



## HUMAN RIGHTS ISSUES IN THAILAND'S FISHING INDUSTRY

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### ABSTRACT :

The people are migrating in search of jobs and better lives for their families as some countries develop more rapidly. Migrant workers in Thai fishing sector are extremely vulnerable to human trafficking for labour exploitation for a various reasons. They are vulnerable due to the nature of their work there is a vulnerable population of illegal, unregulated workers there are likely to be human rights abuses.



**KEYWORDS :** Human Rights, Human Rights Issues, Thailand's Fishing Industry.

### BACKGROUND

The search for better lives and opportunities on one hand and the high demand for labour on the other hand have driven high flows of low skilled workers to enter Thailand. Migrant workers make huge contributions to Thailand's economy but receive little protection from abuse and exploitation. Thailand is home to an estimated 3-4 million migrant workers, most from neighboring Myanmar, Cambodia and Laos. They are the engine that keeps Thailand's export economy humming, because they are willing to do jobs that many Thai nationals aren't. How these workers find their jobs and register with Thai authorities is at the heart of Thailand's trafficking problem. Migrant workers in the Thai fishery industry many of them trafficked illegally are suffering terrible abuses and all too often are denied their basic human rights. Various reports and anecdotal narratives point to a high percentage of trafficking victims in the Thai fishing industry,

### Vulnerabilities of Migrant Workers in Thailand's Fishing Industry

In Thailand, the fishery industry has been implicated in widespread exploitation and abuse of workers, including forced labour and human trafficking.<sup>1</sup> Migrant workers are extremely vulnerable to human trafficking for labour exploitation in Thailand. The vast majority of migrant workers on Thai fishing boats are undocumented migrant workers who have not registered with the Ministry of Labour and are in violation of Thailand's immigration law.<sup>2</sup> As a result, many are forced to live in constant fear of deportation

<sup>1</sup> International Labour Organization, "Employment Practices and Working Conditions in Thailand's Fishing Sector", (Bangkok, 2013), at ix, ILO Tripartite Action to Protect the Rights of Migration Workers within and from the Greater Mekong Sub-region (GMS Triangle Project) and Asian Research Center for Migration Asian Studies, Chulalongkorn University, Thailand.

<sup>2</sup> Phillip Robertson, "Trafficking of Fishermen in Thailand", International Organization for Migration (IOM), (Bangkok 2011), at 20.

and choose to silently suffer through exploitative working conditions and discrimination in order to maintain a low profile.<sup>3</sup> Migrant who manage to register with the Ministry of Labour and obtain the correct work permits to be legally employed in Thailand usually do through the assistance of a broker or recruitment agent.<sup>4</sup>

### Human Rights Issues in Thai Fishery Industry

In Thailand, the fishery industry has been implicated in widespread exploitation and abuse of workers, including forced labour and human trafficking.<sup>5</sup> The Thai fishing industry is built on slavery, even being negligent about enforcing legal standards of wages and working conditions for migrant workers. It is reported that workers had no employment contracts or they did were illegal contracts. Sea fisheries work does not place limits on working hours or requires set periods of rest. They work 17-24 hours per day with no pay or without overtime pay, they do not have set working hours and nor adequate rest, men workers among boat owners work like animals. The survey found children under the age of 18 working on Thai fishing vessels.<sup>6</sup> In 2013 a study published by the International Labour Organization found that 17% of 600 fishermen in Thailand said that they worked against their will and were unable to leave for threat of financial penalties, the threat of violence or being reporting to authorities. Around six of ten migrants who had been forced to work on Thai fishing boats said that they had seen the murder of another worker, a worker on Thai boat who tried to rebel, escape, or was no longer fit for work, and had risk to be thrown overboard according to a 2009 survey by the U.N. Inter-Agency Project on Human Trafficking.<sup>7</sup>

### Changing Face of the Fishing Sector

Fishing has always provided livelihood for those living along Thailand's fertile coastline. Since the second half of the 20th century, the rapid industrialization of the fishing sector and the Thai economy more broadly has drastically changed the character of fishing work. A cabinet decision by the Royal Thai Government in 1993<sup>8</sup> granted permission for migrants to work in the Thai fishing industry in 22 coastal provinces. This policy shift coincided with a major decline in internal migrants from the Northeastern region of Thailand willing to work on fishing boats. This change in policy created a greater range of employment options for low-skilled workers, particularly in construction and export-oriented manufacturing, sparking a significant shift of the Thai labour force to the fisheries sector. Employers within the fishing sector realized that migrant workers could be utilized to fill the emerging labour shortages. Migration to Thailand in large numbers was several times greater than those available in their home countries. Even though they were paid less than Thai workers, they worked harder, and did not demand any additional health or social security benefits. As the Department of Fisheries is aware of the ongoing labour shortage faced by the industry, the Marine Fisheries Management Master Plan stated that: "Chronic shortage of fishing hands had epidemic

<sup>3</sup> Supang Chantavanich et al., "*Mitigating Exploitative Situations of Migrant Workers in Thailand*", Asian Research Center for Migration (ARCM), Institute of Asian Studies, Chulalongkorn University, (Bangkok 2007), at 43.

