



FACULTY OF LAW

Lund University

My Stenquist

Regional Migrant workers in Thailand: Precarity and Resistance

แรงงานข้ามชาติระดับภูมิภาคในประเทศไทย: ความเปราะบางและ
การต่อต้าน

LAGF03 Essay in Legal Science

Bachelor Thesis, Master of Laws programme

15 higher education credits

Supervisor: Niklas Selberg

Term: Spring term 2023

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Summary

In recent decades, Thailand's economy has grown significantly and in one generation the country has gone from being classified as a low-income country to an upper-middle-income country. Combined with an ageing population, this has created labour shortages particularly in sectors with many low-skilled jobs, such as fishing, agriculture and manufacturing. The need for migrant workers continues to increase.

Approximately 10% of Thailand's total workforce consists of regional migrant workers from neighbouring countries. Thai labour law discriminates against migrant workers as only Thai nationals are allowed to form or lead a trade union. In addition, migrant workers have limited access to social security and are at an elevated risk of labour law violations and social and cultural marginalisation. A majority of these migrant workers come from the conflict-ridden and military-ruled neighbouring country of Myanmar, with very difficult living conditions.

In light of this, this article aims to examine the legal situation and regulation of migrant workers in Thailand and its practical consequences. Enforced debt burdens and property mortgages are often the starting point of migrant workers' journey to work in Thailand. Although legal migrant workers enjoy broadly the same labour law conditions as domestic workers, the legal framework and its implementation are inadequate and arbitrary, with few opportunities to enforce liability for labour law violations.

The explanatory models Dual Labor Market Theory developed by labour market researcher M.J Piore and the Rights-Based approach to labour migration developed by the ILO are used to analyse the results from the study. The models suggest that the vulnerable position of migrant workers is primarily attributable to the legal barriers imposed on them. The legal framework allows the migrant to bear recruitment fees, creating a cycle of debt

that strongly affects labour market mobility. This, in combination with the limited union rights and the permanently uncertain and constantly changing regulatory framework, contributes to the vulnerable position of migrant workers in society.

Sammanfattning

De senaste årtiondena har Thailands ekonomi vuxit avsevärt och på en generation har landet gått från att klassas som ett låginkomstland till ett övre medelinkomstland. I kombination med en åldrande befolkning har detta skapat brist på arbetskraft framför allt inom sektorer med många lågkvalificerade jobb, såsom fiske, jordbruk och tillverkningsindustri. Behovet av migrantarbetare fortsätter att öka.

Ungefär 10% av Thailands totala arbetskraft består av regionala migrantarbetare från grannländer. Den thailändska arbetsrätten diskriminerar migrantarbetare då endast thailändska medborgare får bilda eller leda en fackförening. Utöver detta har migrantarbetare en begränsad tillgång till sociala skyddsnät, löper stor risk för arbetsrättsliga kränkningar samt social och kulturell marginalisering. En majoritet av dessa migrantarbetare kommer från det konflikttrabbade och militärstyrda grannlandet Myanmar med mycket svåra levnadsförhållanden.

I ljuset av detta har jag valt att undersöka rättsläget och regleringen av migrantarbete i Thailand samt dess praktiska konsekvenser. Påtvingade skuldbördor och pantsättning av egendom är ofta startpunkten för migrantarbetares resa till arbete i Thailand. Även om legala migrantarbetare i stort åtnjuter samma arbetsrättsliga villkor som inhemska arbetare, är det juridiska regelverket och dess implementering otillräckligt och godtyckligt med få möjligheter att utkräva ansvar för arbetsrättsliga övertramp.

Förklaringsmodellerna Dual Labour Market Theory som utvecklats av arbetsmarknadsforskaren M.J. Piore och den rättighetsbaserade strategin för arbetsmigrering som utvecklats av ILO används för att analysera resultatet från studien. Modellerna antyder att migrerande arbetstagares utsatta ställning i första hand kan tillskrivas de rättsliga begränsningar som ålagts dem. Den rättsliga ramen gör det möjligt för migranten att bära rekryteringsavgifter, vilket skapar en skuldcykel som kraftigt påverkar rörligheten på arbetsmarknaden. Detta i kombination med mycket begränsade fackliga rättigheter samt den permanent osäkra och ständigt föränderliga regelverket bidrar mer till deras utsatta ställning.

Abbreviations

CBO	Community Based Organisation
B.E	Buddhist Era
ILO	International Labour Organisation
IOM	International Organisation for Migration
LPO	Labour Protection Office
MOU	Memorandum Of Understanding
NGO	Non-Governmental Organisation
UN	United Nations
USD	United States Dollar
SIDA	Swedish International Development Cooperation Agency
THB	Thai Baht

1. Introduction

1.1 Background

It is estimated that there are one hundred and sixty nine million international migrant workers in the world. They make up approximately 5% of the global workforce, making them a significant presence in the global economy.¹ Migrants, especially those with undocumented status, are at risk of facing exploitation during their migration journey and upon arrival at their destination.² When discussing migrant workers, Thailand is an interesting example. People both emigrate from and to the country in search of employment and a better life. For the purpose of my investigation, I have focused on the latter.

It is estimated that up to 10% of the Thai labour force are made up of migrant workers.³ The vast majority of Thailand's migrant stock comes from three countries – Cambodia, Lao People's Democratic Republic and foremost Myanmar.⁴ According to the International Organisation of Migrants (IOM) migrant workers are three times as likely to be exploited compared to domestic workers in Thailand.⁵ The migrant workers are to a large extent employed in low-skilled jobs working in sectors such as fishing, agriculture, construction, manufacturing and domestic work. A high percentage of migrants are employed in so-called 3D jobs, in often dirty, difficult or dangerous conditions.⁶ The Thai labour law explicitly discriminates against migrant workers with regards to unionisation, as only Thai citizens are permitted to form or lead a union.⁷ As a result, migrant workers lack access to tools that would strengthen their position in the job market, resulting in their exclusion from different labour protections.

