

Statistics

Statistics of Migrant Workers and dependents
Percentage of migrant works by types of work

Policies and Laws

May

1. Draft Migrant Worker Management Act, B.E..., used in hearing

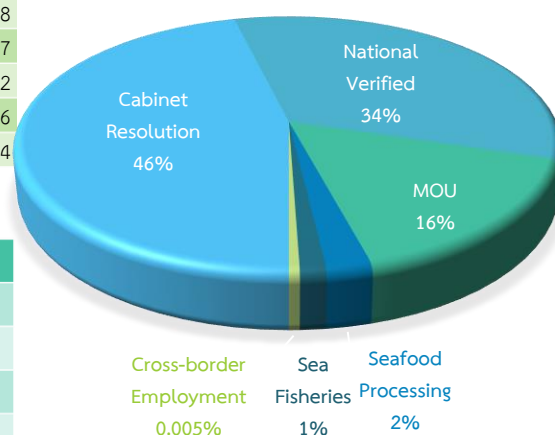
June

1. Enforcement of the Royal Decree on the Migrant Worker Management B.E. 2560 and Its Consequences
2. Resolution on a Labour Shortage in Fishery Sector

Migrant workers and dependents, June 2017

Statistics of Migrant Workers				
Category / Country	Myanmar	Cambodia	Laos	Total
Nationality Verified	711,987	84,599	58,989	855,575
MOU	202,932	160,881	48,283	412,096
Cabinet Resolution	723,360	385,829	69,489	1,178,678
Sea Fisheries	20,045	13,018	804	33,867
Sea food Processing	50,171	7,823	1,228	59,222
Cross-border Employment	2,280	11,686	-	13,966
Total	1,710,775	663,836	178,793	2,553,404

Percentage of migrant workers by type of work, June 2017



Statistics of Registered Dependents of Migrant Workers				
Category / Country	Myanmar	Cambodia	Laos	Total
Cabinet Resolution	11,157	10,559	1,953	23,669
Sea food Processing	348	256	27	631
Total	11,505	10,815	1,980	24,300

Data from the Foreign Worker Administration Office and the website of Ministry of Labor, retrieved from 29 June 2017

1. Draft Migrant Worker Management Act, B.E..., used in hearing

In principal, the draft Migrant Worker Management Act B.E... aimed at improving the law on working of alien and the law on alien workforce import, containing 8 sections and 145 articles.

Section 1 General. The additional issues from the original laws are as follows.

- Stipulating the impermissible categories of work for the migrant worker. That means the migrant worker can engage in every category of job except prohibited occupations. Occupational stipulation in the upcoming law is different from the previous law – the law on Working of Alien B.E. 2551 – which specifies the permissible categories of work (Section 7)
- Stipulating the Minister of Labor, approved by the Management Policy Committee on Working of Migrant Workers, shall have authority to issue an announcement of work specification which calls for an employment fee from the employer (section 11)
- Authorizing the Minister to delimit the migrant worker to work for certain types of work (section 12)
- Authorizing the Minister, agreed by the Cabinet, enable to assign a migrant workforce import which have to be under the condition of this law or with the exception of that (Section 14).
- Authorizing the Minister of Interior, agreed by the Cabinet, to indicate wherever residential areas for the permitted migrant worker to live at.
- Stipulating dispute about rights and responsibility according to this law, or labor relation being in the authority of the labor court.

Section 2. Management Policy Committee on Working of Migrant Workers

Setting up such a committee is for replacing the review Committee on Working of Alien stipulating in the law on Working of Alien B.E. 2551, Section 3, Article 41-44 (Section 17-22).

- The Management Policy Committee on Working of Migrant Workers consists of the Minister of Labor as president, the Permanent Secretary relevant, and other members of the committee from the representatives of entrepreneurs, labor organization, and professionals specifically in a field of human rights (Section 17).
- They are responsible for formulating policy and strategies on migrant workforce management, stipulating measures and approaches to solve the problem, including stipulating management missions which would present to the Cabinet to take a consideration. Once agreed by the Cabinet, all government agencies shall have to implement and govern according to such policy. Beside this, developing and improving the stipulation on management to fit the current situation, reporting annually on implementation to the Cabinet and publicize to the general public.

