

The Determinants of Irregular Migration of Myanmar Workers to Thailand

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Abstract

Irregular migration imposes a threat to national security, undermines economic development and society's rule of law, and increases the risk and vulnerability of migrant workers. Most research combines irregular migration with regular migration because the two phenomena are interwoven and because of the hidden nature and unreliable estimation of the data on irregular migration. Therefore, there is a lack of a widely-acceptable theoretical framework for studying irregular migration.

This article proposes a conceptual framework for the determinants of irregular migration and provides policy recommendations to address this problem. Drawing on in-depth interview data from irregular migrant workers, employers, government officials, labor rights activists, native workers, international migration experts, politicians, and academics regarding the irregular migration of Myanmar workers into Thailand, the author suggests that the determinants of irregular migration need to incorporate not only the long list of factors from traditional international migration theories but also other sets of factors such as deterrence factors, social norms, individual attitudes, and government policies.

Keywords: Irregular migration, determinants of international migration, non-compliance behavior, labor migration policy

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ปัจจัยที่เป็นตัวกำหนดการย้ายถิ่นอย่างไม่ปกติของแรงงานพม่าที่เดินทางเข้ามาในประเทศไทย

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บทคัดย่อ

การย้ายถิ่นอย่างไม่ปกติเป็นอันตรายต่อความมั่นคง การพัฒนาเศรษฐกิจ และหลักนิติธรรมของประเทศ และยังเพิ่มความเสี่ยงและความเปราะบางกับแรงงานต่างด้าว งานวิจัยส่วนมากไม่ได้แยกการย้ายถิ่นอย่างไม่ปกติออกจากการย้ายถิ่นอย่างปกติ เนื่องจากปรากฏการณ์ทั้งสองมีความเกี่ยวพันกัน และสภาพการณ์ที่ซ่อนเร้นและการขาดแคลนข้อมูลที่เชื่อถือได้เกี่ยวกับแรงงานย้ายถิ่นอย่างไม่ปกติ ทำให้ขาดกรอบแนวคิดเพื่อการศึกษาวิจัยเกี่ยวกับการย้ายถิ่นอย่างไม่ปกติที่เป็นที่ยอมรับ บทความนี้จะนำเสนอกรอบแนวคิดในการวิจัยเพื่อศึกษาปัจจัยที่เป็นตัวกำหนดการย้ายถิ่นอย่างไม่ปกติ และนำเสนอแนวนโยบายเพื่อแก้ไขปัญหาดังกล่าว โดยอาศัยข้อมูลที่ได้จากการสัมภาษณ์เชิงลึกเกี่ยวกับการย้ายถิ่นอย่างไม่ปกติของแรงงานพม่าที่เข้ามาในประเทศไทย จากแรงงานต่างด้าว นายจ้าง ข้าราชการ นักเคลื่อนไหวด้านสิทธิแรงงาน แรงงานไทย ผู้เชี่ยวชาญด้านการย้ายถิ่น นักการเมือง และนักวิชาการ ทั้งนี้ ผู้วิจัยนำเสนอว่าปัจจัยที่เป็นตัวกำหนดการย้ายถิ่นอย่างไม่ปกติ นอกจากจะต้องพิจารณาจากปัจจัยหลากหลายที่ได้มาจากทฤษฎีการย้ายถิ่นระหว่างประเทศที่ใช้กันอยู่ทั่วไปแล้ว จะต้องใช้ปัจจัยด้านอื่นๆด้วย เช่น ปัจจัยที่มีผลต่ออุปสรรคพฤติกรรมกรรมการละเมิดกฎหมาย บรรทัดฐานทางสังคม ทัศนคติส่วนบุคคล และ นโยบายของรัฐบาล

คำสำคัญ: การย้ายถิ่นอย่างไม่ปกติของแรงงาน ปัจจัยที่เป็นตัวกำหนดการย้ายถิ่นระหว่างประเทศ พฤติกรรมที่ไม่เหมาะสม นโยบายรัฐเกี่ยวกับแรงงานข้ามชาติ

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Introduction

People from Myanmar usually migrate to Thailand through irregular migration, meaning that they enter Thailand through an unauthorized channel without a valid passport, visa, or work permit. The United Nations (UN) has estimated that Thailand hosted 3.7 million international migrants (5.6% of population), the highest in the Southeast Asia (United Nations, 2013). The Thai Department of Employment reported in May 2014¹ that 1.5 million migrants were legally living and working in the country and the majorities are low-skilled workers from Myanmar (74%), Cambodia (13%), and the Lao PDR (4%). When subtracting those that are legally living and working in Thailand from the UN estimate, this implies that Thailand hosted at least 2.2 million irregular migrants. Each year, Thai immigration police arrest and deport approximately 300,000-400,000 irregular migrants, mostly from neighboring countries.

In the last decades, both governments and researchers worldwide have paid more attention to reducing or have exerted more control over irregular migration for various reasons. First, irregular migration is viewed as a threat to national security; countries which fail to control irregular migration are often perceived as having weak law enforcement and are more susceptible to international terrorists and transnational organized crime, such as drug trafficking, arms trafficking, human smuggling, and human trafficking.

Second, large irregular migration implies large illegal employment and a large underground economy. From the origin country's viewpoint, irregular migration undermines the government's ability to protect the rights and welfare of its citizen abroad. From the destination country's viewpoint, irregular migrants, who do not have legal status, tend to accept low wages and indecent working conditions, which can consequently depress the wages of low-income native workers. The lack of legal status makes irregular migrants more vulnerable because they tend

¹Statistical data, Office of Foreign Workers Administration, Department of Employment
<http://wp.doe.go.th/wp/index.php/2013-07-25-03-45-44/2013-07-25-03-50-28/2013-07-25-51-48>

to be afraid to report to authorities when their rights are violated because of fear that they will be arrested or deported due to violation of the immigration laws. Relying on low-wage, low-productivity workers will not help the country increase productivity or reach a higher level of economic development. A large underground economy also undermines the country's public finance because it leads to the erosion of a tax base. A large amount of illegal employment also limits the government's ability to provide adequate public services and protection to the migrant laborers and damages the country's image regarding human rights and labor rights. Employers may regard irregular migrants as cheap laborers that are easily threatened, coerced, or forced into exploitative work or living conditions. Eventually, illegality as well as substandard work and living conditions related to migrant workers can also undermine all citizens' commitment to society's rule of law and a good living environment.

