



The situation of migrant workers and business and human rights in Thailand **Submitted to the UN Working Group on Business and Human Rights**

Migrant Working Group (MWG)¹

Human Rights and Development Foundation (HRDF)²

Human rights protection

1. Policies concerning the management of migrant workers from neighboring countries including Myanmar, Lao and Cambodia

Thailand adopts policies on the management of migrant workers from neighboring countries using the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 (A.D.2017) for the regulation. According to the Ministry of Labour, the number of migrant workers permitted to work in Thailand, as of March 2025, is 3,101,183,³ which can be divided into three groups including;

Undocumented workers

This group can get registered and be allowed to reside in Thailand temporarily for up to one year through a unilateral arrangement by the Thai government. This includes 2,381,166 undocumented workers who used to get registered thanks to the cabinet resolutions prior to 2024. Of this, more than two million are migrant workers from Myanmar whose permission to work has expired since February 2025. They are allowed to renew their work permits and visas, although they are subject to the renewal requirements similar to the workers who have been brought into the country via the MOUs between Thailand and neighboring countries whereby the migrant workers are required to depart the country or have to travel to a destination assigned by the Department of Employment (DoE). Meanwhile, the countries of origin are obliged to vet the name list of the migrant workers to collect information and to pursue their own procedure. Given the current political situation in Myanmar including the compulsory military conscription imposed by the Myanmar military junta, this may give rise to a risk of the migrant workers from Myanmar and increase their travel expense to apply for documents and a burden of 2% income tax imposed by the Myanmar military junta. In

¹ Migrant Working Group (MWG) is a network of nongovernmental organizations working on issues concerning migrant population, health, education and migrant workers' rights. Our key objectives are to promote information sharing within the network of migrant populations, problem analysis, the determination of policy issues and collaboration on the advocacies with public agencies, academic sector and civil society sector with an aim to ensure migrant populations can afford their basic rights to develop their quality of life.

² Since 2005, HRDF has been working to promote and protect rights of migrant workers by providing legal assistance, facilitating strategic litigations, promoting human rights education and awareness about existing laws and policies and initiating advocacy campaigns. The specific focus of HRDF's work has been on the eradication of discrimination against migrant workers, and HRDF has been working closely with domestic and international trade unions, the National Human Rights Commission of Thailand, the Lawyer Council of Thailand, Law Reform Commission of Thailand and international organizations

³ https://www.doe.go.th/prd/assets/upload/files/alien_th/2f3afb6961c0750735f6956ccbeea157.pdf

addition, there has been delay due to more requirements imposed by the countries of origin, as a result of which more than two million migrant workers from Myanmar are unable to proceed with the procedure. It has prompted the Thai government to issue a cabinet resolution to extend the deadline for the workers to renew their work permits and visas to until August 2025. This will impact their employment, their access to health insurance, and the safety risk of the migrant workers as well as their risk of becoming indebted and being subject to forced labour.

Imported workers According to the MoU between Thailand and its three neighboring countries including Myanmar, Lao and Cambodia for a two-year term which allows the two-year renewal of the work permit and visa. At present, there are 687,414 such workers and MWG has found that the workers risk being excluded from the imported labour scheme if they are required to travel back to their country of origin and forced to become military conscripts. This will increase their expense and they will be subject to the 2% income tax as well.

Migrant workers registered as commuter or seasonal migrant workers along the borders and Special Economic Zones (SEZs) The migrant workers who live along the Thailand-Myanmar and the Thailand-Cambodia borders are allowed to apply for permit to take on menial jobs and domestic work for up to three months at a time. At present, there are 32,603 of them. Although they are registered as temporary workers, but in reality, most of them are engaged in permanent employment sectors, i.e., in garment factories, many of which are involved with clothe making for export. MWG have been informed of concerns among them regarding their lack of access to social security and Workmen's Compensation Fund systems. Meanwhile, the Social Security Office has failed to enforce the laws strictly including being dismissive about compelling employers to register their employees in the social security and Workmen's Compensation Fund systems.