<sup>4</sup> Sompong Sakaew and Patima Tangprachakoon, "*Broker and Labour Migration from Myanmar: A Case Study from samut Sakorn*", Asian Research Center for Migration (ARCM), Institute of Asian Studies, Chulalongkorn University, (Bangkok 2010), at 19.

<sup>5</sup> International Labour Organization, "*Employment Practices and Working Conditions in Thailand's Fishing Sector*", (Bangkok, 2013), at ix, ILO Tripartite Action to Protect the Rights of Migration Workers within and from the Greater Mekong Sub-region (GMS Triangle Project) and Asian Research Center for Migration Asian Studies, Chulalongkorn University, Thailand.

<sup>6</sup> *Ibidem*, at xi.

<sup>7</sup> Sophie Brown, *Tackling Thailand's Human Trafficking Problem*, Retrieved from <http://edition.cnn.com/2014/06/20/world/asia/thailand-trafficking-report/>

<sup>8</sup> International Labour organization, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, (Bangkok, 2013), at 26. ILO Tripartite Action to Protect the Rights of Migration Workers within and from the Greater Mekong Subregion (GMS Triangle Project) and Asian Research Center for Migration Asian Studies, Chulalongkorn University, Thailand.

Thai commercial fisheries for quite some time. Although wages under the catch-sharing system used to serve as a good incentive, the actual pay had... been less competitive....”<sup>9</sup>

In May 2012, an National Fisheries Association of Thailand survey estimated 142,845 fishermen as its membership. It is acknowledged that most of the migrant fishermen on Thai fishing boats were undocumented workers who had entered Thailand in violation of the Immigration Act, 1979, and who had not registered in significant numbers under the Department of Employment periodic migrant worker registration office. One of the reasons for their failure in registration is largely due to the fact that they were at sea during registration periods. Furthermore, many boat owners are unwilling to pay the costs of registration and to obtain work permit because of high turnover of crew members. It is also the fact that fishermen often change employers if they can earn more or can find better working conditions, or if they want to work with their friends and colleagues. The frequent movement between vessels is also the reason that the employers to withhold their pay and limit the freedom. Hence, the employers are unwilling to pay the costs to regularize the irregular migrant fishermen. A work permit ties a worker to one employer, and therefore regular migrant fishermen become irregular when they change employers, unless they have the permission of the employer and the authorities. Migrant fishermen who manage to register and obtain the correct work permits frequently do so through a labour broker. While some brokers legitimately try to assist migrants with the process, there is always greater possibility of overcharging, and there is no remedy to seek justice in the case of exploitation. Even if the migrants are able to register themselves under the Department of Employment, agents or boat captains often seize and hold their passports and work permits, preventing them from leaving situations in which their rights are abused. If forced to go into debt with a broker over registration fees, workers may find themselves in situations of debt bondage, and may have to work without remuneration until the debt is paid. These include simply accepting the first job they are offered by brokers or recruitment agents because of a lack of labour market information, the sanctuary from arrest for irregular migration provided by work on fishing boats, the opportunity to save greater amounts of money due to long periods of time spent at sea, and the numerous forms of coercion and deception used by brokers and employers to get migrants to work on fishing vessels. Despite of the large number of illegal migrant workers, Thailand's fishing industry is still experiencing a labour shortage. The use of foreign migrant workers to fill the labour demands of the fishing sector is unlikely to change. Most Thai fishermen who work within the industry do not wish to see their children pursue fishing as an occupation.<sup>10</sup> These challenges to the sustainability and business models of the fishing sector have developed alongside dramatic changes to the composition of the sector's workforce. Shortages of Thai workers willing to work on fishing vessels, emerging simultaneously with expanding structural differences in population demographics and economic development between Thailand and its neighbouring countries, have transformed fishing crews to predominantly consist of migrant workers from Cambodia and Myanmar. Regulating the employment of these migrants aboard Thailand's fishing fleet has proven complex for authorities. These factors have all contributed to the vulnerability of fishers, and there have been several reports of abuse and exploitation on board Thai fishing vessels.<sup>11</sup>

### Obstacles to Realization of Rights of Migrant Workers in Thailand's Fishing Industry Registration Process

In an effort to tackle the challenge posed by the increasing number of irregular migrant workers in the country while accommodating the needs of employers and industry for migrant labour, the Thai Government has established a registration process for migrant workers to be employed as labourers or domestic servants in the 1990s. While the registration process provided migrant workers with some documentation and health insurance, it did not change their immigration status. Registered migrants

<sup>9</sup> *Ibidem*, at 27.

<sup>10</sup> *Ibid*, at 28.