Third, irrespective of countervailing policies and measures to control the irregular migration implemented in many countries around the world, the findings remain inconclusive as to whether the government policies can help reduce irregular migration. To date, there remains an unreliable estimation of data on irregular migration (Jandl, 2004) because of its hidden nature and because many migrants either do not admit or do not know that they are irregular migrants, and some may also shun or fear researchers. Some migrant workers may also frequently move in and out of regularity or irregularity because "the boundaries between regular and irregular migration are not always clear" (De Haas, 2007: 4). In addition, a decrease in irregular migration might be the result of other migration determinants such as economic growth, an end of war in the origin country, or an economic recession in the destination countries. Some scholars have suggested that it may be the policies of the receiving country that create or increase irregular migration (De Haas, 2007: 66), especially when there are insufficient authorized channels to bring in migrant workers to meet the labor market demand. This lack of empirical-based research and the lack of a widely-acceptable theoretical framework explaining irregular migration also limits the government's ability to

understand the causes of irregular migration and consequently restrains its ability to design appropriate policies to cope with this problem.

Literature Review

Although there are many theories that explain international migration (i.e. neoclassical theory, new economics of labor migration theory, dual labor market theory, world system theory, migration system theory, network theory, institutional theory, cumulative causation theory), no single theory is adequate for explaining international migration (Castles, 2007; Portes, 2010; Massey et al., 1993). One theory can explain one phenomenon of migration but may fail to explain other phenomena. For instance, the neoclassical school, which explains that individuals make a rational decision weighing the benefits and costs of migration (Sjaastad, 1962: 80-93) by taking into account differentials in income and employment opportunities between the origin and destination country, may be useful for explaining what triggers migration but it fails to explain why some people still migrate even without income differences. Network theory, on the other hand, which explains that family, friends, and community members facilitate international migration by helping to reduce the cost and risk of migration, excels in explaining why migrant communities tend to go to specific destinations but it fails to explain what triggers migration. Therefore, researchers need to choose more than one theory that best fits the context of the study, beginning by observing the migration phenomenon first, and then choosing the theories that best fit the observation in order to elaborate the findings which can only be known when the researcher has completed the empirical research.

In order to develop a conceptual framework for the determinants of irregular migration, the literature review covers three main areas: (i) the determinants of international migration; (ii) the determinants of non-compliance behavior; and (iii) labor migration policies and their effect on migration. While the determinants of international migration help explain the factors that affect migration decisions and processes (why and how people migrate), the determinants of non-compliance

behavior can help enhance the understanding on why some migrant workers choose to migrate through authorized or unauthorized channels and what deterrence factors can change their behavior. Lastly, labor migration policies can affect irregular migration because they create legal migration channels and affect the benefits and cost of irregular vs. regular migration.

From the literature review, the author found that neoclassical theory, dual labor market theory, network theory, and institutional theory have a crucial link with irregular migration. For instance, neoclassical theory explains that individuals make a rational decision weighing the benefits and costs of migration, and therefore the costs and risks of being arrested or deported for violation of immigration laws directly affect irregular migration. Dual labor market theory helps explain the creation of the demand for low-skilled, low-wage irregular migrants. While network theory helps to explain how migrant families and communities facilitate migration through either regular or irregular migration channels, institutional theorists suggest that the imbalance between the demand and supply of migrant workers creates economic opportunities for private institutions to make a profit from the expansion of underground markets that facilitate irregular migration.

Most international migration research is also heavily influenced by the economic field, focusing on push and pull factors and is somewhat marginalized from other multidisciplinary fields, such as sociology, political science, law, geography, anthropology, and other disciplines. For instance, most studies explain that immigration in Thailand is the result of push (i.e. escaping war and poverty in Myanmar) and pull factors (i.e. income and employment opportunities in Thailand). Many studies also found that the demand for migrant workers in Thailand was driven by a shortage of low-skill labor, particularly for 3D (dirty-dangerous-difficult) jobs which are undesirable for Thais (Meekul, 1995; the Thailand Development Research Institute and the National Economic and Social Development Board, 1996; Lohvithee, 1998). However, those studies paid little attention to other non-economic factors such as geography, sociology, or government policies.

As irregular migrants are persons that do not comply with some aspect of laws and rules, rational choice theory, developed from the classical theory on criminology by Casare Beccaria and Jeremy Bentham, explains that humans are rational self-interested beings that make decisions to commit a crime after weighing the potential risks, such as the probability of getting caught and the severity of punishment, against the rewards (Stafford & Warr, 1993). The theory of planned behavior (Ajzen, 1991) suggested that the behaviors of the individuals are also under the influence of a definite set of factors such as an individual's attitude toward behavior, social norms, and perceived control behavior that make an individual deviate from his/her original intention. Therefore, these theories suggested that a country's criminal justice system and social norms, as well as the individual's attitudes toward behavior, can deter people from breaking the law.

De Haas (2011) suggested that migration policies can be broadly defined as "any policies which are executed in order to affect behavior of target population (potential migrants) in an intended direction." However, Thailand is a recent immigration state, as the country was previously closely associated with emigration before it has recently become a net receiver of immigration. Therefore, it may be inappropriate to define migration policy by looking at the stated objectives of policies on paper, as suggested by De Haas (2011), because the country's existing laws or policies may not be appropriate to cope with recent immigration trends. Therefore, in this study, the researcher used the broad framework of labor migration policies suggested by W. R. Bohning (1996) in "A Manual on Policies and Procedures of Special Interest to Middle and Low Income Countries: Employing Foreign Workers." According to Bohning (1996), labor migration policies can be broadly categorized into four main types: admission policy; post-admission policy; regulation of recruitment and employment services; and combating illegal employment. While there has been growing literature on the effects of migration policies, the findings remain inconclusive as to whether the government policies can help reduce migration or if there are other factors that reduce migration.

De Hass (2011) noted that one of the problems of research on this issue over the past decades is “the rather weak connection between studies on migration policies and migration determinants on the one hand and fundamental research and theories on the causes of migration on the other.”

Research Methodology

After reviewing the literature, the author designed a tentative conceptual framework and identified key informants from various interest groups, as well as developed questionnaires for the semi-structured interview. Two sets of questionnaires were developed; one questionnaire was for interviewing Myanmar workers, and the other was for interviewing other interest groups. The first groups of key informants, Myanmar workers, included workers in both the formal and informal sector, all of which entered Thailand through unauthorized channels. Because the researcher could not speak Burmese or any Myanmar ethnic language, and irregular migration involves illegal activities, the researcher relied on the staff members of non-governmental organizations to help with the translation and in order to gain access to irregular migrants that were more willing to speak freely and more openly because these non-governmental organizations (NGO) have created long-term relationships and trust among migrant worker communities. The second group of key informants from other interest groups (i.e. employers, labor rights activists, Thai trade union leaders, academics, international migration experts, politicians, and government officials) was purposively selected based on document reviews and the 5-year experience of the author working in this field to identify experts or prominent figures that had been actively working on labor migration issues.