2. Ratification of international treaties

Thailand has ratified seven core international human rights treaties ⁴ as well as 20 International Labour Organization Conventions and one Protocol.⁵ Nevertheless, two core ILO Conventions on labor have yet to be ratified by Thailand including the ILO Convention no. 87 on Freedom of Association and No. 98 on Right to Organize and Collectively Bargain. Thailand has adopted its 1st National Action Plan on Business and Human Rights (2019-2022) to provide for feasibility study of becoming a state party to the ILO Conventions, particularly the ILO Convention no. 98. Following the 2nd National Action Plan on Business and Human Rights (2023-2027), a set of activities has been proposed to ensure ratification of both the ILO Conventions no. 87 and 98. The Migrant Working Group (MWG) has found the Ministry of Labour has set up a working group composed of stakeholders from three concerned sectors including the state, the employers and the employees to advocate for the ratification of both the ILO Conventions no. 87 and 98 in November 2023. The working group has later proposed to the government to sign both Conventions while the Ministry of Labour has set out a timeframe for the reform of domestic laws and the signing of both Conventions within April 2025. However, until now, there has been no progress as to the reform of our labour relations laws to ensure their compliance with the international labour

⁴ <http://humanrights.mfa.go.th/th/humanrights/obligation/international-human-rights-mechanism/>

⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102843

laws and the signing of both Conventions. As a result, the migrant workers continue to face a challenge to their freedom of association and collective bargaining due to constraints in the existing labour relations laws which require that those who are eligible to form a labour union and become an executive member of a labour union must have Thai nationality. In addition, such restriction is incompatible with the international human rights conventions that have been ratified by Thailand including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). **Therefore**, as a member of the International Labour Organization and as its founding member since 1919, the Thai government should promptly see to it that the ratification of the remaining core conventions be made immediately.

3. Laws concerning social protection

MWG has found that the Social Security Act B.E. 2533 and the Workmen's Compensation Act B.E. 2537 have still been invoked to issue notifications, secondary laws and guidelines which discriminate against employees in certain sectors depriving them of access to become an insured person and access to protection under the Social Security Act and Workmen's Compensation Fund, particularly employees in agricultural and fishery sectors who are employed seasonally and domestic workers and undocumented migrant workers.

The Human Rights and Development Foundation (HRDF) has filed cases with domestic courts to create legal precedence on labour protection regarding their access to Workmen's Compensation Fund without discrimination including when a migrant worker is harmed, dies or disappears during the course of their work. The Supreme Administrative Court has made a decision since 2015 to set precedence for the protection of all employees equally.

Nonetheless, migrant workers continue to face challenge in terms of their accessing to such remedies. In the latest case, the Human Rights and Development Foundation (HRDF) has filed the case against the Chiang Mai Social Security Office and the Workmen's Compensation Fund Committee as the WCF Committee had refused a descendant from accessing benefits from the WCF claiming the employer of the worker had not registered him with the WCF through the SSO. As a result, the employer has to be held liable to pay such benefit to the descendant of the deceased worker. Both the Lower Court and the Appeal Court ruled to affirm that “That the Social Security Office has issued a guideline no. Ror Ngor 0607/Wor987 dated 31 May 2012 regarding the protection of alien workers who are subject to occupational health problem or illness which requires that an alien worker who is subject to occupational health problem or illness and eligible to receive benefits from the Workmen's Compensation Fund must be able to produce their registration documents and work permits and must have been permitted to enter the country legally or have undergone nationality verification according to the cabinet resolution dated 13 February 2012. Without such documentation, the employer shall instead be held liable to pay such benefit as per the Workmen's Compensation Act. This guideline is found unlawful by the Court.” ***The Court therefore orders the rescinding of the Social Security Office’s order and the Workmen's Compensation Fund Committee’s decision to instruct the company to pay the wife of the deceased migrant worker such benefits. Instead, it is incumbent on the Social Security Office to pay such benefit drawing from the Workmen's Compensation Fund to the wife as descendant of the deceased migrant worker.*** It has been more five years since then and the descendant has yet to receive the benefits since the Social Security Office and the Workmen's

Compensation Fund Committee continue to invoke their judicial right to challenge the decision of the Appeal Court with the Supreme Court.⁶

Therefore, the Social Security Office should adhere to the principle of ensuring equal protection of all workers and should refrain from imposing requirements concerning the period of employment, the forms of employment and the legal status of the workers to discriminate against certain workers.

