

# JOINT CIVIL SOCIETY REPORT

## Submission to the Committee on the Elimination of Racial Discrimination (CERD)

for the review of the combined fourth to eighth periodic  
reports of Thailand (CERD/C/THA/4-8)

at the 105<sup>th</sup> session,  
15 November 2021 – 3 December 2021

### Submitting organizations



## Table of Contents

Acronyms.....	2
<b>1. Introduction.....</b>	<b>3</b>
<b>1.1. Background.....</b>	<b>3</b>
<b>1.2. Background of migrant workers in Thailand.....</b>	<b>3</b>
<b>2. Impact of COVID-19 to migrant workers .....</b>	<b>4</b>
<b>2.1. Effect of the governments’ measures on migrant workers during COVID-19 pandemic.</b>	<b>4</b>
<b>2.2. Management of State Shelter during COVID-19 Pandemic .....</b>	<b>5</b>
<b>2.3. Obstacles to access to compensation during COVID-19 pandemic .....</b>	<b>5</b>
<b>2.3.1. Migrant workers excluded or not yet registered as an insured person in social security system .....</b>	<b>5</b>
<b>2.3.2. Online channel to make a claimant about violation of labour rights and social security during COVID-19 pandemic .....</b>	<b>5</b>
<b>2.4. COVID-19 Response: Exclusion and Xenophobia against migrant workers .....</b>	<b>6</b>
<b>3. Problems from the Management of migrant workers under the Royal Ordinance Concerning the Management of Foreign Workers’ Employment 2017.....</b>	<b>6</b>
<b>4. Specific Group: Border workers.....</b>	<b>7</b>
<b>5. Specific Group: Working in Sea Fisheries.....</b>	<b>8</b>
<b>6. Social Security and Workmen’s Compensation Fund.....</b>	<b>10</b>
<b>6.1. Works excluded from Workmen’s Compensation and Social Security Fund.....</b>	<b>10</b>
<b>6.2. Problem in access to Workmen’s Compensations Fund .....</b>	<b>10</b>
<b>6.3. Problems in access to social security fund .....</b>	<b>11</b>
<b>7. Freedom of Association and Collective Bargaining of Migrant Workers.....</b>	<b>12</b>
<b>8. Strategic Lawsuits against Public Participation (SLAPP) against human rights defenders ...</b>	<b>14</b>
<b>9. Right to education and children’s welfare .....</b>	<b>14</b>
<b>10. The right to remedy of the victim of a crime .....</b>	<b>15</b>
<b>11. Human Trafficking .....</b>	<b>16</b>
<b>12. Summary of the Report.....</b>	<b>18</b>

## Acronyms

COVID-19	Coronavirus disease 2019
HRDF	Human Rights and Development Foundation
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILO	International Labour Organization
MOU	Memorandum of Understanding
MWG	Migrant Working Group
MWRN	Migrant Workers Rights Network
OSS	One-Stop Service Center
PIPO	Port-In Port-Out Center
SLAPP	Strategic Lawsuits against Public Participation
SSO	Social Security Office
UNESCO	United Nations Educational, Scientific and Cultural Organization
VMS	Vessel Monitoring System
WCF	Workmen's Compensations Fund

## 1. Introduction

### 1.1. Background

1. This report has been prepared by Human Rights and Development Foundation (HRDF) and Migrant Working Group (MWG) with contributions from community-based organizations and migrant worker's network in Thailand.
2. The Human Rights and Development Foundation (HRDF) was established as a foundation following the orders of the Office of the National Culture Council in 2000. It was established by human rights academics and a human rights lawyer. HRDF aims to empower migrant workers to reduce work related injuries, diseases and deaths in their communities, through effectively controlling workplace hazards, improve migrant worker occupational health and safety conditions through facilitating the control of migrant workplace hazards and to provide capacity building on occupational health and safety issues, that ensures greater migrant's awareness and knowledge to a migrant led action research project.
3. Migrant Working Group Thailand (MWG) is a network of non-governmental organizations working on health, education and migrant workers' rights. MWG aims to exchange information among a migrant workers network, analyze problems, set agendas and conduct campaign and advocacy activities with state sector, academic sector and civil society sector for migrant workers' fundamental rights in order that they can have a better quality of life.

### 1.2. Background of migrant workers in Thailand

4. The flow of migrant workers into Thailand has begun since more than 20 years ago, though the policy to address migrant worker issues has only started to take shape in 1992 with the two major governing laws including the 2008 Alien Working Act and the 1979 Immigration Act. The Royal Ordinance Concerning the Management of Foreign Workers' Employment 2017, replaced the Alien Working Act 2008, provides clauses on management of migrant workers in Thailand including the recruitment and employment of migrant workers. This law aims to manage migrant workers focusing those recruited through the Memorandum of Understanding (MOU) between states. Migrant workers living and working in Thailand by the cabinet's resolution are pushed to change to be migrant workers recruited through the MOU Channel.
5. Compared groups of migrant workers allowed to stay and work in Thailand before and after the adoption of the 2017 Royal Ordinance:

No.	Migrant workers before 2020	Migrant workers in 2020
1.	Imported labour by the virtue of bilateral agreements between Thailand and its neighboring countries as Myanmar, Laos, Cambodia and Vietnam.	<ul style="list-style-type: none"><li>- Imported labour by the virtue of bilateral agreements between Thailand and its neighbors including Myanmar, Laos, Cambodia and Vietnam.</li><li>- In 2019, migrant workers who are allowed and stayed in Thailand by the cabinet's resolution can change their status to be migrant workers recruited through MOU channel by the special process allowed by Thai government (by the exemption of the immigration law).</li></ul>
2.	Migrant workers who have undergone nationality verification process and obtained travel documents from their countries of origin, permits and visas to allow them to stay within a period of time	

3.	Irregular migrant workers, who according to the government policy are allowed to stay temporarily in Thailand and issued documents to recognize their residency and work until 31 March 2016. This group of migrants was required to undergo nationality verification afterward in order to obtain travel documents from their countries of origin, work permits and visas.	
----	---	--