The qualitative method was used in this study for two main reasons. First, the data and information on irregular migration were unavailable due to their hidden nature. Second, a tentative conceptual framework involves various thick descriptive factors, such as expected income differentials and expected employment opportunities, the culture of migration, the migrant network,

underground entities (which help facilitate irregular migration), social norms, the individual's attitudes, and government policies. Therefore, these types of information and analyses can only be obtained through qualitative methods. Because this study was inductive in nature, there was no set sample size beforehand. The data gathering was stopped when no new data or new discovery emerged. The snowball technique was also used to include additional participants recommended by the key informants to further triangulate or enhance the knowledge and information in the area that should be covered in the study. When secondary data were available, they were collected and included in the analysis results in order to support or argue against the primary data source. The semi-structured in-depth interview with the 47 key informants was conducted during April-August 2014, and various sources of data and various groups of key informants were utilized to help triangulate the information, corroborate evidence, and increase the validity of the information.

Findings

Understanding how people migrate is a crucial piece of information for explaining irregular migration because it provides insightful information on how and why some people migrate through authorized channels and others migrate through unauthorized channels. The author proposed that there are three main components of the determinants of irregular migration. First, international migration determinants explain why and how people migrate. Second, the determinants of non-compliance behavior explain why some people do not comply with the law. Third are government migration policies and actions which directly affect irregular migration because government policy defines what is legal and what is illegal, and it is the government policy that provides opportunity (or no opportunity) for legal migration. In addition, government policy also directly affects the benefits (rights and protection of migrant workers) and costs (probability of arrest, punishment, and monetary and time costs) of irregular vs. regular migration, and therefore it affects people's decision on how they migrate.

Determinants of international migration

The reasons why Myanmar people migrate to Thailand are not static but they continue to change and evolve over time, depending on politics, economics, demographics, and the level of development in both Thailand and Myanmar. Civil wars, military oppression, and armed conflicts between ethnic groups and the military government of Myanmar drove the first wave of migration in the 1970s. Many people, particularly from ethnic groups in Myanmar, migrated to Thailand because of the lack of safety and security regarding their life and their assets, and because of racism, heavy taxes on farm production, and forced evacuation. Physical proximity as well as the historical and social connection among the people along the borders are also reasons why many ethnic groups often chose Thailand as the destination. Some migrated with all of their family members and others migrated following the family member that started the settlement in Thailand.

The second wave of Myanmar migration to Thailand was driven by poverty and a low level of economic development in Myanmar, as well as large income gaps between Thailand and Myanmar. The lack of formal job opportunities outside farming and limited cash income from farms pushed Myanmar people to search for better economic opportunities outside the country. The expected income in Thailand is 2-4 times higher than what Myanmar people can make at home. As more people in the communities migrated to Thailand, it created a culture of migration, where people in the communities become more obsessed with migration as they see the returning migrants or families of migrants with more wealth and better lifestyles than the non-migrant families. Flows of information, new lifestyles, and new consumption patterns have driven young Myanmar people to search for new adventure in life and the opportunity to learn new skills. Therefore, this explains why many of the young generation of Myanmar have tended to migrate more than the older generation, who continue to work on the farm at home.

The third wave of Myanmar migration to Thailand was driven by Thailand's absolute labor shortage. Thailand has experienced a labor shortage in all industries

and in all skills due to slow population growth. However, the most severe labor shortage has been in the low-skill labor market because the Thai economy has continued to heavily rely on a low-productivity workforce, while the supply of low-skilled native labor has shrunk due to a low fertility rate since the 1970s, higher education of native citizens from government compulsory and free education programs, and increased job opportunities for low-skilled natives outside Thailand or in self-employed businesses. As Thailand's fertility rate has continued below the replacement level, the country is expected to have a negative population growth by 2020 (UNFPA and NESDB, 2011), which will lead to even higher labor shortages in the near future.

When asking how they migrated, all interviewed Myanmar people say that they migrated to Thailand through unauthorized channels from 1970 to 2010 because there was no legal migration channel available between Thailand and Myanmar at that time. Long and porous land borders, and historical and community connections among the border people, allowed Myanmar people to easily cross the border to Thailand using various informal routes, such as taking a small boat or walking through the jungle, crossing rivers, and using roads. Most do not have immigration authorization or any documents when crossing the border. Many Thailand-Myanmar border areas are ethnicity states which have had armed conflicts with the Myanmar military government; therefore, the Myanmar government does not fully control these border areas to prevent illegal emigration. At the same time, the enforcement of Thai immigration has also been lax, allowing informal (unauthorized) border crossing to accommodate the traditional ways of life of border communities and to provide humanitarian assistance to those that escaped civil wars and military oppression in Myanmar.

While most countries require a foreigner to have an identity document (such as a passport or identity card) issued by the origin country when crossing international boundaries, the Myanmar government did not start to issue identity cards or have a house registration system until after 1985 (Tun, 2007). Even though the 1982 Myanmar Citizenship Laws require that a citizen of Myanmar

apply for a national ID card, many people, particularly from ethnic groups, have not had access to the Myanmar ID card for various reasons. For example, some ethnic groups are not eligible for Myanmar citizenship. Some have difficulty applying for an ID card due to language barriers, as there are more than 135 national races with different languages in Myanmar. Some were too young to apply for an ID card before they migrated, and some lived in a house in a rural area that was far away and hence it was costly to apply for an ID card when there was little incentive to apply for one. Therefore, the lack of an ID card (or a passport, which is usually required for international border crossing) is one of the main reasons why Myanmar people crossed the border through unauthorized channels and became irregular migrants in Thailand.