<sup>11</sup> *Id*, at 28.

remained irregular migrants because they had entered or remained in Thailand in breach of the Thai Immigration law and had not obtained valid visas or travel documents. Owing to the lack of regular legal status in Thailand, the registered migrants continued to be very vulnerable to abuse and exploitation and were not granted basic rights such as the right to move freely between provinces or the right to drive a vehicle. In addition, the registration process was a unilateral mechanism developed, decided upon and implemented by the Thai Government only. No discussion with neighbouring countries took place, and information on the registered migrants was not shared with the countries of origin. This national registration process has been regarded as ineffective due to the plummeting registration figures and increasing numbers of unregistered migrants. Over the years migrants dropped out of the registration system, viewing it as cumbersome, confusing and expensive or because they were ineligible.<sup>12</sup> Awareness of the registration system is low, depending on the decision of employers. Most of migrant workers have no access to information on registration due to language barrier and lack of access to information channels. The main obstacle is the unwillingness of the employer to bring their employee for registration. Registration was possible only through employer decision. On the migrant workers side with or without awareness, the workers could not register themselves without an employer. Furthermore, detailed information about migrant workers rights, benefits and obligations are not fully made know in most campaigns.<sup>13</sup>

### Memorandum of Understanding (MOU)

Before the implementation of MOUs, it was not possible for low-skilled migrant workers to enter Thailand legally to work. The MOU recruitment process, however, makes it possible for low-skilled migrant labourers to enter into Thailand. As a first step, a company wishing to recruit workers through the MOU process must contact the Provincial Employment Office to request quota for the number of workers they want to import. A recruitment agency can also obtain a quota of their own initiative and with a view to import workers whose labour they can then subcontract to other companies. The 25-step recruitment process from Myanmar takes an estimated minimum of 89 days and an estimated minimum of 62 and 55 working days from Cambodia and Laos, respectively. The process involves a myriad of stakeholders including various governmental agencies at different levels and some duplication such as multiple health checks, all of the cost of which are typically borne by the workers. Additional steps may be required in order to obtain some of the documentation necessary to complete the formal process e.g. copies of household registration and ID cards that many prospective migrant workers may not ever before have had and due to the involvement of brokers and/or recruitment agencies. Many of the steps take place between government agencies and are opaque and difficult to understand to both workers and employers so that further reliance is placed on brokers and recruitment agencies to navigate these processes.<sup>14</sup> The official costs of various documents are not easy to establish and subject to frequent change. There are no set time-limits for processing of these documents also, facilitating gaps for overcharging and corruption. According to the Myanmar Overseas Employment Agency Federation the official costs that can be charged for MOU recruitment processes to a worker in Myanmar is approximately 110 EUR. In addition, according to the Myanmar Overseas Employment Agency Federation, the employer in Thailand is also allowed to charge a

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<sup>12</sup> Andy Hall, Migration and Thailand: Policy, Perspective and Challenges, 17-37, in: Jerrold W. Huguet and Apichat Chamratrithirong (ed.), *Thailand Migration Report 2011: Migration for Development in Thailand: Overview and Tools for Policymakers*. (Bangkok: International Organization for Migration 2011).

<sup>13</sup> Supang Chantavanich, Premjai Vungsiriphisal and Samarn Laodumrongchai, *Thailand Policies toward Migrant Workers from Myanmar*, (Asian Research Centre for Migration Institute of Asian Studies Chulalongkorn University 2007), at 54.

<sup>14</sup> ILO, *Review of the Effectiveness of the MOUs in Managing Labour Migration between Thailand and Neighbouring Countries*, (Bangkok 2015), at 11, ILO Tripartite Action to Protect the Rights of Migration Workers within and from the Greater Mekong Subregion (GMS Triangle Project) and Asian Research Center of Migration Asian Studies, Regional Office for Asia and the Pacific.