## 2. Impact of COVID-19 to migrant workers

### 2.1. Effect of the governments' measures on migrant workers during COVID-19 pandemic

6. The government's response to the COVID-19 pandemic does not provide enough protection and remedy to migrant workers, which makes them negatively affected in many aspects. Refer to MWG<sup>1</sup>, in the beginning of April 2020, migrant workers started to get affected by COVID-19 pandemic from the job dismissal because of the business closing. In May 2020, 39 from 42 complaints of MWG were about the temporary closing of business. These businesses cover garment, electronic and auto mobile part factories, restaurant, hotel and other services. Thus, it has been reported during this period that some migrant workers traveled back to the country of origin or try to find new employer in Thailand. Both activities are risk of infecting or spreading COVID-19. This situation is a result of the lack of appropriate policies to manage migrant workers during the pandemic. Some migrant workers cannot travel back to their country of origin because of the curfew. Even living in Thailand, migrant workers fall behind the government's remedy which is restricted to only Thais.
7. Another impact of COVID-19 pandemic to migrant workers is the enforcement of immigration law to migrant workers who the passport or VISA expired before the COVID-19 pandemic and cannot conduct their extension due to the restriction of travel. The government's policy extends the period to stay for non-Thais only those who has the document expired during the COVID-19 pandemic but not before.<sup>2</sup> Migrant workers who passport or VISA expired before the COVID-19 pandemic were arrested and some were referred to the state shelter which already crowded. There is also no deportation process during the COVID-19 pandemic.
8. The government's policies for extension of right to stay in the country have been issued by cabinet's resolution for a particular time and from time to time. This makes the migrant workers confused to which the government policy has applied to them. For those who travel back home, if they need to come back to work after COVID-19, they have to pay for VISA themselves. There has been so far no government's policy to exempt VISA for migrant workers who need to travel back to continue their employment in Thailand after COVID-19 pandemic.

#### Recommend

- Thai government should consider the enforcement of immigration law during the COVID-19 pandemic or in other emergency situation which affected the travel of migrant workers in the country. Also, Thai government should exempt the immigration law to migrant workers who has expired their personal documents for all groups.

<sup>1</sup> Letter from MWG to Minister of Labour on Measures to Solve Problems on the Employment of Migrant Workers Affected by COVID-19 Pandemic, dated 15 April 2020

<sup>2</sup> Letter from MWG to Chief of Immigration Bureau on the Recommendations on the Enforcement of Ministry of Interior's Notification regarding the Permission of Some Groups of Foreigners to Stay in the Country as Special Case dated 8 and 23 April 2020, dated 1 May 2020

- Thai government should exempt re-entry fee (immigration law) to allow and migrant workers who travel home to return their work in Thailand after the COVID-19 pandemic.<sup>3</sup>
- Thai government should provide information about the government policies during the COVID-19 pandemic to migrant workers in order to understand on what procedures have been applied to them and to avoid the travel during the pandemic.

## **2.2. Management of State Shelter during COVID-19 Pandemic**

9. Information from MWG<sup>4</sup> revealed that during COVID-19 pandemic, 42 foreigners (from Myanmar, Vietnam, Malaysia, Yemen, Cambodia and India) detained in the state shelter in Sadao District, Songkla Province, were infected with COVID-19, while other 73 detained in the same shelter test negative. Because of the small space of the shelter and the current close of border, the state shelter has been crowded with foreigners waiting to be deported, coupled with those who seeking asylum. With this environment, it is hard to conduct health measures to prevent the spreading of COVID-19.

### **Recommend**

- Thai government and the Ministry of Health should consider applying health measures in the state shelters to be in line with the guidelines of Ministry of Health.
- Thai government and the Immigration Office should consider alternative measures instead of detaining foreigners in the state shelter during the COVID-19 pandemic.

## **2.3. Obstacles to access to compensation during COVID-19 pandemic**

### **2.3.1. Migrant workers excluded or not yet registered as an insured person in social security system**

10. Migrant workers affected by the lack of social security can be divided into three groups as:
  - Migrant workers whose the contribution to the social security fund has not reach the time conditions to get benefits
  - Migrant workers whose jobs are excluded from social security system and cannot reach any other remedy
  - Migrant workers whose employer does not submit the list of the employees to be registered with the social security system according to the employer's duty

### **Recommend**

- The social security system of Thailand should be considered to cover all types of businesses and workers and monitor the employers who do not implement the laws.

### **2.3.2. Online channel to make a claimant about violation of labour rights and social security during COVID-19 pandemic**

11. Claiming benefits of social security or report the violation of labour rights through online channel has been found to be problem for migrant workers during the COVID-19 pandemic. This is due to the fact that the language available in the App of the government units is delivered in Thai and the App requires some information to be filled

<sup>3</sup> MWG Urgent Recommendations to the Government on the Travelling of Migrant Workers from Myanmar, Laos and Cambodia through the Permanent Border Checkpoints, dated 25 May 2020

<sup>4</sup> MWG Open Letter on Protection and Treatment of Migrant Workers in case of COVID-19 Infected Cases in the state shelter in Sadao District, dated 27 April 2020

in which some groups of migrant workers do not have. The government offices are also closed during the COVID-19 pandemic. As a result, migrant workers who need to submit the request for social security benefits or report unfair dismissal and other rights violation, cannot access to a claimant mechanism even they are available in online platform.

#### **Recommend**

- The Labour Protection Office and the Social Security Office should improve the online system that can facilitate migrant workers to able to access to their services especially in the languages the migrant workers can understand. This could be done also by cooperating with the civil society working with migrant workers in the fields to support the access of migrant workers to such system during the COVID-19 pandemic.

### **2.4. COVID-19 Response: Exclusion and Xenophobia against migrant workers**

12. The government's 3-month 5,000 baht monthly compensation scheme does not cover migrant workers living and working in Thailand. The campaign's criteria for eligibility include having Thai nationality, which bar both the migrant workers and the ethnic group living in Thailand without nationality (stateless persons) from receiving such remedy from Thai government.
13. In addition, that the government's report on the situation of COVID-19 shows the number of infected non-Thais separated from Thais. This way of communication by the government reflects prejudices to migrant workers and if this trend continues, it can become xenophobia against foreigners.

#### **Recommend**

- The government's policies towards migrant workers should not be discriminatory when considering the need to support for those affected by the COVID-19 pandemic. The report of the government on situation of COVID-19 pandemic should also not be based on a nationality to avoid xenophobia against a particular group of people.

### **3. Problems from the Management of migrant workers under the Royal Ordinance Concerning the Management of Foreign Workers' Employment 2017**

14. The 2017 Royal Ordinance is main law applied to the management of migrant workers in Thailand; however, some gaps still remain especially when coupled with the situation of COVID-19 pandemic. In this part, three gaps will be raised.
15. Firstly, the change of employers in this law is strict to the employer's conditions such as the closing of business rather than the feasibility of the employment. If the criteria are met, the worker needs to find new employer within 30 days. For this process, it also relies on the ex-employer to notify such change to the state officials. Otherwise, the new employer will not be able to officially notify the change of employment of migrant workers. This will affect the worker's rights to access the social security system and other benefits. The short period of 15-days under the law pushes the migrant workers to rely on brokers to find new employer. This makes migrant workers more vulnerable to get into the cycle of human trafficking.
16. Secondly, sub-contract employment is prohibited by law but still conducted in practice. During COVID-19 pandemic it has been reported that after the closing of business, some workers cannot claim compensation from the job's dismissal because they are hired as the workers of the sub-contract company, not the employers they are working for. The sub-contract company in other words is their employers in their official documents but not in the reality. Thus, when the business closes down, the workers are not entitled to get a compensation for the job's dismissal. They have to rely on the sub-contractor company which is actually prohibited by law.