The author found that the irregular migration process tends to be a step-by-step migration, which means that Myanmar workers do not always go directly from their hometown to a destination in Thailand. Many Myanmar people stay and work along Thailand's border in an informal sector to save some money before moving to more formal sectors or urban areas. Most interviewed migrants stated that the cost of smuggling (5,000-40,000 baht) from Myanmar to the destination in Thailand was separate from the cost of the job placement service (500-5,000 baht) and most did not have a job waiting in Thailand before they migrated. The service providers that facilitate the migrant documentation through the regularization program in Thailand (7,000-18,000 baht) are also generally another separate profit-making entity. Before leaving Myanmar, some irregular migrants may know the destination province or the type of job they may be doing in Thailand. However, most interviewed Myanmar workers in the present study generally did not have information about the names of the employer or workplace; most said that they planned to work at whatever jobs they could find and many of them changed jobs several times since their arrival in Thailand, either to look for higher wages, better welfare jobs, or for other personal reasons such as to move closer to family members. Thailand has a relatively large informal sector, employing more than two-thirds of the labor force. Therefore, many

irregular migrants started their first job in the informal sector because it was easy to find a job there and hide from law enforcement. In addition, employers in the informal sector (i.e. agriculture, construction, domestic work) generally provide free or low-cost accommodations (and sometimes food) and the work in this sector does not require skills, language, employment contracts, or any identity documents. Employers in the informal sector also do not pay much attention to the legal status of migrant workers because of the frequent movement of workers (because migrant workers see work in the informal sector as temporary or short-term work) and the fear that migrant workers will change jobs if they have legal status (because the wages and benefits in the informal sector are lower than those in the formal sector).

While some Myanmar people (particularly the pioneer group in the 1970s) migrated to Thailand by themselves, either by walking or hiring local transporter along the migration route, most interviewed migrants, particularly chain migrants (followers or newcomer migrants), relied more on migrant networks and underground (profit-making) entities to facilitate the irregular migration process. The roles of migrant networks in facilitating irregular migration vary, ranging from direct help in bringing in new migrant workers to recommending human smugglers that successfully help former migrants or friends migrate, providing financial support to cover the cost of migration or the cost of initial accommodations, and providing labor market information and employment opportunities. The information from the interviewed migrants suggested that the migrant network helped to reduce the risks and cost of migration. The migrants, that did not have access to migrant networks or solely relied on underground entities, tended to experience more risks and higher costs of migration.

The roles of underground entities also vary, ranging from facilitating smuggling across borders to being a transporter or an intermediary between employers and migrant workers, assisting in paying bribes to officials along smuggling routes, providing lodging or loans, assisting with job placement, facilitating migrant documentation, and delivering remittances to families in

Myanmar. Underground entities are generally small and disconnected profit-making entities which provide service to migrant workers without contractual written agreements. Payment is generally made in cash without a receipt and mostly without a guaranteed outcome. The system is generally based on referral and trust among migrant communities, as well as the individual's willingness to take a risk. There is generally no guarantee that the fees paid to underground entities will not be a lost cost. In bad circumstances, underground entities can create conditions conducive to exploitation through fraud, force, or coercion.

By the time that the legal migration channel between Thailand and Myanmar under the Memorandum of Understanding on Cooperation in the Employment of Workers (hereafter referred to as MOU) was operating in 2010, at least 2-3 million Myanmar workers were already in Thailand and almost all of them migrated through irregular migration channels, either with the help of migrant networks or underground entities. Therefore, the information that the migrant networks provided to their relatives and friends at home (who also want to migrate to Thailand) tended to be similar to what they experienced, which was irregular migration. Hence, it is more difficult for the government of Thailand and Myanmar to control the flows of irregular migration because the migrant networks and underground entities have been well-established to facilitate irregular migration for decades. In addition, the newly-established legal migration channel under the MOU has to compete with widespread migrant networks and underground entities. From 2007 to 2014, only 0.22 million migrants (15% of 1.5 million registered migrant workers) from neighboring countries migrated to Thailand through the MOU legal migration channel. The author found that the MOU legal migration channel remains ineffective and is unable to compete with irregular migration for various reasons, for example, it is (i) a complex, lengthy, and cumbersome process (2-6 months); (ii) has a high cost (20,000-30,000 baht/person) with limited benefits; (iii) heavily relies on private employment service agencies without the regulation or cooperation between the two governments to regulate the fees, quality of service, or to punish malpractice or fraud; (iv)

provides insufficient information particularly regarding cost, time, process, destination, employment conditions; (v) provides limited labor mobility (migrant workers cannot change jobs/employers before the end of the employment contract unless they are going back to Myanmar); (vi) lacks long-term employment opportunities (cannot continue to work after 4 years without a 3-year break); (vii) is not compatible with some of the aspects of migration such as seasonal or short-term migration, step-by-step migration, as well as informal sector employment; (viii) lacks a system to enforce employment contracts or to promote workers that honor employment contracts, which consequently discourages employers from recruiting and paying for the cost of migration for migrant workers.

Determinants of non-compliance behavior

While irregular migrants know that they have violated the law, they may not know the consequences or extent of the punishment. In addition, the actual penalties tend to be a lot lower than what is prescribed in the Thai laws. For example, employers generally pay a fine of 2,000-5,000 baht for employing irregular migrants instead of a fine of 10,000-100,000 baht per illegal employee as written in the law. On the other hand, irregular migrants generally pay a fine of 2,000-3,000 baht or spend a few days in detention instead of a fine of 10,000 baht or 1-year imprisonment as written in the law.

While most interviewed migrants recognized that the probability of being arrested by Thai law enforcement was high because most of them are in the country illegally, having legal status (holding a document such as Tor Ror 38/1, a passport, or work permit) does not fully protect Myanmar workers because they may still be arrested for other types of administrative or fabricated offences, for example, working in unregistered workplaces, drug use, gambling, underground lottery, fraudulent documents, etc. Because almost all migrant workers from neighboring countries were illegal before 2010, employers and migrant workers have gotten used to paying bribes when they are arrested. Therefore, high probabilities of arrest but with a culture of bribery to get out of trouble do not help deter migrant workers or employers from breaking the laws.

Many Thais have ancestors that migrated through unauthorized channels from China, India or other countries in this region. Myanmar people also do not view that crossing the border illegally is socially unacceptable because most of them cross the border illegally. On the other hand, not trying to find decent employment and earning an income to support family and parents are a lot more socially unacceptable behavior than illegal border crossing. Therefore, a long historical connection and migration history in Thailand and in this region make unauthorized border crossing socially acceptable.

Therefore, the author concluded that there were three main factors that explain why some migrant workers do not comply with the law: low severity of punishment, a culture of bribery to avoid arrest (due to decades of irregular migration), and social norms and individual attitudes which accept illegal border crossing are the main reasons why many Myanmar people migrated through unauthorized channels.