worker 10,000 Baht or 250 EUR per migrant worker which the employer can claim back, often through deductions from the workers salary during the first months of employment. The legal basis for these deductions remains unclear, especially as according to Thailand's Labour Protection Act no such salary deductions can lawfully be made.<sup>15</sup> Some of the costs charged by an employer to a worker may be costs advanced to brokers or recruitment agencies in the origin country. The high costs charged to workers for MOU processes can often result in their personal documents such as ID cards, passports or work permits being unlawfully confiscated by a broker or employer as insurance against a worker deserting a workplace prior to debts being recouped. The confiscation of personal documents and limited freedom of movement this entails can take the situation into conditions equivalent to debt bondage, forced labour or human trafficking. Migrant workers from Cambodia, who are recruited through the official MOU process, typically pay between approximately 520-570 EUR to a recruitment agency in their home country through a combination of upfront payments and deductions from salaries after they have started working. On top of these costs, will also pay a fee to recruitment agency in Thailand. In the case of MOU recruitment from Laos to Thailand, the fee around 19,500 Baht or approximately 490 EUR to migrant workers which the agencies have to advance to the worker but that they can later claim back through salary deductions.<sup>16</sup> Although the number of MOU workers in Thailand has increased, the relatively low proportion of MOU workers in the total migrant workers population is attributable to the complexity and long duration of the recruitment process and the high fees charged by brokers and recruitment agencies for their services. In addition, many migrant workers see the MOU process as offering few benefits in comparison to other channels for obtaining the legal rights to work in Thailand. At the end of the recruitment process in their country of origin, all MOU workers should be in possession of a passport, a Thai visa<sup>17</sup> and a two year work permit<sup>18</sup>, as well as an employment contract. One challenge for MOU workers is that, unless in exceptional cases, they are not allowed to legally change employers and if such a worker wants to change work, they had to return to their origin country and re-enter under a new MOU quota and contract. In Thailand, MOU workers are in theory entitled to the same rights and protections under Thailand's labour protection laws including the Labour Protection Act, Social Security Act, and Workmen's Compensation Act as Thai nationals, and can obtain a driving license and travel unrestricted within Thailand. For the first 90 days of their employment, migrant workers can apply to be covered by the Ministry of Public Health migrant workers health insurance which the workers may have to pay for themselves during which time their employer should enroll them to the social security scheme, including medical cover and compensation for accidents at work place. In order for migrant workers to be able to access social security benefits, they themselves and their employer must both contribute 5% of the workers salary to the social security fund for a minimum of three months. Workers contributions are deducted from their salaries. Some employers are unwilling to pay their share and sometimes migrant workers themselves are also unwilling to contribute as they want to avoid salary deductions and do not see themselves as needing or being able to access services. MOU workers' contributions have been deducted from their salary but the migrant workers has not been in a possession of social insurance card and the deducted sums have not actually been paid into the funds but presumably pocketed by the employer, a recruitment agency or corrupted individuals. Even when social security contributions are paid, a number of factors hinder equality of treatment including language barriers, lack of awareness, fears of retaliation and loss of work permit, evasion of responsibility by the employers, documentation requirements and long duration of the processes involved.<sup>19</sup> MOU workers and migrant workers have completed the Nationality Verification process are not free to change jobs as their work permit

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<sup>15</sup> *Ibidem*, at 17.

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

<sup>17</sup> May be issued on the Thai side of a border.

<sup>18</sup> Can be extended by a further two years.

<sup>19</sup> Benjamin Harkins, Social Protection for Migrant Workers in Thailand, 27-43 in: Jerrold W. Huguet (ed.) at 36-38, *Thailand Migration Report 2014*. (Bangkok: United Nations Thematic Working Group on Migration in Thailand 2014).

is tied to a particular employer. Changing employers is possible for regular or regularised migrant workers only under the most necessary situations, including the employer's death, an employer's activities cease, an employer breaches the rights of workers or commits a violent act, or the employer does not act in accordance with the labour protection laws.<sup>20</sup> As allegations of labour rights abuse are rarely investigated in Thailand, making a successful claim for changing jobs on the basis of abuse of rights, violence or breach of the labour protection laws is near impossible. The time-limits and lack of clear guidelines also make it in practice impossible for most migrant workers to legally change employers. However, in practice migrant workers do sometimes change employers. This involves informal and unregulated processes and high fees paid to corrupt officials which are borne by the workers themselves.<sup>21</sup> Migrant workers whose contracts of employment are terminated by their employers can take up new employment provided that they can find new employment within set time limits. However, depending on regional variations, the employer must generally provide the dismissed employee a letter known in Thai as "bai jeng awk" which the worker will then need to present to his or her new employer before their work permit can be changed under the new employer. Some employers charge the migrant workers irregular fees for the "bai jeng awk" letter. The official cost of making changes to work permits due to change of employers irrespective of the reason is 900 Baht.<sup>22</sup> According to the MOU migrant workers can obtain a legal right to live and work in Thailand for maximum of four years.<sup>23</sup> Many migrant workers rights groups and employers have protested the four-year stay limit in MOU. Having invested in to training of their workers, the employers would like to be able retain their workforce beyond the limits set in the MOU. The first MOU workers from Myanmar entered Thailand in 2010 and completed their four years of employment in 2014. Instead of returning home, many of them have overstayed their visas in Thailand and become irregular. Some of these workers would have simply thrown away their passport and registered during the 2014 registration amnesty using a different name.<sup>24</sup> As a result, they would no longer have been entitled to social security including workmen's compensation for accidents and injuries at work place and had their freedom of movement restricted to the province of registration in Thailand. To restore their regular status and subsequent entitlement to social security and freedom of movement, such workers would have had to complete the Nationality Verification process and pay the fees all over again. Migrant workers have completed the two step regularisation process have been able to obtain work permits for between four and six years. Since this time, the Thai authorities have continued to issue ad hoc, temporary measures allowing migrant workers who have completed the registration or the two step regularisation processes to extend their stay for two more years at a time. Notably, these extensions have not, seemingly discriminatorily, been available to MOU workers. Often the temporary measures have been announced so late that the in the absence of clear instructions, many migrant workers would have made costly arrangements to return home for the purpose of renewal of their work permits based on outdated information and assumptions. Furthermore, the authorities typically publicise these policy changes in the media but most migrant workers do not speak or read Thai and many are illiterate. As such, the impromptu policy changes further increase their reliance on brokers and recruitment agencies, and they have been criticised as money making schemes.<sup>25</sup> The procedures for employing migrants under MOUs were very complex, lengthy, expensive and burdensome, which translated into very low numbers of migrants using this channel to migrate to Thailand. The MOUs as a regular channel for migrant workers to Thailand cannot yet be considered a success and the numbers of migrants who have benefited from it are still very low.