17. Thirdly, regarding the assistance to workers during COVID-19 pandemic, as the Fund for Management of Foreign Workers is established under the Royal Ordinance 2017 with aims to manage the foreign working under the Royal Ordinance in various aspects. However, this Fund has not been allocated to assist migrant workers under this Royal Ordinance during the COVID-19 pandemic.

**Recommend**

- Thai government should develop effective and sustainable migrant worker's management policies with consideration of balancing between the sustainable national development and the respect for human rights of migrants. Such policy should be developed by means of consultation with concerned stake holders and result in long term strategies. Also, Thai government should regulate services by brokers assisting migrants and employers.
- Ministry of Labour and Department of Employment should consider relaxing the legal conditions for the change of the employers under the Royal Decree 2017 and the short time limit thereof.
- Ministry of Labour and Department of Employment should consider allocating the Fund for Management of Foreign Workers under the Royal Ordinance 2017 to assist migrant workers affected by COVID-19 pandemic.

**4. Specific Group: Border workers**

18. In principle, if the employment of migrant workers along the borders either the commuter or the seasonal workers is permanent, migrant workers can be considered as a worker under the labour protection and the social security law. If the employment is not permanent, a different law on the labour protection and the health scheme will be applied to them.
19. According to Section 64 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment 2017, Thai government has signed and revised the agreements with neighboring countries regarding the procedures and issuance of border pass for commuter or seasonal worker. As a result of these agreements, migrant workers living along the Thailand-Myanmar and Thailand-Cambodia borders are eligible to apply for work permits in menial labor sector and domestic work. The border pass issued to them shall be valid for up to three months.
20. However, MWG found that these workers have been increasingly employed as regular workers rather than temporary or seasonal employment, particularly in Mae Sot District of Thailand-Myanmar border since it helps to bring down the production costs of the entrepreneurs.<sup>5</sup> As a result, given the Covid-19 outbreak, many factories have to terminate the employment of migrant employees or have to shut down their operation temporarily, the border workers cannot access to social security benefit as some of them are not registered as insured persons by the employer who has a duty to do so. Also, the interpretation of border worker as temporary by employer and government units lead to the discrimination against the border worker by excluding them in practice from the protection they should have under the law.
21. Letter from the Social Security Office confirms that the practice of not registering the border workers who are employed more or less like regular workers is a blatant violation of the social security law which obliges an employer with one worker and upward to register the employee under the security system to ensure the employees' access to assurance and seven social benefits offered by the law.<sup>6</sup> The letter explained that in the past the problem was on the documentation of border workers but this problem has been resolved and the Social Security Office is following the employers who employ worker in such manner to register the employee in the social security system. However, the

---

<sup>5</sup> Press Release on Labor rights organizations submitting letter of petition to Social Security Office Urging inspection of the registration of migrant employees under the border employment policy, 3 April 2020

<sup>6</sup> Letter from the Social Security Office, Report on the inquiry into the employment of migrant workers per the Royal Ordinance Concerning the Management of Foreign Workers' Employment 2017's Section 64, 7 May 2020



question remains if the existing system is enough to monitor the employment of border workers in Thailand.

#### **Recommend**

- Border workers on seasonal work, ad hoc work or homework which appears to be regular work should be registered under the security system and the contemporary work as the excluded work from the social security law should not be strictly interpreted to limited works.
- Thai government should review the employment policy in border area with the aim to ensure that laws do not discriminate against any migrant worker and to ensure protection of their dependents in compliance with the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.<sup>7</sup>

### **5. Specific Group: Working in Sea Fisheries**

22. The Labour Protection in Fisheries Act B.E. 2562 (2019) aims to protect sea fisheries workers, at the same time, separate this group of workers from the social security system. In this regard, the legislations are incompatible with the international treaties to which Thailand is a state party since they create separated and less protection than other groups of workers protected in the social security system.<sup>8</sup>
23. According to Section 3 the Royal Ordinance on the Determination of Other Enterprises or Employees Exempted from the Application of the Social Security Act B.E. 2560, working in sea fisheries if not work all year (temporary work) is exempted from social security law. Additionally, the Ministry of Labor's Notification under the Labour Protection in Fisheries Act. B.E. 2562 excludes sea fisheries workers from the social security system by obliging the fishing vessel's owner to provide health benefits and welfare instead. However, such benefits and welfare offered are stipulated less than those stipulated in the Social Security Act B.E. 2533.
24. These laws applied to the workers in sea fisheries are the result of the legal reform after Thailand has ratified the ILO Work in Fishing Convention No. 188; nevertheless, it contains provisions which do not comply with the ILO Convention No.188. For example, Article 34 of the ILO Convention mentions that the access to benefit from social security protection under conditions is no less favourable than those applicable to other workers. The government seems to lack adequate measures to ensure progressive implementation of the protection of workers in the fisheries sector pursuant to Articles 35 and 36 (1) of such ILO Convention.
25. Regarding the impact of COVID-19 pandemic to the migrant workers in fisheries and seafood processing sector, the situation is different from other types of workers as migrant workers in these two sectors are not dismissed from jobs. In the opposite, they are still needed for the businesses even during the COVID-19 pandemic. A survey done by Thaksin University to Stella Maris Seafarer's Center<sup>9</sup> about the impact of COVID-19 pandemic to the migrant workers in fisheries and seafood processing sector, conducted in Songkla province, Thailand, between April to June 2020 reveals that both employers and migrant workers in the fisheries and seafood processing factor in Songkla, Thailand have affected from COVID-19 pandemic and have responded to the situation as follows.
26. For the employers, they stayed alert to follow news and announcements about the Covid-19 pandemic from government policies and communicated to their workers about the

---

<sup>7</sup> The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, <http://asean.org/storage/2012/05/16-ASEAN-Declaration-on-the-Protection-and-Promotion-of-the-Rights-of-Mi...pdf>

<sup>8</sup> See also Letter from MWG to Minister of Labor, Subject: The Issuance of Notification of the Ministry of Labor on the Provision of Health Benefits and Welfares for Workers in the Fisheries Sector pursuant to the Labour Protection in Fisheries Act. B.E. 2562, dated 11 February 2020