Labor migration policies

Thailand does not have a national policy or bureaucratic institutions or mechanisms to formulate and make decisions on labor migration policy. The government continues to use various existing legislations which allow the cabinet members to make decisions on the timing, skills, and nationality of low-skill migrant labor. While cabinet resolutions can be a useful tool to manage temporary migration to resolve short-term problems, it has limitations in terms of resolving the absolute labor shortage and the long-term impact of migration for two main reasons. First, the policy of the cabinet members can easily shift, depending on the economic and political situation. As a result, frequent policy change and the lack of continuity and clarity can cause confusion for those that are directly impacted by the policy, such as employers and particularly migrant workers, most of whom would be disadvantaged the most due to language barriers and a lack of direct access to information. Second, as the cabinet members' term is short (maximum of 4-year terms but generally 1-2-year terms), they may prefer short-term or ad hoc programs for quick results despite the fact that labor

migration has a long-term impact. At worst, ad hoc programs can easily lead to implementation errors when there is no coordination body or mechanisms to monitor and evaluate the impact of the policy, particularly in the long term. In addition, without ad hoc cabinet decisions, low-skilled migrant workers remain “illegal” under the Thai Immigration Act and Alien Employment Act. If the cabinet fails to extend the period allowing migrants to live and work legally before the expiration date (which often has happened in the past), regular migrants can easily become irregular migrants and can be arrested or deported. When the legal status heavily relies on cabinet decisions, this creates a lot of uncertainty for regular migrant workers and limited perceived benefits of having legal status.

The government also lacks data or a mechanism to assess the labor shortage and demands for migrant workers, which skills are needed by the country, and when and how many migrant workers should be brought in each year to meet the labor demand. Therefore, the volume of the admission of migrant workers currently heavily depends on the employer’s demand and the supply of irregular migrants. Consequently, irregular migration is tolerated as long as the migrants that enter Thailand through unauthorized channel can find work.

The author found that there are at least three main types of private employment service agencies related to Myanmar migrant workers in Thailand: employment service agencies (helping to bring in migrant workers from abroad, job placement services, sub-contract employers); service providers (facilitate documentation for migrant workers under the regularization program or renewal of passport, visa, or work permit documents); and informal brokers. Some are registered with the Thai government, such as in-bound employment service agencies, while others (i.e. service providers, sub-contract employers) are neither registered nor regulated. To date, there are still no legislation or cooperation frameworks between Thailand and Myanmar to regulate private employment service agencies or service providers against malpractice, fraud, and excessive fee. Without a system to promote and regulate private employment service agencies, the legal migration channel will not be able to compete with underground entities (informal brokers) that facilitate irregular migration.

The rights and protection of regular migrant workers in Thailand are also limited and below international standards in many aspects, for example, inequality in remuneration and work conditions (particularly in the informal sector); limited ability to change jobs and limited access to job placement services without losing legal status to stay in the country; limited protection and ability to redress unfair termination of employment; limited access to the social security system and work accident compensation (particularly in the informal sector); lack of reimbursement for over-contribution to the social security system (regarding the benefits that they do not receive due to short-term migration such as unemployment benefits, allowance for children, old-age retirement benefits, etc.); limited employment opportunities either to move up to semi-skilled jobs or to continue to work after 4 years; limited ability to form trade unions, etc. Even though the Thai Labor Protection Act provides equal protection to all employees in Thailand regardless of nationality, access to protection and the services for migrant workers is still limited due to various factors, for example, lack of a clear policy and bureaucracy institutions to provide services and protection to migrant workers; language barriers and insufficient interpretation services; lack of an effective complaint mechanisms for migrant workers against unfair treatment and termination of employment; cultural bias and public attitudes toward migrant workers; as well as the migrant's lack of understanding of their rights.

The author found that the limited ability to change jobs and the lack of long-term employment opportunities (after 4 years) were the two main factors why many regular migrants fail to keep their legal status or go underground. The MOU requires that low-skilled regular migrants work in Thailand for a maximum of 4 years and return to Myanmar for at least 3 years before they can reapply for work in Thailand again. The maximum 4-year restriction stems from the idea of preventing permanent migration of low-skilled migrant workers. However, replacing migrant workers that have four years of experience and that are accustomed to the Thai culture, language, and labor market with newly-recruited unskilled migrant workers from Myanmar will not help achieve the economic objective of

reducing the labor shortage and increasing labor productivity. On the contrary, it may even worsen the country's labor productivity due to the employers' lack of incentive to provide skill training to increase labor productivity and to continue to heavily rely on low-productive laborers. The maximum 4-year migration restriction may also force regular migrants (or law-abiding migrants) to go underground or use fraudulent identity in order to continue to work in Thailand.

Since 2002, the Thai immigration police have issued internal instructions that irregular migrants from neighboring countries will not be prosecuted by the court, but will be deported under the discretion of immigration police under article 54² of the Immigration Act and that the expense of detention will be charged to the irregular migrants. This process is generally known as "soft deportation."³ The author found that the use of soft deportation to expel irregular migrants has a very small deterrence effect on illegal migration. On the contrary, soft deportation may further promote illegal migration as there is no consequence (punishment) for violation or repeated violation of the immigration laws. In addition, the lack of proper records for irregular migrants prevents law enforcement from

²Section 54: "Any alien who enters or come to stay in the kingdom without permission or when such permission expire or is revoked, the competent official will deport such alien out of the kingdom. The provisions of Section 19 and 20 will be applied Mutatis Mutandis if in the case the investigation for deportation in reference to Para.1 of this Section must be conducted.

In case there is an order of deportation for the alien; while waiting for the alien to be deported the competent official may order the alien to stay at any prescribed place or he may order the alien to report to him (competent official) according to prescribed date, time, and place with Security or with Security and Bond. The competent official may also detain the alien at any given place as many be necessary. The expense of detention shall be charged to the alien's account.

³**Soft deportation** is an immigration process to expel a person or a group of irregular migrants from neighboring countries (Myanmar, Cambodia, and Lao PDR) through an informal channel. Irregular migrants that have been arrested by Thai law enforcement are sent to detention centers and wait to be transported to the non-formal border crossing nearest the migrant's hometown in the origin country. These individuals cross the border back to the origin country by themselves. According to the immigration regulations, it is up to the immigration police's discretion whether to charge irregular migrants for violation of immigration laws and bring the case to the court.

monitoring or imposing more stringent punishment on those that repeatedly violate the law. The use of the discretionary authority of immigration police to detain and deport irregular migrants through informal channels also creates a loophole for police to call for bribes for releasing irregular migrants. This further creates a culture of distrust among migrant workers toward Thai law enforcement. As irregular migrants involuntarily leave Thailand by force of the immigration police, they have an incentive to borrow money or buy services of human smugglers to re-enter Thailand illegally. The cities or border-crossing areas where immigration police usually drop off irregular migrants can become migration hubs where human smugglers, human traffickers, and illegal money lenders set up their operations to offer travel packages or loans in exchange for fees to illegally bring deportees back to the destination in Thailand.