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<sup>20</sup> Thai Cabinet Resolution, 19 January 2010. Retrieved from <http://www.burmalibrary.org>

<sup>21</sup> ILO, *Supra n. 14*, at 21.

<sup>22</sup> IOM, Migration Information Note 4. Retrieved from <http://th.iom.int/Migration-Information>.

<sup>23</sup> Art 9, MOU between the government of the Kingdom of Thailand and the government of the Union of Myanmar on cooperation in the employment of workers.

<sup>24</sup> Myanmar nationals often have multiple names and changing one's name is easy.

<sup>25</sup> ILO, *Supra n. 14*, at 22.

### Limitations on Social Protection for Migrant Workers

Despite these recent achievements in providing coverage for nationals, social protection benefits for the over three million migrant workers in Thailand remains a fragmented and incomplete system, leaving most without sufficient access. Both migrant workers entering under the MOU between Thailand and neighbouring countries, and those who have registered and completed Nationality Verification, are eligible for many of the same benefits as Thai nationals. Migrants falling within these two legal statuses constitute over one million eligible workers in Thailand in practice. However many are not able to exercise their right to benefits. Expansion of temporary labour migration programmes has outpaced the development of comprehensive and appropriate social protection schemes for migrants. As a consequence, many of the eligibility requirements for receiving entitlements either explicitly exclude or create significant obstacles for migrants to avail themselves of their rights e.g. citizenship requirements, documentation requirements. When compounded by common problems with poor enforcement of compliance, a large number of migrants are left without access to protection. Standard forms of social protection are often deficient in effectively shielding migrants from the risks they face. In Thailand, gaps in regulating the entry, placement, employment, and unemployment of migrant workers create specific socio-economic vulnerabilities during each stage of the process. These risks can be classified into 4 types: risks during recruitment or job seeking, risks during employment, risks upon termination of employment and risks faced by migrants while in an irregular status.

#### (A) Risks during Recruitment or Job Seeking

The journey of migrant workers into Thailand is often facilitated by brokers or other intermediary parties. By some accounts migrants who are smuggled of their own free will for placement with employers constitute the majority of low skilled migrants entering from neighbouring countries. Because of the complexity, expense, and duration of migrating through legal channels, a substantial market for these services has been established.<sup>26</sup> The involvement of these agents during the migration process who often recognize that the legal, economic, and social vulnerability of irregular migrants can be exploited for profit places migrants at risk of becoming victims of trafficking for labour exploitation. Smuggled migrants are often not fully aware of the tenuousness of their situation until their arrival in Thailand. They become irregular workers in the Thai labour market until they can register during the next window for amnesty. However, in the worst cases, they may end up as victims of forced labour. Research on regular recruitment of migrant workers has shown that legal labour migration under the MOUs between Thailand and neighbouring countries also create risks for migrants. Recruitment under the MOU process in Cambodia requires the services of a private employment agency, approximately a 3 month period from application to placement, and a total expense of between 18,000 - 20,000 Baht which is borne by the worker through a combination of upfront payments and payroll deductions. As a result, some migrants find the increased freedoms associated with regular status largely unrealized as the payroll deductions they face keep them in a state of pecuniary captivity.<sup>27</sup>

#### (B) Risks during Employment

The MOUs call for the protection of migrant workers in accordance with national laws. Thailand Labour Protection Act 1998 applies to all, regardless of nationality or legal status. But while migrant workers are provided equal protection under the law, their status as migrants and the nature of their work means that they are at risk of labour rights violations. In practice, migrant workers often earn less than the minimum wage and are subjected to illegal wage deductions, excessive working hours, and poor living and

<sup>26</sup> Harkins, *Supra n. 19*, at 33.