<sup>9</sup> A Survey of COVID-19 Pandemic's Impacts on Migrant Workers and their Employers in Fisheries and Seafood Processing Sector in Songkhla Province, Thailand by Sansanee Chanarnupap, Preedaporn Kanjanasamranwong and Orisa Chumphong, Thaksin University to Stella Maris Seafarer's Center, Songkhla

risks of Covid-19.<sup>10</sup> However, the screening of diseases has not been delivered by the employers due to the high cost of screening process nor did the public sector provide professional staff or public health volunteers to help the employers to do the screening.<sup>11</sup> The employers also allow the workers who risk of being infected the pandemic to self-quarantine. For the employers, the delays and high-costs for Memorandum of Understanding (MOU) issues and labour shortage problems are the continuing problems even before the pandemic; the COVID-19 pandemic suspends the recruitment process which make the labour shortage in this industry worse. In addition, the employer views that the relevant government units do not work in the same direction. For example of Port-In Port-Out Control Center (PIPO) does not implement the policy to extend the work permit of migrant workers, while One-Stop Service Center (OSS) has taken such measure.<sup>12</sup>

27. On the migrant worker's side, more than half of them have never been screened by health officers or volunteers but almost all workers may not be at risk for acquiring Covid-19.<sup>13</sup> Most of the workers follow the measures on the prevention of disease including wearing masks which are provided through private employers, government agencies, local government organizations, and/or anonymous donors but not all of them have access to gel alcohol.<sup>14</sup> The migrant workers are aware of and access to information and news about COVID-19 pandemic, about 75.95 per cent can understand Thai but only a few can read Thai.<sup>15</sup>
28. Regarding income and employment of the migrant workers, the study shows that most workers (59.49%) receive the similar payment as the same amount before COVID-19 pandemic, while 37.98% of workers experienced a decline in income of around 3,956.78 baht per month.<sup>16</sup> The household income of most workers has been steady. About 41.69 responded the increase of assistance from the employers during the Covid-19 pandemic, for example providing mask, alcohol gel, food, rent, electric and water expense and some got financial assistance from employers<sup>17</sup>. Even though the migrant workers in fisheries and food processing business show they get small impact from the work permit extension and the country's shut down measures and view that the chance to be dismissed or work's suspension is low, they express concern of the fear of losing income, job and closing of business as it affects the sending money back home and their ability to pay debt.<sup>18</sup> What the migrant workers needs mainly assistance to the suffering are for example government cash relief, survival supplies and disease prevention materials, reductions in rental and utility bills, goods pricing support for their establishments to survive, re-opening border checkpoints for the entry and exit of workers, normal operations of the OSS, and the screening of diseases in the workplace.<sup>19</sup>

#### **Recommend**

- Thai government should amend laws to ensure that workers in the fisheries sector can access to seven benefits awarded by the Social Security Fund and revoke the subordinate legislations which are incompatible with international treaties to which Thailand is a state party.
- Thai government should support screening the inflection of COVID-19 among the migrant workers who have a risk of being infected and ensure that the migrant workers in the country are under the same support and protection measures like Thais. This should include remedy measures to both the employers and employees.

---

<sup>10</sup> *Ibid.*, pp.19-20.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p.23.

<sup>13</sup> *Ibid.*, p.25.

<sup>14</sup> *Ibid.* pp.25-26.

<sup>15</sup> *Ibid.* p.26

<sup>16</sup> *Ibid.* p.27

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

## 6. Social Security and Workmen's Compensation Fund

### 6.1. Works excluded from Workmen's Compensation and Social Security Fund

29. Social protection laws in Thailand include the Social Security Act B.E. 2533 and the Workmen's Compensation Fund Act B.E. 2537. However, the secondary legislations and guidelines under these laws discriminate against employees in certain sectors, depriving them of access to insurance and benefits from the Social Security and Workmen's Compensation Fund. These sectors include workers in agricultural and fishing sectors (seasonal workers), domestic workers and undocumented migrant workers.

#### Recommend

- The government should repeal secondary laws and guidelines found to be discriminatory in terms of access to social protection of the employees.

### 6.2. Problem in access to Workmen's Compensations Fund

30. The Workmen's Compensation Act B.E.2518 (1975) provides protection to employees or their dependents (including migrant workers). Every employer employing more than one employee has to make a contribution to fund at an annual rate provided by the Workmen's Compensations Fund (WCF) with respect to each person employed by it. The Social Security Office has the responsibility to investigate whether an employer has paid the necessary contribution to the WCF and submitted the necessary documents such as the list of employees. If the employer fails to pay contribution within the prescribed period, the employer has to make an additional payment or employer is liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Thai Baht or to both.
31. Under such law, an employee is entitled to compensation if he/she suffers from harm, illnesses, death or disappearance related to work. Therefore, when an employee in the workplace of an employer who makes contributions to the Fund suffers any harm or illness or dies or disappears as a result of the work, the compensation will be provided under the WCF.
32. Nevertheless, employers in some industries are exempted by law, such as the fishery and agricultural sector and domestic workers. In case a worker from these industries suffers from workplace injury or accident, it is the employer who is directly responsible for paying compensation to the concerned employee, not the Fund.
33. In access to the WCF, The Guideline Circular No. Ro Sor 0711/Wor 751 of the Social Security Office (SSO) provides that a migrant worker who wants to access the WCF is required to produce passport or an alien person document, a work permit and proof of payment of taxes. This rule has excluded the undocumented migrant workers who do not have a work permit in Thailand as well as those who are registered with the government in Thailand and carry temporary documents issued by Thai authorities.
34. In case the employer does not pay to the WFC, the Social Security Office directs the employer to accept responsibility of providing compensation. The amount of compensation will be agreed in mediation between employer and employee. In many cases representatives from the Social Security Office participates in such mediation. Since the employee or migrant worker has the least power, mostly the amount of compensation agreed is not in the favour of the migrant workers. Moreover, in many cases the mediation agreement has not been executed or the employer simply refuses to pay the compensation.
35. The following case reflects the difficulties of migrant workers in access to the WCF. On 30 December 2015, the SSO issued a directive stated that Mr. Kein had suffered work related injury from working for his employer and thus he was eligible to have compensation from his employer. Mr.Kein disagreed with the SSO order and filed an appeal against the case to the WCF Committee by arguing his status that he is a migrant worker registered with Thai authorities and carried passport and work permit issued by the Office of Employment, Ministry of Labour. He also worked for an employer who ran business required by the Ministry of Labour to pay contribution to the WCF.