Section 3 Alien Workforce Import

- Stipulating on prohibiting a recipient without a permit to bring a migrant worker to work within Thailand, to advertise for migrant employment; for preventing a fraud (Section 25)
- Stipulating on prohibiting an employer calling for money or property from a migrant worker who works with (Section 49).
- Stipulating a clear duty and responsibility of the employer who employs the migrant worker. In the case where an offence is not committed by the employer, the migrant worker shall have to be sent back to the country of origin. Providing the employer is who commits an offence, and the migrant worker want to continue to work in the Kingdom, he can change the employer within 15 days counting from the out-of-work day (Section 50, 51).
- Stipulating other employer who will be employing the migrant worker from an original employer, shall have to put a guarantee and be granted from the Director-General of Employment Department (Section 51)
- Stipulating on permitting the migrant worker to appeal to the Director-General of Employment Department to consider deducting the guarantee in the case where the employer or the permitted recipient fail to abide by this law (Section 57)

Section 4 Management on Working of Migrant Worker

Management on Working of Migrant Worker is an original principle stipulated in the law on Working of Alien B.E. 2551, which have been made a revision as the following issues;

- Stipulating a border pass or an official document issued by the country of origin to be allowed to use as material for a permit application especially for the migrant worker from neighboring countries (Section 64).

- Revising and adding the type-of-work stipulation on the work permit; stipulating a work regulation, an employer, an area and conditions. This is for a flexibility in permission for the migrant workers to engage in work (Section 70).
- Stipulating the employer to be required to notify the registrar in case the permitted migrant worker quit his job within seven days (Section 74).

Section 5 Migrant Worker Management Fund

Replacing the Alien Out-of-Kingdom Repatriation Fund, changing the title and the objective of the repatriate fund section 29-30 under the Working of Alien Act B.E 2551 (Section 75-85)

- Abolishing the Alien Out-of-Kingdom Repatriation Fund, establishing the Migrant Worker Management Fund with the fund management committee which has the Permanent Secretary as president, the committee from related government agencies and professionals (Section 75 and 78).
- The management fund derive financing from the repatriation fund transferred to, and fee, subsidies, and other (Section 76)
- The objectives of the management fund are to assist the migrant worker whose rights is violated, to use for repatriation, to support the activities of government agencies and NGOs, and so on (Section 77).

Section 6 Governing Measure. Divided into two parts;

- Part 1: about a suspension of a work permit, a worker- import license. Granting the Registrar’s authority to order a work permit suspension. Adding the section of a notification on the list of employers or license recipients who import the migrant worker inside and are penalized in violation of the stipulations according to this law (Section 86-91)
- Part 2: Appealing an Administrative order
This is the measures on appealing order directly to the Minister of Labor, the judgment of the Cabinet shall be deemed to be final. The following are the case in this regard; importing the migrant worker to work inside, issuing a licensed importer certificate, deducting a warrant, and renewing a work permit renew.

Section 7 Authority

- There is some change regarding authority over a search with a warrant except the reasonable condition that the incident where such a migrant may be violated, moved, or hidden, or a relevant evidence may be transformed, destroyed, before coming of a search warrant, the authority can proceed an entry without warrant, but must abide by the Criminal Procedure Code on Search (Section 98).

Section 8 Penalty

Increasing a penalty fine to be higher (Section 101-133)

- Whoever deceiving others that can bring a migrant worker to work with an employer in the Kingdom, shall be liable for punishment of imprisonment from 3 to 10 years or a fine from 600,000 Baht up to 1,000,000 Baht or both per a migrant worker (Section 128). And whoever backing up the offence said above shall be liable for punishment of imprisonment from 1 to 3 years or a fine from 200,000 Baht up to 600,000 Baht or both (Section 129).
- An employer who employs a non-work permit migrant worker or a work permit migrant to engage in a type of impermissible work, shall be liable for punishment of a fine from 400,000 to 800,000 Baht per a migrant worker (Section 102)
- Whoever employs a non-work permit migrant worker to work with shall be liable for punishment of fine from 400,000 to 800,000 Baht per a migrant worker (Section 122)
- Whoever employs a migrant worker which the work type does not comply with a work permit, shall be liable for punishment of fine not exceeding 400,000 Baht per a migrant worker (Section 123)
- A migrant worker who works without a permit or engages in the work that is impermissible as the Minister’s stipulation, shall be liable for punishment of imprisonment not exceeding 5 years or a fine from 2,000 Baht up to 100,000 Baht, or both (Section 101).
- An additional punishment for a person who seizes a work permit or private document of a migrant worker, shall be liable for punishment of imprisonment not exceeding 6 months or a fine not exceeding 100,000 Baht, or both (Section 131).
- An employer who fails to notify the Registrar in case where a migrant employer quit a job, shall be liable for punishment of a fine not exceeding 100,000 Baht (Section 124).