<sup>27</sup> Benjamin Harkins, Samarn Laodumrongchai, Noppawan Sangnate Der Kinderen *et al.*, *Regulating Recruitment of Migrant Workers: An Assessment of Complaint Mechanism in Thailand*. International Labour Organization, (Bangkok 2013).

working conditions. The high levels of debt often involved, frequent confiscation of identification documents and requirement that workers stay tied to a specific employer leave migrant workers at risk regardless of their legal status.<sup>28</sup> Moreover, Sec 88 and 101 of the Labour Relations Act 1975 issue restrictions on non-Thais establishing trade unions and serving as union leaders. Although they can legally join Thai unions, migrants frequently work in jobs that are not traditionally unionized and in workplaces where there are no unions. Migrant organizing and collective bargaining power for increased rights is therefore very limited. As employees, migrants in Thailand often face inequitable working conditions that may pose risks to their welfare or health. In many cases, they do not receive pay in accordance with minimum wage laws during periods of illness, injury, or maternity or on a regular schedule. Excessively long work days of 12 hours or more are not unusual in some sectors, and non-payment of overtime wages has been frequently reported. Their freedom of movement may be restricted and retention of identification documents is a widespread practice. In addition, because the majority of migrant workers are employed in dirty, dangerous, and demanding jobs the nature of their work generally places them at higher risk of work related accidents and health problems than that faced by nationals particularly when coupled with fatigue from long work hours. In some cases, industries employ foreign workers specifically because native workers have shunned them due to the occupational safety and health risks involved.

### **(C) Risks upon Termination of Employment**

For migrants who have come to Thailand legally under the MOU or have completed some portion of the regularization process through registration or nationality verification, their legal status to remain in Thailand is tied to their employment. Upon termination, they are required to leave the country within 7 days. Although there is an administrative process for changing employers while maintaining regular status managed by the Department of Employment, it is only possible within the same industry and under certain specific conditions i.e. death of the employer, bankruptcy of the business, or employer is found guilty of exploitation or abuse, or employer approval. The result is that many migrant workers in Thailand cycle through stages of regular and irregular status during their stay, with all of the associated risks that period without legal documentation entail.<sup>29</sup> In addition, because migrants are regularly paid below minimum wage, and in many cases must remit income to support family members in their home countries, they often do not have sufficient accumulated savings to cope with the sudden loss of income caused by termination of employment. For many families, migration itself is an informal social protection strategy to alleviate the deprivations of poverty, thus the economic shock of unemployment affects not only the welfare of migrants themselves but also the dependents they have left behind.

### **(D) Risks in Irregular Status**

Risks related to irregular status underpin all stages of the labour migration process in Thailand because legal channels for migration sometimes fail to provide comprehensive protection of rights and welfare, foreign workers may conduct an informal cost-benefit analysis of the options available to them. The outcome has been that the majority continue to choose migrating irregularly because it is less complicated, faster, and less expensive. However, undocumented migrants face an increased risk of exploitation and abuse, not only by unscrupulous brokers and employers but also by corrupt authorities. Irregular migrants may face extortion of money to avoid arrest and deportation, and it is not uncommon for a migrant to lose the equivalent of one to several months pay in one incident. In addition to their heightened vulnerability to abuses, irregular migrants are denied even the marginal levels of access to legal protections and redress mechanisms that are available to regular migrants. Unable to appeal to officials when their labour rights are violated, undocumented migrants typically suffer silently in fear of reprisals or being reported to authorities

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<sup>28</sup> ILO, *Supra n. 14*, at 21.

<sup>29</sup> Harkins, *Supra n. 19*, at 34.



for filing complaints.<sup>30</sup> Even for migrants who are registered for the Social Security and Workmen's Compensation Funds, use of benefits remains restricted for a variety of reasons that preclude genuine equality of treatment. In cases, of application for unemployment benefits, the responsible authorities at the Department of Employment simply do not accept applications from the migrants. For other benefits, including claims related to workmen's compensation for on the job accidents, the long duration of the process and evasion of responsibility by employers are major obstacles for migrants. For old age pension benefits, a minimum qualifying period of 15 years of contributions, is required which is an impossibility for migrants under Thailand's current immigration policies. Additional constraints to access include a lack of understanding for many workers about the process to make a claim for benefits, language barriers, documentation requirements such as official marriage and birth certificates, and concerns about discriminatory treatment by authorities. As a result, regular migrants are required to pay into a social security system where they have no opportunity to use several of the benefits. Likewise for the Migrant Health Insurance scheme, substantial barriers to care mean that utilization remains relatively low, particularly for outpatient care. Enrolment in the programme is compulsory for migrant workers to regularize their status and obtain work permits in Thailand. Migrants are entitled to a health screening and health insurance, by making payment of 30 Baht per hospital or health centre visit. However, reluctance to access government medical facilities often results in migrants self-medicating or not seeking medical care until their health problems are very severe, even when they are enrolled in the scheme. For irregular migrant workers, health care is still generally financed through a patchwork of out of pocket payments, hospital-granted exemptions, voluntary health insurance schemes provided in some provinces, and migrant health programmes supported by international donors. However, access to care at public hospitals remains largely dependent on individual hospital policies. The resulting gaps in provision of health care are contradictory with the international standards for equality of treatment, as well as the Ministry of Public Health principle of promoting health as a human rights. Both migrants themselves and the Thai population more broadly face negative impacts on health status from the policy deficit. Whether or not the recent reforms enacted by the Ministry of Public Health providing irregular migrants with the option to buy into the Compulsory Migrant Health Insurance scheme will be sufficient to fill the coverage gap remains to be seen. Although Thailand was able to implement a universal coverage programme beginning in 2001, intended to provide health care for all persons in Thailand who are not covered by other Government-provided insurance schemes, it has so far been targeted for coverage of citizens only. Even though the National Health Security Act that provides the legal framework for the scheme stipulates that "every person" is entitled to health services in Thailand, the law is generally interpreted to apply to those of Thai nationality. Therefore, migrant workers are omitted from the concept of universality applied. Various informal eligibility restrictions have also been found in the implementation of the universal free education policy for children. Although the law guarantees that all children are allowed to study at Thai schools, in practical terms, they are typically required to show identification documents to enroll, which remains a barrier in some cases. The final decision about matriculation of migrant children often rests with individual headmasters who add their own conditions and requirements to those laid out in the universal free education policy. Commonly, schools require a certain level of Thai language proficiency or place age restrictions on the enrolment of migrant children because of this and other factors, a large portion of migrant children study at unaccredited migrant learning centers funded by Non-Governmental Organizations and other donors to complete their education at primary level.<sup>31</sup>