36. However, the WCF Committee made the decision on 18 November 2016 which denied the worker access to the WCF under the Workmen Compensation Fund Act B.E.2537 (1994) as the Committee found that the worker had work permit but the work permit indicated that Mr.Kein was still employed by the previous employer.
37. In this case, before the request for the WCF to pay a compensation, migrant workers had challenged the constitutionality of the SSO guideline before the Administrative Courts. The Supreme Administrative Court issued the final decision on 9 September 2015 that the objective of the Workmen's Compensation Fund had been established as a fund and guarantee for the provision of compensation to the employee on behalf of the employer who is supposed to pay contributions to the Fund.
38. The Court held that the protection was intended to cover all employees without any discrimination or categorization of the employees. It further overturned the ruling of the lower court that had upheld the regulation of the SSO requiring a migrant worker to submit their personal income tax form as well as show evidence proving that their employer has paid contributions to the Worker Compensation Fund not less than the minimum wage.
39. Despite the Court decision, the right of migrant workers to access the WCF continues to be subjected to their ability to show personal documents such as passports and work permits. In case the migrant cannot provide the required documents, the SSO shifts the responsibility of paying compensation to the employer.

#### **Recommend**

- The government should review laws that excluded some types of workers from Workmen's Compensation Fund.
- The government should review, amend and revoke law and practice that prevents migrant workers to access the SSO's Workmen's Compensation Fund.

### **6.3. Problems in access to social security fund**

40. The problem found when migrant workers claims for the unemployed benefits during COVID-19 pandemic. The migrant workers who claim such benefit are needed to show valid immigration document to the SSO.<sup>20</sup> Setting the immigration status as a condition to claim for such right under the social security system is discriminatory when compared to Thais as both groups of Thais and non-Thais are in the same status of insured person under the social security system and pay a contribution under the same rule. Considering to the situation of the Covid-19 pandemic, some migrant workers face problem of the expiration of passport or VISA, this condition should not be brought by the SSO to bar migrant workers to claim their rights.
41. In addition, as the claim for unemployment benefit requires the employer to notify the dismissal of worker in order that the worker will become unemployed and be able to claim for unemployed benefit, it has been reported that some cases the employers do not notify the SSO which result in the migrant workers cannot claiming the unemployment benefit.
42. In February 2021, the Royal Thai Government initiated a cash relief program, called "Section 33, We Love Each Other", for insurers under Section 33 of the Social Security Act. The registered insurers will receive a certain amount of cash relief for the cost of living to alleviate the financial impact of the COVID-19 pandemic. However, the program requires that an insured person who is eligible for this program must have Thai nationality. Consequently, foreign workers in Thailand are automatically disqualified although they are insurers who contribute to the Social Security Fund under the Section 33 scheme. Such requirement is tantamount to a violation of the International Convention on the Elimination of All Form of Racial Discrimination (ICERD).

<sup>20</sup> Guideline for claiming the unemployment benefits under the SSO, <https://bit.ly/3bUv2m8>

### Recommend

- Thai government should not take the immigration status of worker as a condition to receive social security benefit, especially during the situation of COVID-19 pandemic.
- The SSO should extend the period of finding new employer for migrant workers under the 2017 Royal Ordinance so that there is enough time for employer and employee to complete the process of changing the employment.
- Thai government should repeal the requirement that disqualifies migrant workers from handouts under the cash relief program, “Section 33, We Love Each Other”, as well as other relief projects during the COVID-19 pandemic. It should be ensured that migrant workers who are insured persons have access to handouts similar to their Thai counterparts.

## 7. Freedom of Association and Collective Bargaining of Migrant Workers

43. Thailand does not ratify ILO fundamental convention Nos.87 and 98 on Freedom of Association and Protection of the Right to Organise and Right to Organise and Collective Bargaining, respectively. Even though Thailand has committed to accede International Labour Organization Convention No. 87 and 98 (the right to assembly and negotiate), 189 (domestic labour) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), including the promotion of the implementation of the tripartite declaration of principles concerning multinational enterprises and social policy (MNE declaration) in its First National Action Plan on Business and Human Rights (2019–2022). Some provisions of Thai laws regarding the freedom of association and collective bargaining are discriminatory against migrant workers. In other words, rights of migrant workers regarding the unionization are not equal to Thais.
44. The 1975 Labour Relations Act sets out clearly the regulations concerning the formation of labour union and eligibility of its members that person who has the right to establish the labor union shall have Thai nationality. Therefore, a migrant worker is entitled to become a member of labour union but not a former of the union. Being deprived of the right to association, the migrant workers have found themselves deprived of their leverage when having to negotiate with the employers. Some employers also attempt to suppress the employees from getting unionized including by penalizing the workers who have come out to demand their rights by having them fired, having their salaries deducted, and other sanctions. Cases regarding the collective action to demand the rights of migrant workers from the HRDF’s report<sup>21</sup> are for examples;
  - (a) Protest demanding for improving conditions of works: In 2015, Myanmar Workers Protesting Chicken Meat Factory with Additional Nine Demands 1 1 On 9 October 2015, it was reported that over 300 of Myanmar migrant workers of Laemthong Poultry Co., a chicken meat processing plant, based at 1/10, Moo 8. Mittraphap Road, km322, Tambon Sung Noen, Sung Noen District, Nakhon Ratchasima have gathered to protest and submit their demands to the company on Day 2 of their strike about their working conditions.
  - (b) Protest for the recruitment process and fee: Myanmar Workers Demonstrates against Employers in Chiang Mai on 30 May at 11:10 am, about 50 Myanmar workers led by Mr. Khin Muang Wei, demonstrated with banners saying “Power Line No Good Chiangmai”. Five core members have been recruited to negotiate with the company inside the temple. The administration of Keng Dee Pattana Co. was told by Mr. Khin Muang Wei that prior to embarking on the trip for job in Thailand, a contract had been made and clearly stated each worker from

---

<sup>21</sup> A complete report on possible models of how migrant workers can exercise their right to form a labour union and to become a member of a labour union’s board of directors, Human Rights and Development Foundation (HRDF), Migrant Justice Program, 2017

Myanmar shall pay 13,300 baht for the fee to the agent plus 2,000 baht to be used while they were settling in for job, altogether 15,000 baht.

But in reality, the worker was charged 18,745 baht, more than what was agreed in the contract. The final straw was on the morning of 30 May, when they were forced by the employers to sign their names and agree to pay 22,000 baht. They could not accept that term and wanted to protest though it risked their being deported to Myanmar.