1. Enforcement of the Royal Decree on the Migrant Worker Management B.E. 2560 and Its Consequences

The cabinet has endorsed the Royal Decree on the Management of Migrant Employment as proposed by the Ministry of Labour. It is aimed to serve the MoL's goals, in particular to stem the violations of basic labour rights or the act of human trafficking against migrants. The law shall come into force on 23 June 2017.

After it has been effective, Migrant Working Group (MWG) has been informed of issues by both employees and employers regarding the enforcement of the law. The Royal Decree has led to additional measures on top of the previous laws including the Foreign Workers Act BE 2551 (2008) and the Royal Decree on the Placement of Foreign Workers with Employers in Thailand BE 2559 (2016). The new law imposes hefty penalties on both the employers and the employees who are found to have employed migrant workers and violated the law. It has brought about massive confusion among employees, employers and local officials involved with the employment.

MWG has found some employers have started to lay off their existing migrant employees, an increase of crackdown on the employees, arrests and deportations of a large number of workers. Legal loopholes have also been exploited by law enforcement officials to commit extortion against the workers and the employers. Therefore, MWG is calling on the government to urgently address the issues and to seek other alternative solutions other than severe labour crackdown since many problems have stemmed from a lack of clarity as to the policy for the management of migrant workers and how they are incompatible with root causes of the employment as follows;

1. The Royal Decree has been promulgated invoking Section 172 of the Constitution of the Kingdom of Thailand which provides that the cabinet can issue a Royal Decree "for the purpose of maintaining national or public safety or national economic security...". The issuance of such Emergency Decree shall be made only to apply for "an emergency of necessity and urgency which is unavoidable.

MWG has found that the management of migrant workers does not constitute "an emergency of necessity and urgency which is unavoidable" which can be invoked to issue the Royal Decree. In addition, in light of the Royal Decrees issued invoking the previous Constitution, the administration or the cabinet had avoided to exercise such legislative power save for the laws to cope with urgent vulnerabilities as to national security.

Therefore, the government should thoroughly listen to opinions from various sectors and rely on solid evidence and research in order to improve the existing laws. It also serves the interest of the government to put in place a law concerning the management of employment of migrants as a whole and to ensure decent work and sustainable development.

2. MWG has found the new law imposes much more severe punishment than the previous ones. Such increase of penalties includes an increase of fine and prison term. Such a change may induce more corruption and violation of the law and would render massive impact on the businesses that employ migrant workers. Meanwhile, the channels through which legal employment of migrant workers can be done including the MoU arrangement to import workers from the sending countries have been fraught with problems. In addition, the penalty rates between employees and employers are found to be different. For example, for an employee who is found to have worked without permission, they would be punishable by an imprisonment or a fine, whereas, for an employer who has violated the law, they shall be punishable only by a fine. This could be construed as discrimination. MWG, therefore, calls on the government to review such harsh punitive measures and to do away with imprisonment.

3. Crackdowns on and arrests of migrant workers should be suspended while clear policy and measures are developed and put in place to ensure the same enforcement of the laws of all officials in different areas. Security and administrative agencies should be formally told to be careful when conducting any crackdown on migrant workers since the law has suddenly been changed and an effort is needed to ensure that all officials at the practical level are sufficiently informed of how to execute the law and all stakeholders have to be informed as well. A number of workers also need more time to get adjusted in terms of their immigration status and the right to work, the right to stay in Thailand. Otherwise, they would be made be vulnerable to widespread arrests and crackdowns.

4. An emergency measure should be put in place to ensure migrant workers and business operators that the new initiative regarding the management of migrant workers shall not affect their employments. This is to stem an exodus of migrant workforce since there have been rumors about arrests of migrant workers in various areas, an incidence of which once happened in 2014.