In addition, the Thai government's policy tools, which have been used in the last decade to combat irregular migration, such as regularization⁴, may also have had the opposite effects from the intention. While the regularization program has been applauded by labor rights activists and migrants, as it helps grant legal status to irregular migrants so that they can be protected under the law and have increased access to some basic rights, this program has a shortcoming in its ability to control irregular migration for various reasons. First, regularization may cause a magnet effect to attract more irregular migrants into the country if migrant workers expect that the regularization program will soon happen or continue to happen on a regular basis (Larramona et al., 2011; Brick, 2011). International experience has demonstrated that regularization may even encourage illegal immigration by rewarding those that violate the immigration laws. In addition, if the Thai government's intention is to promote the MOU legal migration channel,

⁴Regularization concerns the Thai government program to grant legal status to irregular migrant workers from Myanmar as an alternative to removal. The Thai government used the resolution of the cabinet to grant legal status to migrant workers to temporarily live and work in Thailand (pending deportation) either through (i) the (unilateral) migrant worker registration program (1992-2008) and/or (ii) the (bilateral) nationality verification program (2009-present).

the use of regularization on a regular basis will not encourage either migrants or employers to use this channel because the cost, time, and complexity of regularization are lower than those of the MOU process. Consequently, the regularization will compete with the MOU legal migration channel and therefore discourage legal migration. Second, it is a faulty assumption that all irregular migrants should be able to apply for the regularization program. In practice, not all of them will be able to take advantage of the program, neither in Thailand nor in other developed countries which used to implement a regularization program (Levinson, 2005; SOPEMI, 1989). The share of registered migrants that received a work permit (50% in the 2004 registration) or passed nationality verification (30% in the 2009 registration and 60% in the 2011 registration) in Thailand shows that not all registered migrants were able to complete the program. The author found that there were many groups of irregular migrants that could not apply for or were unable to complete the regularization process for various reasons, for example, (i) newcomers that entered Thailand after the registration period was closed or that did not have employment or sufficient savings to pay for the cost of regularization; (ii) migrants that did not pass nationality verification (NV) due to rejection from the Myanmar government (particularly those from ethnic groups that may not have an identity document or house registration); (iii) migrants that encountered fraudulent service providers that did not help them with the NV process as promised; (iv) migrants whose employer did not want (or did not help) them to be registered; (vi) migrant children (aged 16-18) that were still in school or unemployed and could not be registered as dependents. In addition, the author also found that the implementation of the regularization program has shown limited success because of various problems, for example, complex processes with a short time frame requiring migrant workers or employers to use (unregulated) service providers that can charge excessive fees with no guaranteed outcome (because it depends on the government of Myanmar to verify the nationality); limited information and lack of clarity of the cost, process, and time frame; identity fraud, age fraud, document fraud; limit government budgets and resources; corruption, bureaucracy with no coordinating body to solve operation

problems, communication gaps, or accountability when error or corruption happens; limit benefits and rights for legalized migrant workers (particularly limited ability to change jobs and lack of long-term employment opportunity), etc.

From the discussion above, the author has proposed a conceptual framework for the determinants of irregular migration of Myanmar workers to Thailand, as illustrated in Figure 1.

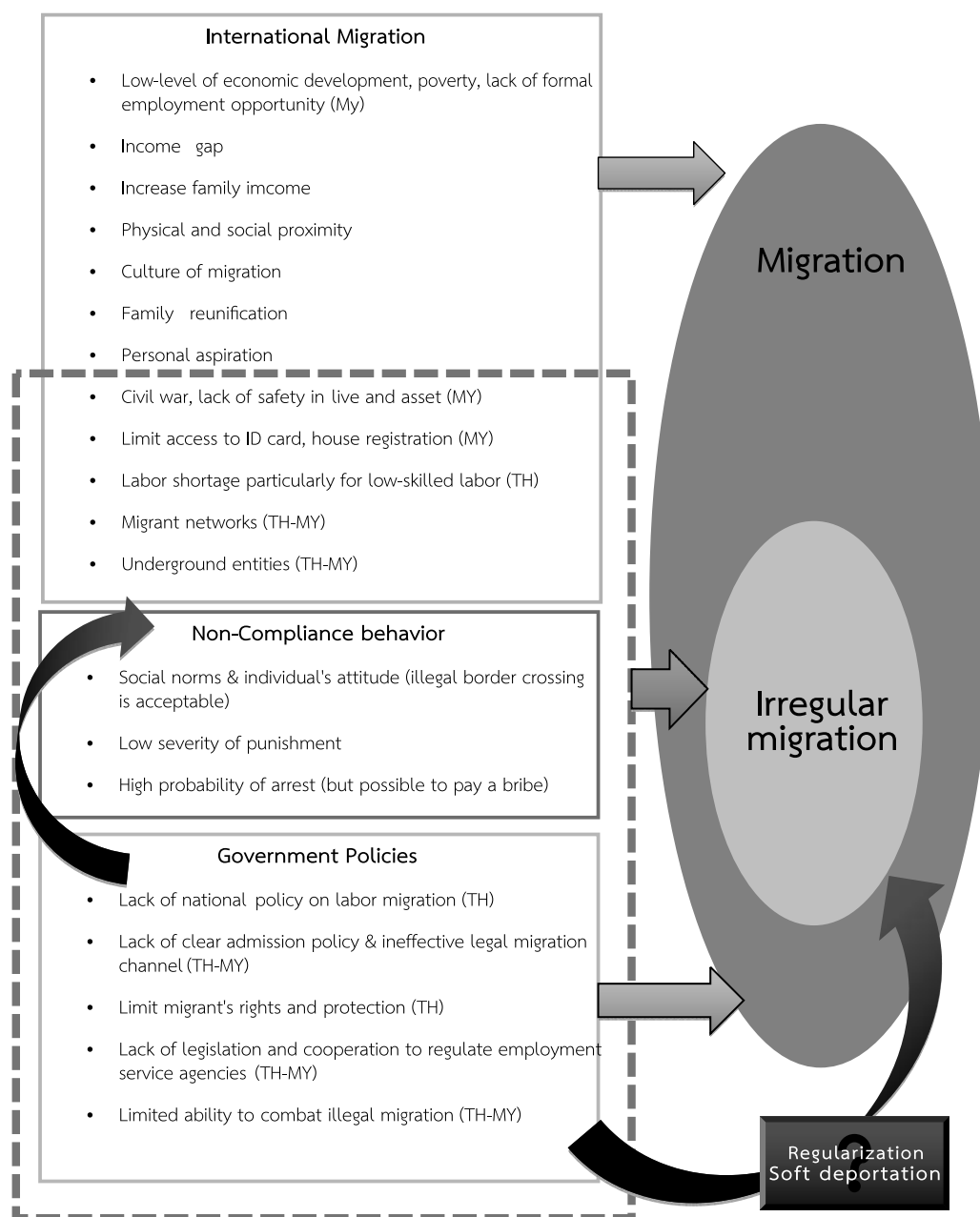


Figure 1: A Proposed conceptual framework for the determinants of irregular migration of Myanmar workers to Thailand