### Health Services

Thailand has been lauded for its efforts to extend these health benefits equitably throughout the population, including to non-nationals. In addition to issues related to health financing and human resource

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<sup>30</sup> *Ibidem.*

<sup>31</sup> *Ibid.*

capacity, a core challenge to fully expanding health services to migrants has been related to the lack of timely and reliable information on the health status of this group in Thailand. Challenges to monitoring the status of migrant workers health are linked to both the status of the migrants themselves and the currently available health information systems. This situation is not unique to Thailand but the problematic nature of most migrants legal status, complicated socio-economic issues, and fragmented data collection processes lead to a lack of comprehensive information on migrant populations. Owing to constantly changing and often cumbersome registration processes in Thailand, many migrant workers remain in the country without documentation and essentially off any government registers, thus presenting major challenges to gathering accurate demographic information. These difficulties in obtaining reliable estimates of the numbers of migrant workers as well as more detailed age-sex information generally preclude determining accurate denominators.<sup>32</sup> However, surveys on health-seeking behaviour among migrants indicate that over 60% of those who are ill may not receive any treatment, self medicate, or seek care in the private sector and thus would not be captured through Government surveillance systems.<sup>33</sup> In any case, avoidance of public health services may be due to a complex mix of fear of apprehension, lack of funds, and real or perceived stigma associated with presenting to government health facilities. This last factor, in addition to several practical issues including location of health services, language barriers and availability of time also limit migrant workers access to services even among those who have the requisite health insurance. All migrant workers enrolling in the compulsory migrant health insurance scheme are required to undergo an annual medical exam.<sup>34</sup> Workers are categorized as normal, needing follow-up, or prohibited from work. Results from these examinations are reported to Ministry of Public Health and can provide a snapshot of overall migrant health. The Ministry of Interior gathers household information for registered migrants, but these data are often incomplete and do not capture those migrants who fail to register. The Department of Employment similarly collects numbers of registered migrants and the Social Security Office also collects information on migrants eligible for its scheme. While these systems are primarily focused on generating data to follow health insurance usage or monitor work regulations. In general, regardless of insurance status, non-Thais are offered diagnostic and both first and second line treatment care in Ministry of Public Health health facilities as well as through a few selected non government providers. Costs are covered through a variety of sources, including the global fund and other donors, but local hospitals often cover a substantial portion of costs for those cases without insurance. The extension of basic health care benefits to migrants in Thailand regardless of documentation status is a pioneering policy proposal. This initiative could be part of a comprehensive Migrant Health Strategic Plan, which remains to be fully outlined with clear strategies and objectives. Nevertheless, major gaps remain in understanding the health status of migrant workers due to fragmented approaches, lack of coordinated analysis, and limited dissemination of information. A more coherent monitoring system could provide more detailed information to guide decision making, improve quality of services, and enable objective evaluation of new policy initiatives. All of these efforts are necessary but not sufficient to increase migrant access to health services.<sup>35</sup> Migrant access to public health services in Thailand is dependent on their registration and health insurance status placing them under either the Social Security scheme, or the National Health Security scheme. Both sets of health insurance coverage have gaps in coverage for migrant workers such as no reproductive health and family planning services in migrant languages, lack of provision of antiretroviral drugs that treat HIV and AIDS, and no coverage for work related accidents or health conditions. There is an Emergency Welfare Fund that hospitals can use when a migrant is

<sup>32</sup> Brent Burkholder and Aree Mounsookjareeoun, Health Status of Migrants in Thailand 69-89, in: Jerrold W. Huguet (ed.), *Thailand Migration Report 2014*. (Bangkok: United Nations Thematic Working Group on Migration in Thailand 2014).

