*
3. *Royal Thai Government. (2020). Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (1 January – 31 December 2019).*
4. <https://www.khmertimeskh.com/501141318/cambodia-thailand-sign-agreement-on-combating-human-trafficking/>



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