5. We urge the government to review the recommendations made by MWG and submitted to the Prime Minister and Minister of Labour since 24 May 2017. The recommendations have been derived from feedback of participants in a public forum regarding the Draft Royal Decree on 15 May 2017. Among the participants were representatives from state and private agencies including business operators, employees, Industrial Chamber, academics, labour activists, NGOs, and lawyers.

2. Resolution on a Labour Shortage in Fishery Sector

In pursuance to a letter by the Fishing Association of Thailand urging the government to tackle a labour shortage in fishery sector whereas the Ministry of Labour's policy to allow undocumented workers to get registered has been terminated, and with regard to the meeting of the Command Center for Combatting Illegal Fishing (CCIF), a resolution has been made urging the Director-General of the Department of Fisheries to exercise his power per Section 83 of the Fishery Royal Decree BE 2558 (2015) to allow the fishing operators to report their demand of migrant workers as to how many more workers are needed for each fishing boat. The Director-General of the Department of Fisheries can then temporarily allow the workers to stay in the kingdom and to work in the fishery sector for one year. The DoF would issue a seaman document to each of the undocumented workers and would, later on, ensure that they would undergo nationality verification process. At present, there is a demand of around 40,000 fishing workers.

On 19 June 2017, the Director-General of the Department of Employment has invited representatives from civil society to a meeting to explain about the procedure to implement the Draft Royal Decree on Alien Workers Management B.E... and the enforcement of Section 83 of the Fishery Royal Decree B.E 2558 (A.D.2015). As to the enforcement of Section 83, the Migrant Working Group (MWG) has compiled opinions and recommendations from a meeting of civil society organizations as follows;

Giving permission to work is a major role adopted by the Ministry of Labour. It is related to labour protection, social security and workmen's compensation fund laws as well as management in the short and long term.

The survey of the demand for foreign workers falls under the charge of the Department of Fisheries; an attempt should be made to explore the actual demand of labour in marine fishing sector. The review of labour demand in fishery sector has to be made based on the balance between the labour force in the fishing boats and the type of fishing boats, as well as the supervision of the Port In – Port Out Controlling Center (PIPO). Fishery sector has long suffered from a labour shortage, and the previous reprieve on the registration of undocumented labour did not satisfy all the demand.

The Thai government should assess readiness of governments of the sending countries in terms of their cooperation to ensure their worker undergo nationality verification after the workers have been issued with seaman documents. It has been found out by civil society that the existing nationality verification effort has failed to garner enough cooperation from the sending countries.

The Thai government has to develop a plan to monitor, verify or reduce pull factors that might encourage the fishing workers into other labour sectors which may have different levels of remuneration and welfare. Otherwise, it would led to a shortage of labour in fishery sector again. It was a lesson learned from fishing processing business.

An effort should be made to ensure decent work as a pull factor for the workers. Previously, the Ministry of Labour has proposed a raise of minimum wage in fishery sector to 400 baht and the employers are required to provide fringe benefits including food and accommodation as well as group life insurance to the workers. But according to the ILO Convention C188 which is likely to receive ratification from Thailand, provides that social security provided for fishing workers shall be compatible with social security provided for workers in other sectors. Therefore, the proposed life insurance scheme proposed for fishing workers seem to be incompatible and different from social security provided by the state.

It should be ensured that workers issued with seaman documents, an equivalent of work permit, should be able to get registered with the state social security fund. The law should be made to require employers in fishery sector to pay their contributions to the Workmen's Compensation Fund per the WCF Act BE 2537 (1994) since the private health insurance does not cover injuries, losses or deaths of the fishing workers during the course of their work.

The regulation applied to the employers and workers should be developed in compliance with the Draft Royal Decree on Foreign Workers Management B.E... whereby employers must be required to deposit to a fund from which the government can tap to cover the compensation from the importation of migrant workers The fund should be managed by the Ministry of Labour or other agencies to provide for the compensation and those in charge of deportation of foreign workers and notifying state agencies.

A shortage of labour in marine fishery sector should be proposed as an issue to the Committee to be established per the Draft Royal Decree on Foreign Workers Management B.E...in order to set out a resolution, both short term and long term.

We welcome a proposal for civil society to participate as a third party, even though detail of such cooperation needs to be further spelled out together with the form of financial support from the state.

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