4. Strengthening legal enforcement and revision of recruitment laws

Regarding the state policy framework on the management of migrant workers, it has been found the state in general adopts the approaches in compliance with the ILO General Principles and Operational Guidelines on Fair Recruitment, in terms of prohibition of recruitment fee, prohibition against the retention of the workers' personal documents, conditions for the termination of employment contracts for workers recruited through the G2G protocol, and the appointment and authorization for law enforcement officials to make an intervention in the recruitment process by recruitment agencies and employers. The state, as a result, has legislated the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560. However, certain provisions according to the ILO General Principles are still unavailable.

In collaboration with the People's Party, the Migrant Working Group (MWG) has proposed a revision of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 including its definition to ensure it applies to groups refugees, migrants, employers' organizations, employees' organizations, roles of the policy committee for the management of migrant workers to increase roles of representatives from the employers and the employees, the enhancement of the methods to bring migrant workers to work domestically, and the protection of workers, particularly regarding their employment contract arrangement, change to a new employer, prohibition of document retention, extension work permit from two to four years, since after the migrant workers have been working for the employers and picked necessary skills, this will benefit the economy and ensure workers attain secure employment, minimize their expense related to their document processing which normally take a long time and is costly. This can also help to improve the management of the fund which can more efficiently provide help when migrant workers are subject to labour rights violation.

Business sector and respect of human rights

1. Adopting “employers pay” principle

Until now, business sector in Thailand opts to minimize their production costs by shifting to the use of cheap migrant workers recruited from Neighbouring countries to replace domestic labor. It has given rise to illegal labor recruitment process in the sending countries. Migrant workers are charged exorbitantly in their home countries in order to get across the border illegally to work in Thailand. The authorities in both Thailand and sending countries are aware of the problem and have signed G2G agreements to facilitate labor recruitment and to minimize such risk.

⁶ <https://hrdfoundation.org/?p=4866>

However, according to the Migrant Working Group (MWG)'s Report on the Impact of the Thai Government's Migrant Worker Amnesty Program and Forced Labour Risk,⁷ it has been found that more than 90 % of the migrant workers who are unable to get registered by themselves have to rely on services from brokers and recruitment agencies and 79% of such migrant workers are overcharged for the expense involving such labour registration and get indebted from having to repay their employers for such services and fees causing them to be subject to the use of forced labour.

From our experience giving legal assistance to migrant workers in fishery sector, the Human Rights and Development Foundation (HRDF) has found migrant workers in fishery sector continue to have their documents retained by their employers as a guarantee that they pay off the debts incurred from such labour registration.⁸ Such finding is echoed by the reports of the Migrant Working Group (MWG) as well.

Therefore, the government should set out legal frameworks and create a mechanism to monitor workplaces that employ migrant workers to ensure they shall be responsible for any expense incurred from the recruitment based on the employer pay principle.⁹ Such expense should be calculated as part of the production cost by the employers themselves.

2. An emphasis on policies to provide for human rights due diligence

The government has adopted plans to ensure the legal enforcement of human rights due diligence and to hold consultations with stakeholders including civil society sector to listen to their input and recommendations regarding the preparation of the draft laws. Representatives from civil society have shed light on the local situations in which human rights violations have happened. Several of such incidences are directly related to actors in business supply chains including trade partners, subcontractors, and supplies. Such due diligence process has, however, failed to ensure respect of labour rights, particularly in areas declared the Special Economic Zones. **Therefore, an effort to draft a human rights due diligence laws asides,** the state should develop a plan with the Federation of Thai Industries and the Chamber of Commerce through the signing of a MOU to promote business operation that respects human rights and to encourage members of the Federation of Thai Industries and the Chamber of Commerce to participate in the model human rights organizations project in the category of business entities. By participating in such model project, such businesses shall be required to prepare human rights due diligence report [1] that covers all collaborating business entities or those in the supply chain. This shall help to aid the exploration of measures for the prevention and suppression of abusive labour exploitation. Such report must be made publicly available to raise the awareness and to facilitate trackability.

3. Review of government procurement

The National Action Plan on Business and Human Rights' human rights due diligence places an emphasis of responsibilities of business sector. The Migrant Working Group (MWG) has, however, found that the state is also an economic actor. Section 8 of the Government Procurement and Supplies Management Act B.E. 2560 currently states that it must be ensured that procurement and supplies management most benefit the State and it has to be carried out in compliance with the principles of worthiness, transparency, efficiency, efficacy and

⁷ <https://mwgthailand.org/sites/default/files/2023-04/Report-on-the-Impact-of-the-Thai-Governments-Migrant-Worker-Amnesty-Program-and-Forced-Labor-Risk.pdf>

⁸ <https://hrdfoundation.org/?p=4291>, See page 12.