<sup>33</sup> Wathinee Boonchalaksi, *Baseline survey on knowledge, attitudes, and practice for tuberculosis among Thai population, migrants population, and ethnic groups*, (Nakhorn Pathom 2011), Institute for Population and Social Research Mahidol University. (Text in Thai Language).

<sup>34</sup> Tests screen for tuberculosis, filiarasis, syphilis, leprosy and amphetamines.

<sup>35</sup> Burkholder and Mounsookjareeoun, *Supra n. 32*, at 71.

unable to pay that also pays for poor Thais. In some areas where hospitals have shouldered a large debt for services to undocumented migrants, there have been reports of denial of medical services or insufficient treatment because of a migrant's undocumented status and inability to pay. There is no policy or mechanisms to support migrant workers and their dependents to access health information and services in their language. The hospitals or health centers that have "Migrant Health Assistants," who provide translation services for migrants, are mostly supported by Non-Governmental Organizations.<sup>36</sup>

## CONCLUSION

Myanmar, Cambodia and Laos migrants continue to play a critical role in filling labour shortages in many sectors of Thailand's economy, a trend that is likely to continue in the future, it is essential that the Government and its partners make rights-based and judicious decisions on migration policy. With the current push to register previously undocumented migrants, there is a promising opportunity for Thailand to further develop its migration policy and move forwards in addressing human trafficking and reducing incidences of exploitation, in cooperation with the private sector, civil society and international organizations. Main problems are that migration policies are short term, conflicting, and lack enforcement mechanisms. These policies have a primary objective of acting as a deterrent to migration rather than supporting rights of migrant workers. A weak administrative and human rights monitoring system enable exploitation, trafficking, violence and discriminatory practices by officials, employers and other private individuals against migrants. The laws and regulations regarding the protection of the migrant workers, including labour laws and the MOU, are largely ineffective due to weaknesses in law enforcement among the authorities and even there is absence of effective cooperation and collaborative framework. Therefore, the absence of implementation of policy is a major factor contributing to the vulnerability of migrant workers. Currently, there are a number of governmental actors involved in the migration process, including the Department of Employment led by the Ministry of Labour, which are responsible for regulating brokers and issuing and renewing work permits, involving the ministry of public health through conducting health examinations and assisting with the compulsory health insurance scheme and collaborating with provincial employment offices to register migrant workers.<sup>37</sup> The Thai Alien Worker's Act allowed increasing powers of inspection and arrest of migrant workers, as the authorities are able to enter workplaces without a court warrant. While the Department of Labour Protection's inspectors are tasked with conducting investigations concerning potential workplace violations, the implementing fines ranges between 2,000 and 200,000 Baht or court sentences of up to one year imprisonment,<sup>38</sup> the Department is only able to inspect one third of the total number of employment sites each year, often preventing and delaying the potential identification of exploitative employers. Additionally, the Immigration Bureau are involved with the issuing of visas and reporting requirements. International treaties and policies can be applied to the situation of migrant workers in Thailand. The existing corruption and collusion the role of the authorities in facilitating the irregular migration process, and the absence of law enforcement are a key obstacle to any actions to suppress human smuggling and trafficking, as are the inadequate financial and material resources of the authorities. Indeed, Thailand has acknowledged the difficulties faced in controlling national borders due to a lack of funding and personnel,<sup>39</sup> in addition to addressing national security concerns. Efforts are further hampered by the difficulties involved with identifying and restricting the operations of unlicensed brokers. Thailand faces a

<sup>36</sup> Rak Thai Foundation, *UPR Report on Human Rights of Migrant Workers and Their Dependents in Thailand: Civil Society Submission*, at 18, (Bangkok 2011) (Text in Thai Language).

<sup>37</sup> Rebecca Jane Carden, *Smuggling of Female Migrant Workers from Myanmar to Thailand*, (Bangkok 2014), at 73, Chulalongkorn University, Thailand.

<sup>38</sup> UNIAP, *The Mekong Region Human Country Datasheets on Human Trafficking*, (Bangkok 2010), Thailand.

<sup>39</sup> Ali A. S. M., *Smuggling of Migrants in International Law: A Critical Analysis of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention against Transnational Organised Crime*, (UK 2014), University of Leicester.

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number of obstacles regarding the efficient implementation of policy. Nearly all of the key informants refer to lack of resources as a major barrier to Thailand's efforts to deal with migrant labour in general and particularly to ensuring that migrant workers are included in the government's system so that they are protected by law.<sup>40</sup>

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<sup>40</sup> Carden, *Supra n. 37*, at 75.