- (c) Protest for demand of changing the manager of factory regarding the management of the factory: On 2 November 2015, it was reported that more than 2,000 Myanmar migrant workers were holding a strike to voice their discontent with the management of Thai Food Group PLC Moo 4, Ban Nong Sam Kwian, Tambon Uloke Si Muen, Tha Ma Ka District, Kanchanaburi, a factory exporting frozen chicken meat. Over 2,000 Myanmar workers are upset by the factory management's mistreatment and oppression. After six hours of negotiation, five demands were agreed.
  - (d) Protest demanding conditions of work and welfare of workers: Sri Racha Center – Cambodian workers of Cobra International Co. gathered to demand an increase of rent subsidy, incentive and equal rights to their Thai counterparts. On 16 November 2015 at the lawn in front of the dormitory of workers of Cobra International Co., 111 Moo 2, Tambon Ban Kao, Phan Thong District, Chon Buri, over 500 Cambodian workers led by Mr. Kum Sem, 34 (Cambodian) have demonstrated and tendered their ten demands including an increase of rent subsidy, incentive, power bill subsidy, holiday leave, working hours compatible with Thai workers, sickness benefit, leave day, overtime payment and politeness when addressing the Cambodian workers.
45. From the findings in HRDF's report, it is clear that there have been incidences of assembly made by the migrant workers to demand a fair treatment as they had been subject to unfair employment conditions and deprived of their rights in their employments. Given the situation, it is important that the government pay attention to and work toward ratifying the ILO Conventions Nos. 87 and 97 to prevent any further labour disputes. The mobilizations among migrant workers without strategies as a result of their lack of knowledge in the legal procedure shall also backfire on the workers themselves and the whole system of employment.
46. In addition to the HRDF's report, the report of International Labour Rights Forum in March 2020 on migrant workers in seafooding and fishing industry where forced labour and human trafficking are prevail also provides five case studies of attempts by migrant workers to organize and exercise their rights, where they have faced numerous challenges but also found some success.<sup>22</sup> It emphasizes the problems of exercising rights to form trade union and collective bargaining by migrant workers in fishing sector faced when lack of trade union representing them while forced labour and human trafficking are still being reported in this fishing sector. The report addresses the refusal to reform by the Thai government to the increase of the inequality in the structure in the seafood industry where migrant workers are exploited.
47. Migrant workers should have the right to form their labour union and have freedom of assembly to conduct their negotiation fairly including to be a sub-committee or committee member and to be a union advisor in a collective bargaining. Having trade union of representing migrant worker also protects migrant workers from unfair treatment, labour rights violations, forced labour and human trafficking.

#### **Recommend**

- Thai government, as a member of the International Labour Organization and its founding member since 1919, should make an effort to accelerate the process to ratify the remaining core Conventions as soon as possible. In addition, the Thai government should come up with measures to support and develop a policy to promote the ILO's Tripartite declaration of principles concerning multinational

<sup>22</sup> Time for a Sea Change, [https://laborrights.org/sites/default/files/publications/ILRF\\_TimeforaSeaChange.pdf](https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf)

enterprises and social policy (MNE Declaration).

- As to the practical level, after the ratification, it is important for the laws, regulations and rules to be amended accordingly, particularly the 1975 Labour Relations Act, which specifies the nationality of the person eligible to form a labour union. This clause is a blatant breach to the ILO Convention no. 87 and should be repealed.

## **8. Strategic Lawsuits against Public Participation (SLAPP) against human rights defenders**

48. There is increasingly trend to take a legal case against workers and human rights defenders by both the state and a business sector. Such legal mechanisms are in the nature of civil and criminal litigations or called Strategic Lawsuits against Public Participation (SLAPP). In general, the effective implementation of the labour protection laws hinges on participation from multiple parties (employers, employees, public authorities, civil society organizations or non-governmental organizations, academics, mass media and the public). The rights to seek and to impart information, rights to freedom of association and peaceful assembly, rights to freedom of expression and opinion and rights to enforce rights and seek remedies should then be respected.<sup>23</sup> However, a number of migrant workers, activists and media representatives who have brought to light allegations of human rights violations against the workers have been prosecuted in this manner.
49. Example of the SLAPP is the case of Thammakaset Farm 2. As a group of workers from Thammakaset Farm 2 contacted Migrant Workers Rights Network (MWRN) to enquire about their working conditions whether they violate the Labour Protection Act of 1998, with the assistance of non-governmental organization, the workers present their grievances before Thammakaset and local authorities and file the complaints to other available mechanisms about their unfair working conditions in supply chains. In response, Thammakaset, the employer, started filing SLAPPs against the workers who filed complaints, human rights defenders, the media and others who supported the campaigns. The legal cases are on the court proceedings.

### **Recommend**

- The Thai government should put in place, seriously and promptly, a measure to prevent the launch of both civil and criminal suits against the workers or whistleblowers who have acted in good faith. Also, awareness among law enforcement agencies about SLAPPs should be created so that they are able to identify such cases during their investigation processes.
- An effort should be made to raise the awareness about the roles of public prosecutors per the Public Prosecutor Organization and Public Prosecutor Act including Section 21 which provides that public prosecutor must maintain their independence when deciding whether or not to charge a person for a crime and to perform their duties according to the Constitution and laws with faithfulness and fairness. The decision to charge a person or not should rest on consideration of public interest.

## **9. Right to education and children's welfare**

50. UNESCO has distributed a report “The Economic Cost of Out of School Children in Southeast Asia 2015” and estimated that more than two hundred thousand children in Thailand are left out of school system. Most of them are children of migrant workers. Major factors include formidable expense, language, the need to travel, and other unnecessary requirements for enrolment.
51. In this regard, Thai government launched the Education for All policy and has made a cabinet resolution in 2005 to ensure that undocumented children still have the right to schooling. But in 2015, the government allowed the drafting of the Ministry of Education's 2015 Regulation on per head assistance for students in private schools which

---

<sup>23</sup> SLAPP Report on Judicial Harassment against Labour Rights Activists: an Analysis

will have led to the subsidization of budget for only students with ID numbers issued by the Ministry of Interior. This regulation is in conflict with the Education for All policy since it deprives of the right of undocumented children from getting enrolled in school and Thailand is obliged to disconnect between the right to education and immigration status.

52. The recent case about children's rights is about the contribution to lunch and supplementary to children in school. A local administration organization in Tak province did not allocate budget for children who have no registration document. Having no registration is implied by the local administration as not being a population under the local administrative law. Thus, the local administration did not allocate budget for them. This practice reflects the misunderstanding of the local administrative organization with regard to the government's policy on children. The Ministry of Interior in this case has confirmed that referred to the Cabinet Resolution dated 5 July B.E.2558 (2015), the government has approved for the allocation of budget for students in schools which cover also persons who have no evidence on state registration or have no Thai nationality. This case reflects the government's policy on the promotion of children rights and at the same time the going-on misunderstandings about non-Thai children in Thai schools.