⁹ <https://www.ihrb.org/employerpays/the-employer-pays-principle>

accountability in both the procurement and recruitment processes. MWG deems that the law still lacks important principles regarding human rights due diligence through the state procurement. This is attested to by case studies of labour rights violations made possible by companies or contractors which have won a bid for state development projects.¹⁰ There are also cases of occupational health and safety such as the case of a number of workers including migrant workers who have been affected during their work to construct the high-rise building that collapsed during the recent earthquake.¹¹ It has drawn much attention from the public to the state procurement process and how it has led to the losses of workers in construction sector.

Therefore, the draft law concerning human rights due diligence must apply to the review of cases whereby private companies have won a bid to develop projects by the state and state enterprises, and how they have to be held responsible and respect human rights and the environment through their supply chains. This will ensure that such projects shall most benefit the public and the employees which shall genuinely support a sustainable economic growth by the state.

Remedy

1. The use of grievance mechanisms through judicial review

The Department of Labour Protection and Welfare adopts policies to avoid mediation in cases involving labour rights violation and to issue an order to ensure the amount of benefits not lower than the minimum amount prescribed by labour protection law. The protection procedure through Labour Court do not, however, adhere to this principle. Through dispute mediation, the Labour Court places an emphasis on forging good relationships between the employers and the employees. It has also been found that Labour Courts in general lack knowledge about migrant workers, particularly on the application of documents or mechanisms concerning legal relation between the labour importing companies and the employers. This has kneecapped the ability of the court to conduct such mediation and discovery of facts and failed to ensure that justice is served for the migrant workers.

The mediation has largely been made to ensure satisfaction of parties who after all do not have equal bargaining power and fail to take fundamental rights into account. As a result, even an agreement has been reached to provide for remedy, it is often lower than the minimum standard. As to the execution of the agreement, it happens that the workers tend to receive the actual compensation less than what is prescribed for in the labour law. And since the negotiation agreement has no criminal sanction, the employers often use this loophole to avoid giving remedy to the employees. Instead, the burden has been shifted to the employees to trace assets of the employers to bring them to the auction. Such process can be quite complicated, challenging, costly and time-consuming, as a result of which the employees may not receive the remedy.

Therefore, a safeguard must be put in place in the judicial mechanism to ensure it is not possible to use such loophole regarding legal execution which may prevent the employees from accessing the remedy.

¹⁰ <https://hrdfoundation.org/?p=3017&lang=en>

¹¹ <https://mwgthailand.org/en/press/1743422336>

2 . Insufficient interpretation service At present, the Ministry of Labour cannot provide sufficient number of interpreters who can speak the languages of the migrant workers including during the investigation by the labour inspectors and public health agencies. Even in the court, no interpretation is provided and the migrant workers have to find their own interpreters, or have to rely on interpretation services of the Office of Labour Protection and Welfare during the hearing of cases the labour inspectors of the Office of Labour Protection and Welfare are a party or a witness. But if the migrant workers do not file the case against staff of the Office of Labour Protection and Welfare, they are required to secure an interpreter by themselves.

Therefore, the state must adopt policies to provide for interpretation services to ensure justice is served for all of the workers.

3 . Access to remedy in case of document retention During the earthquake on 28 March 2025, several construction workers engaged in the building project of the State Audit Office of the Kingdom of Thailand have died. The Migrant Working Group (MWG) has found that descendants of the deceased workers cannot produce personal documents of the deceased workers in order to receive compensation from either the state or private sector as such documents have been retained by the employers who refuse to return them to the descendants. No help has also been forthcoming from the Department of Employment (DoE) to trace the documents. In such case, the descendants have to try different ways to obtain a copy of personal documents of the deceased workers in order to apply for access to the remedy. The problem has got worse since certain hospitals have retained personal documents of the workers as a guarantee that they will pay the medical bill. Document retention either by the employers or the public agencies serves as an indication of a lack of awareness and legal knowledge concerning the management of migrant workers, which may give rise to forced labour and human trafficking.

Therefore, the Ministry of Labour must strictly enforce the laws to prevent document retention.

For more information, please contact: Mr. Adisorn Kerdmongkhol, Migrant Working Group's Coordinator, phone 089 788 7138 or email contact@mwgthailand.org