Note

1: In the dash line box are the factors that have most contributed to the irregular migration of Myanmar workers to Thailand

2. TH - Thailand

My - Myanmar

Policies Recommendations

According to the results of this study, the researcher has proposed policy recommendations as follows:

1. The government should develop national policy on labor migration with clear institutions and mechanisms for policy decision making, an implementing agency, and a coordinating monitoring and evaluation body. The labor migration problem has had a long-term impact and will continue to grow as Thailand has a low fertility rate and a large labor shortage, and therefore policy decision makers should be able to look at labor migration from a long-term perspective. A consultative mechanism should be used in policy formulation with all interest groups (particularly employers, native workers, NGOs, and academics).

The government should also develop a clear policy on the rights of migrant workers and institutions and mechanisms to ensure that migrant workers have access to protection and their rights. The basic rights of migrant workers should not be tied to their legal status in order to dissuade employers from employing irregular migrants. At the same time, the rights of regular migrants should be more than those of irregular migrants in order to motivate a law-abiding culture. If regular migrants have more benefits and protection than irregular migrants, it will incentivize them to complying with the laws.

Since there are many policy tools and multiple policy goals related to labor migration, the government should clearly define the policy goal for each policy tool to reduce discretion and failure in implementation. There should also be clear outcomes of labor migration policy in terms of monitoring and evaluation. The outcomes should reflect policy objectives and expand beyond volume (of regular migrants), such as composition (skills, nationality, number of family members or migrant children), timing (short-term, long-term), prosecution for illegal migration/illegal employment (i.e. the number of arrests or punishment for illegal migrants, illegal employment, and human smuggling), migrants' access to protection (i.e. number of migrant workers with social security or health insurance,

number of dispute/compliant cases that have been resolved, etc.), social and cultural impacts, etc. The government should also develop a database on migrant workers and member families, including children and spouses, in order to gain information about the demographics and labor market participation of the migrant population and to have more control over the underground economy. The data and information should be used to monitor and plan for the long-term impact of migration, support an employment contract honor system, improve the protection and services for migrant workers and family members, as well as suppress criminal activities.

In order to reduce irregular migration, the government must develop effective legal migration channels to compete with irregular migration by increasing protection, lowering costs, reducing time and complexity, and increasing access to different groups of migrant workers, particularly in the short-term, seasonal, or informal sectors. There should be a mechanism to assess the labor market demand for migrant workers with input from all relevant groups, particularly employers and native workers. The MOU legal migration channel must be adjusted to make it cheaper and more feasible, with sufficient benefits and protection against fraud and malpractice. The process should be streamlined and the employment service agencies should be regulated to reduce costs and prevent malpractice to ensure that the rights/benefits/protection from using legal migration exceed those of irregular migration. Alternative legal migration channels should be developed for seasonal or short-term migration, step-by-step migration, as well as informal sector workers with sufficient protection, enforcement, and lower costs, for example, public employment services, a business association recruitment model, and a one-stop-service recruitment and employment center at the border or soft-deportation drop-off area in order to help newcomer Myanmar workers and deportees apply for documents and enter or reenter Thailand legally.

2. Outdated and conflicting laws related to labor migration should be revised, particularly regulations in the laws which are costly, rigid, or too restrictive, which prevent regular migrants from maintaining their legal status, as outlined in the following.

The Immigration Act (1979) and the Alien Employment Act (2008) prohibit low-skilled migrant workers from entering and working in labor-intensive employment (agriculture, livestock, fisheries, construction), which contradicts the current situation, where millions of migrants are low-skilled and work as laborers in these prohibited sectors. Therefore, low-skill migrant labor is illegal under the law and only allows for temporary living and working through cabinet members' decisions. The Alien Employment Act also requires that migrant workers only work in the "workplace" registered on the work permit, which is not suitable for the current situation, where migrants may work in certain areas but not in one workplace.

The Immigration Act (1979), the Employment and Job Seekers Protection Act (1985), and the Labor Relations Act (1975) were written when Thailand was still an emigration country; therefore, many provisions in the laws are not suitable for the current migration situation. For example, the Immigration Act requires foreigners working in Thailand to report to the immigration police every 90 days, which implies that the immigration police have to accommodate approximately 6 million foreigners (1.5 million migrant workers *4) a year or 16,438 foreigners a day. The Employment and Job Seekers Protection Act (1985) only focused on the protection of Thai job seekers looking for work abroad; there was no regulation appropriately designed for migrant job seekers recruited for work in Thailand. The government should increase its efforts to regulate all types of employment service agencies (i.e. in-bound migration employment service agencies, service providers that facilitate migrant documentation, and sub-contract employers, etc.). In addition, the government should make the legal migration channels (or legal employment service agencies) of more benefit and more marketable than illegal migration channels (or underground entities). For example, if the government is able to

regulate the fees (lower the cost) and ensure that legal migration have transparent and accurate information regarding the process, fees, employment contracts, as well as adequate complaint mechanisms and protection, this would help increase the attractiveness of legal migration to compete with underground entities.

3. International cooperation with the Myanmar government should be increased, particularly in the following areas:

- Support improvement in quality (prevent fraud) and coverage (every household) of ID cards and the house registration of Myanmar people, particularly ethnic groups;
- Increase border cooperation to prevent illegal border crossing, human smuggling, and human trafficking;
- Increase cooperation on admission policy (accuracy and availability of pre-departure/post-arrival information for migrant workers, streamline/speed up the process, enhance protection and complaint mechanisms), and regulate private employment service agencies (recruitment agencies in Myanmar) to reduce excessive fees and complexity, increase transparency, and prevent fraud and malpractice;
- Develop a cooperation mechanism for the safe return of migrant workers and their families that want to return home or that violate Thai laws or that may cause social problems in Thai society, i.e. drug users, persons with a criminal record, persons with a disease or health problems, pregnant women, or the children of migrant workers;
- Develop cooperation on education and health services for migrant children.