#### **Recommend**

- To prevent this practice, Thai government should actively work to improve the lives of children migrants and eliminate the barriers to access education and welfare for all children regardless of nationality.
- Thai government should work together to provide the understanding among governments units regarding the children's rights and the responsibilities of the government units to promote and protect children's rights.

### **10. The right to remedy of the victim of a crime**

53. In any case, injured persons retain the right to seek compensation under the Compensation and Expenses for Injured Person and the Accused B.E.2544 (2001). This law applies to all people in the country including migrant workers. However, the Committee on Determination of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case (the Committee) viewed that undocumented migrant themselves also breached immigration law, which means they did commit a crime as well. Thus, without the immigration document, the Committee has denied to pay compensation to the migrant workers under this Act.
54. This practice negatively affects the right to remedy of victim of crime and can be discriminatory against undocumented migrant who has a right to seek compensation under this Act. Two cases are examples of such practice.
55. The first case is the access to remedy by victim of sexual violence. On 9 March 2016, Ms. B (alias), 13 years old, is a Burmese girl submitted the application to the Committee on Determination of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case (Committee) and inquired the damages as she was an injured person under offences against offences relating to sexual violence committed by the other person. In August 2016, the Committee made the decision and denied Ms.B to access to the damages by given the reason that though the girl is an injured person according to Section 3 of the Act<sup>24</sup>. However, the fact that she entered into Thailand illegally, she is not eligible to access to the damages.
56. Another case is about the access to remedy of Ms.Sasikarn, a wife of Mr.Thuwa (Burmese nationality) who was murdered on 7 March 2014. Ms.Sasikarn filed the application to the Committee to seek for the damages in case of Mr.Thuwa. In August 2016, the Committee made the decision and refused to provide Ms.Sasikarn access to the

---

<sup>24</sup> Art 3 of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act, B.E. 2544 (2001) stated that "Injured person" means a person whose life, body or, mind has been injured due to a criminal offence committed by the other persons where he or she has not been involved in the commission of such criminal offence.



damages by given the reason that although Mr.Thuwa was an injured person according to Section 3 of the Act. Considering that he entered into Thailand illegally, the wife of Mr.Thuwa is not eligible to access to the damages.

57. Later, in November 2016, Ms.Sasikarn appealed the Committee decision by given the reason that Mr.Thuwa has the passport issued by the Burmese Government. However, when the applicant submitted the application to the Committee, the applicant was unable to provide the copy of passport as the passport was destroyed when the perpetrator committed murdered to Mr.Thuwa. In the appeal, Ms.Sasikarn was also mentioned that although the injured person came to Thailand illegally, the Committee should not deny the injured person access to damages, rights to compensation, as the Committee decision is deemed to discriminate against the foreigner and it contradicts to the International Covenant on Civil and Political Rights.

#### **Recommend**

- The practice of the Committee on Determination of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case by taking the immigration status of the victim as the condition to get compensation should be abolished. Such practice is the denial of the right to seek remedy of the victims of crime and it can be considered as discriminatory practice against non-Thais.

## **11. Human Trafficking**

58. As a civil society organization which has been supporting migrant workers and survivors from trafficking in persons from forced labor, HRDF has found that even though efforts have continually been made by the Thai government to address trafficking in persons, particularly in the past five years since Thailand was put at the lowest tier (Tier 3), the issues of trafficking in persons have still not been solved effectively, particularly in terms of the strict enforcement of the laws, compliance with the spirit of the laws and compensation for the survivors.<sup>25</sup>
59. The issuance of the Royal Ordinance on the Amendments of the Anti-Trafficking in Persons Act 2019 include the criminalization forced labor in work or service and provided forced labor victim protection. However, victims of forced labour still not reach the protection because the subordinate legislations of the Anti-Trafficking in Persons Act do not cover the victim of forced labour. For example, the right to get the waiver of work permit fee for aliens who are victims of trafficking in persons or witnesses to the offence against the Anti-Trafficking in Persons Act 2017 is not provided to victim of forced labour.<sup>26</sup> In other words, since the subordinate legislations to the Anti-Trafficking Act use the terms “offence of trafficking in persons” or “trafficking in persons offenders”, the subordinate legislations cannot be applied to the case of forced labor in work or service.
60. Apart from the incompatibility of the subordinate legislations issued invoking the Anti-Trafficking in Persons Act, the promulgation of the Royal Ordinance has failed to ensure clarity at the practical level which has become a major obstacle to the implementation to rescue the victims as the following cases.
61. Firstly, because the subordinate legislations do not include the victim identification interview, the standard of victim identification applied to victims of human trafficking or forced labor may vary subject to the discretion of the competent officials. Until now the central authorities have failed to establish guidelines to identify concrete elements of forced labor and trafficking in persons. The situation may lead to the use of poor discretion by the multidisciplinary team.

---

<sup>25</sup> Press Release of HRDF on concerns about efforts to address trafficking in persons, particularly forced labor in Thailand, dated 21 June 2019

<sup>26</sup> Letter of MWG submitted to Chairperson of the Drafting Committee of the Anti-Trafficking in Persons Act 2008 amended in 2019 and its subordinate legislations, Subject: Observations and recommendations concerning the reform of subordinate legislations related to the Anti-Trafficking in Persons Act 2008 amended in 2019, dated 23 July 2019

62. Secondly, even though the Royal Ordinance ensures forced labor victims access to the right to claim damages, similar to victims of human trafficking under the supervision of the Ministry of Social Development and Human Security, no guidelines have been established for the valuation of the damages for forced labor victims including the loss of income, physical and mental injuries, and rehabilitation (material-non material damages). This is different from labor dispute for which the law establishes the process to provide compensation and various forms of compensation as well as the process and responsible authorities.
63. Thirdly, most of the subordinate legislations fail to spell out the roles of officials from the Ministry of Labor, even though in practicality, the officials from the Ministry of Labor play an important role in assisting victims of human trafficking and forced labor in work or service. At present, the Royal Ordinance authorizes the Minister of Labor to issue subordinate legislations concerning competent officials from the Ministry of Labor. The Minister of Labor should therefore issue subordinate legislations to set out such guidelines.
64. Lastly, in 2017, the announcement made during the Minister of Agriculture and Cooperatives' press conference on 19 June that an urgent effort is being made to revise the 16 Sections of the Royal Ordinance on Fisheries (No.2) B.E.2017 without seeking prior consultation from all stakeholders, Such move might impede the measures for the prevention and suppression of trafficking in persons in sea fishing sector in a long run.