4. The government should increase its efforts to enforce the law, particularly to investigate and prosecute underground entities (human smugglers, human traffickers, illegal money lenders, and informal brokers) and corrupt officials

related to human smuggling, illegal employment, and bribery. As most Myanmar workers are economic migrants and the employer's demand for migrant workers is for economic activities, the government should increase the use of economic incentives (more rights/benefits) or disincentives (fines) rather than crime suppression (imprisonment) in order to dissuade employers or migrants from violating the law. The government should create a system to impose more stringent penalties for repeat law violators (both employers and irregular migrant workers).

5. Prevention efforts should be enhanced, particularly through migrant networks in Thailand, to encourage legal migration channels and to discourage law violation behavior. Instead of viewing migrant networks as the enemy of the state (which helps facilitate irregular migration), the government should take the opportunities to utilize the millions of migrant workers that are already working and living in Thailand to promote legal migration channels as they have direct contact with potential newcomer Myanmar workers at home. The government should also create incentives or a system to help the informal sector become more productive and integrated into the formal sector, particularly regarding labor standards and social protection.

Figure 2 is a summary of the key policy recommendations proposed by the author and they are divided into immediate, medium, and long-term plans. Immediate plans are the area where the government should take action immediately because it provides a basis for medium- or long-term plans. For example, a database of migrant workers, and a national labor migration policy framework and mechanism to assess labor demand to bring in migrant workers, should be developed immediately. When there are better data and clear labor migration policies on migrants (when they should enter Thailand, how many, and which skills they should have), the government can develop alternative legal migration channels to bring in migrant workers to meet the labor market demand. Concurrently, the government should pay more attention to the rights and protection of migrant workers in order to give regular migrants more rights and protection than irregular migrants in order to attract law-abiding migrant

workers. Once there are clear legal migration channels available and the rights of migrants are well protected under the law, people should be obliged to comply with the laws and the government will be able to strengthen enforcement and penalties in order to deter law-violation behaviors.

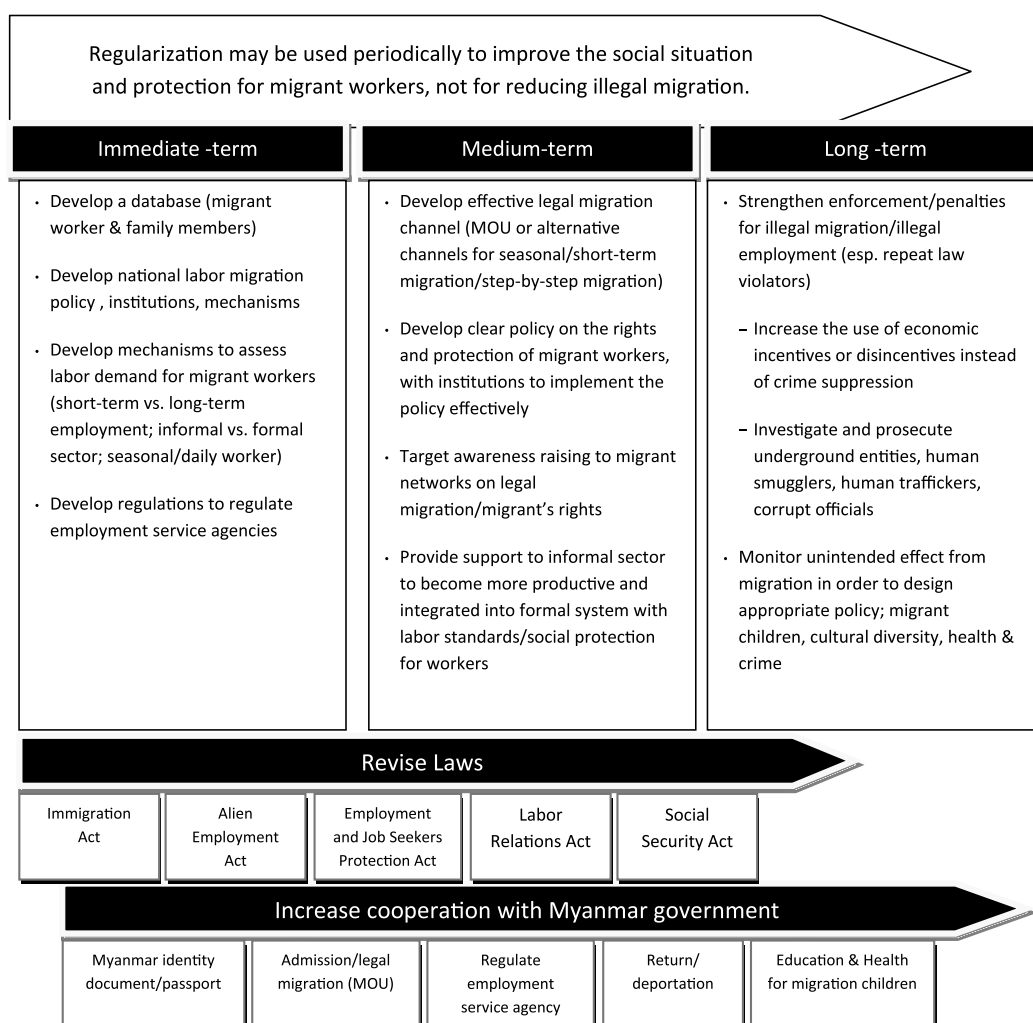


Figure 2: Policy recommendations (short-term, medium-term, and long-term plans)

Conclusion

In order to understand the determinants of irregular migration, one needs to know how people migrate because it provides insightful information on how and why some people migrate through authorized channels and others migrate through unauthorized channels. While international migration theories are useful in providing some explanations on irregular migration, a researcher needs to incorporate other sets of factors, such as deterrence factors, social norms, the individual's attitudes, as well as government policies. The author concludes that the factors that have most contributed to irregular migration of Myanmar workers to Thailand have been civil wars and limited access to identity cards in Myanmar; labor shortages, particularly low-skill labor in the informal sector in Thailand; migrant networks and underground entities which help facilitate irregular (underground) migration; limited deterrence effects (low severity of punishment) and ability to pay bribes in order to get out of arrest; social norms and individual attitudes among Thais and Burmese people which accept illegal border crossing; and the gap in Thailand's policy, legislation, and institutions related to labor migration and the rights of migrant workers. The findings from this study found that Thai government's policy tools, which have been used in the last decade, such as soft deportation and regularization instead of reducing irregular migration, may have had opposite effects because these tools do not have a deterrence effect on irregular migrants or employers for breaking the law. The government policy in the origin country, particularly access to citizenship and identity documents, border control, and regulation of recruitment agencies, are also important factors that contributes to irregular migration. Therefore, in order to develop a policy to solve the irregular migration problems, there is a need to understand the causes and patterns of irregular migration, which can only be found through empirical research.

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