#### **Recommend**

- Thai government should redefine the meaning of “trafficking in persons case” or “offence of trafficking in persons” in the subordinate legislations to “a case concerning the breach of the Anti-Trafficking in Persons Act or the offence per the Anti-Trafficking in Persons Act” to ensure the law can apply to forced labor in work or service case.
- Thai government should revise subordinate legislations by redefining the term “victims of human trafficking” or “victims of trafficking in persons” to “victims of human trafficking or forced labor in work or service” to spell out clarity in terms of access to the right to prevention, remedy and rehabilitation of the two categories of victims.
- Thai government should set out clear guidelines to identify victims and change the curriculum of the multidisciplinary training to genuinely embrace forced labor in work or service since forced labor in work or service is an emerging issue for the multidisciplinary team. Such training should help the multidisciplinary team to be able to use their discretion in better compliance with the new law. This should enable victims of human trafficking or forced labor in work or service to have more prompt and effective access to justice process, legal assistance and other kinds of assistance.
- Subordinate legislations should be issued to set out the policymaking direction and measures for the competent officials under the Ministry of Labor to clarify their duties and roles and to enhance policymaking in collaboration with other public agencies including the Ministry of Social Development and Human Security, among others.
- Thai government should set up a central agency to carry out the inspection of the survivor screening process which is being conducted by local authorities. It would help to ensure proper and effective survivor screening process. Moreover, an effort should be made to enhance access to various rights among those who have been verified as survivors from trafficking in persons and non-survivors who could after all be considered an injured party according to other laws.
- Thai government should accelerate the effort to develop mechanisms and guidelines for legal execution in trafficking in persons cases and assure the survivors that the Thai government would guarantee that they receive sufficient and prompt support while awaiting the compensation after the case is decided.
- Thai government should set aside funding to address trafficking in persons

appropriately and comprehensively in all stages. An effort should be made to address a shortage of personnel to offer help to the survivors from trafficking in persons including interpretation services, among others.

- Thai government should guarantee that the authorities shall enforce the laws properly and adhere to clear guidelines which aim to offer labor protection and address the needs of workers.
- Thai government should review the initiative to revise the Royal Ordinance on Fisheries (No.2) B.E.2017 and should first seek consultation from stakeholders, particularly the workers and survivors from trafficking in persons and civil society organizations since some of the proposed revisions including the relaxation of the Vessel Monitoring System (VMS) installation since it will affect the measures for the prevention and rescue of survivors from trafficking in persons in fishing sector.
- The Thai government should institute concrete policies to provide for cooperation between the authorities and civil society sector working to combat trafficking in persons and forced labor in the effort to prevent and suppress trafficking in persons and to seriously protect and uphold human rights of the survivors.

## 12. Summary of the Report

65. This report aims to present the situation of migrant workers in Thailand and the problems they have faced in exercising their rights to the Committee on the Elimination of Racial Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination.
66. The government policies on the management of migrant workers focus on the migrant workers recruited through MOU Channel but some conditions such as the change of the employer under the MOU are not flexible to both the employers and the workers. The strict law can push migrant workers to rely on a broker in order to find a new job under the time limit and get into the human trafficking cycle. During the COVID-19 pandemic, the migrant workers have reported they did not get enough information about the laws and policies applied to them during the COVID-19 pandemic. The channel available to the workers to claim the social security benefits or report the labour violations is in online platform. The information is provided in Thai and it requires some information to be filled in which some groups of migrant workers do not have. There is so far no government policy to exempt VISA fee for the migrant workers who returned home during the COVID-19 pandemic and need to travel back to continue their employment in Thailand.
67. During the COVID-19 pandemic, the enforcement of immigration law is exempted for only the migrant workers whose documents expired during the COVID-19 pandemic. Those whose documents expired before and cannot travel to extend their permits during the COVID-19 pandemic do not get a legal exemption. The foreigners who are arrested and waiting to be deported as well as the asylum seekers are detained in the state shelter. As there is no deportation process during the COVID-19 pandemic, the state shelters are crowded and being reported for infected cases in one shelter where the health guidelines are difficult to be conducted. The government also reports the infected case by separating Thais and migrant workers in Thailand, which could create the xenophobia against the migrant workers in the country.
68. For the social security scheme, some types of workers in Thailand are still excluded from the social security scheme such as workers in agriculture and fisheries which are not hired all year, the seasonal workers or the domestic workers. If dismissed, this group of workers cannot get unemployment benefits provided in the social security system. The migrant workers in Thailand are not eligible to the government's 3-month 5,000 baht monthly compensation scheme since it is provided to only Thais. For workmen compensation, domestic workers and workers in stall business are still excluded from the workmen's compensation fund. The responsibility for the work-related injuries is then borne to the employer rather than the state system.

69. Working in the border area and fisheries are found to be a concern for right protection and the monitoring of labour violations. Working in border areas are many times interpreted as not permanent employment or as a seasonal work which is the job excluded from the social security fund. Thus, migrant workers in the border area are found to be risk of lacking labour protection under the laws and it is difficult to monitor by the state officials in such area. Working in fisheries is also excluded from the social security fund if not employed all year. The law also sets that for sea fisheries the fishing vessel's owner has to provide health benefits and welfare instead of the social security system to the workers. However, such benefits and welfare offered are stipulated less than those stipulated in the social security scheme.
  70. Undocumented migrant workers are still faced with the problem when claiming their rights. In claiming for compensation in a criminal case, the injured person who is undocumented migrant workers is considered to breach the immigration law. The Committee established by the state to consider such claim then denied to provide the undocumented migrant a compensation in a criminal case. This practice is discriminate to non-Thais.
  71. Rights of migrant children in Thailand are protected by Thai laws. The challenge about children rights is on the understanding of the government units and the state officials involved. Implementing different laws and guidelines by the local administrative officials, which is not in line with the government policy in promoting children rights, is found to be a case of migrant children.
  72. For the right to association and collective bargaining, the labour relation law of Thailand allows only Thais to form a trade union. This legal cause is obviously discriminates against migrant workers. In practice, there are cases of migrant workers protesting against poor working condition and unfair treatment by the employer. However, without the labour union, the workers in many cases ended up with the agreement between workers and employer which the employers get more advantages from the negotiation.
  73. Strategic Lawsuits against Public Participation (SLAPP) against human rights defenders in Thailand has increased in the recent years. SLAPP discourages the human rights defenders working with migrant workers in exercising freedom of expression and report human rights violation cases. The state officials still lacks of the understanding about the SLAPP including those in the justice system.
  74. Laws and policies regarding the management of migrant workers in Thailand directly relates to the human trafficking situation in the country. The strict laws and enforcement on migrant workers can force them to get in human trafficking cycle. As Thailand has amended law on trafficking in persons in part of forced labour, the subordinate laws are found not to be in line with the main law in protection of victims of forced labour. Also, the implementation of laws by various state officials is found to be inconsistency in human trafficking and related offenses.
-