¹ International Labour Organization (ILO), "ILO Global Estimates on International Migrant Workers Results and Methodology," ILO, 2021. p. 25.

² Ibid.

³ THAILAND – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2021. Stockholm: Ministry of Foreign Affairs, 2021. p. 5.

⁴ See IOM (website). "Migration Context." Accessed May 23, 2023.

⁵ International Organisation for migrants (IOM) "Social Protection Diagnostic Review: Social protection for migrant workers and their families in Thailand" Bangkok: p. 80.

⁶ International Labour Organization (ILO) "Hazardous Work." Accessed May 5, 2023.

⁷ Labour Relations Act, B.E. 2518 (1975) Chapter. 7., sec. 88.

Migrant workers in Thailand also experience significant challenges due to social and legal discrimination. Thai migration policy is subject to frequent change, on average every two years.⁸

1.2 Purpose and research questions

The purpose of this essay is to describe and analyse the legal and actual situation on the labour market of regional migrant workers in Thailand. The essay is intended to reflect the migrant's experience. To fulfil this purpose, I will address the following research questions:

- Which legal frameworks govern the process of regional labour migration into Thailand?
- Which legal frameworks govern regional labour migrants while working and living in Thailand- and are they different from those applicable to Thai nationals?
- What is the practical implementation of these regulations and laws and how do they affect the living and working conditions of migrant workers?

The research questions cover the migration process from the perspective of the migrant worker, i.e. from recruitment, travel, entry, working, safeguarding rights on the labour market, termination of employment and return.

The study is conducted from the theoretical perspectives and will be examined in the light of the Dual Labour Market Theory developed by labour market researcher M.J Piore⁹ and the Rights based approach to Labour migration developed by the ILO¹⁰ (see 1.4).

As a recipient of a Minor Field Study scholarship from SIDA, I was able to conduct an eight week field study on site in Thailand to investigate the legal and practical status of regional migrant workers in the country.

⁸ Mekong Migration Network (MMN) Permanently Temporary: Examining the Impact of Social Exclusion on Mekong Migrants. 2016, p. 12.

⁹ See Piore, M.J. (1979).

¹⁰ International Labour Organization (ILO) "International labour migration: A rights-based approach." Geneva: International Labour Office, 2010.

1.3 Methodology

I have used two methods to conduct this study, one for describing the legal situation and one method for the field study to describe the law in practice. When examining the domestic legal instruments in Thailand, a legal doctrinal method has been applied.¹¹ I've accessed these laws through the Thai Office of the Council of State; all relevant laws could be accessed here with official translations from Thai to English.¹² Reports made by UN organs and NGOs have also been used for analysis on the implementation and impact of laws in practice.

The legal doctrinal method alone cannot fully capture the law's functions and purpose, and that's why the field study is necessary to complement it. Conducting interviews with relevant stakeholders in a particular society provides valuable insights into how law and society interact with each other. The field study consists of semi-structured interviews on site in Bangkok and Chiang Mai. Initially, my contacts within civil society networks were relied upon, but the snowball sampling technique was also utilised to create a chain of linked interviewees.¹³

Interviewees from various sectors of society have been chosen for their diverse roles in understanding their relationship to both national and international regulations and how they work in practice. These have included UN officials, NGO executives from both grassroots and larger organisations and lawyers. Interview audio files are held with the author. Full anonymity was granted to the interview subjects and all participants received information on the thesis and its purpose before the interviews.

This study is limited in that it solely presents the perspective of migrant workers and advocacy organisations that work towards promoting their rights. Despite efforts to gather a diverse range of perspectives, it proved challenging to obtain the viewpoints of employers and government officials. In particular, access to government officials was hampered by a combination of institutional barriers and concerns about potential repercussions. In considering the methodological approach utilised in this study, it is important to reflect on some inherent limitations. Firstly, the reliance on snowball

¹¹See Hoecke, M.V. (2011) p.1-18

¹² Krisdika (website). (n.d.). Ministry of Justice.

¹³ See Creswell et al. (2018), p. 235.

sampling for selecting interviewees may have introduced a potential bias and therefore limited the diversity of perspectives represented. While efforts were made to include individuals from various sectors, it is crucial to acknowledge that the sample may not fully capture the entire spectrum of stakeholders involved.

1.4 Theoretical perspective

I will use two different conceptual frameworks to analyse my findings, The Dual Labour Market Theory¹⁴ and the Rights-Based Approach developed by ILO.¹⁵ These frameworks are used to provide an in-depth discussion and to put my findings into an international and critical context. The Dual Market theory was developed by the professor of economics and researcher M.J Piore. It is an economic theory that puts forward the idea that there are two segments to the labour market: A primary sector and a secondary sector. According to the theory, in the primary sector the jobs are stable, with decent wages and prospects of advancement and social mobility. The secondary sector consists of unstable, difficult, low wage jobs with very little opportunity for social mobility. Piore argues that the segmentation is derived from the structural characteristics of the economy such as labour legislation, technological advancements and regulatory frameworks.¹⁶ While the Dual Labour Market Theory focuses on the factors that contribute to migrants being stuck in the secondary sector, The Rights Based Approach developed by the ILO will be used here to identify ways in which to address these issues, and highlight key areas where improvement and better enforcement of labour rights for migrants.¹⁷ The Rights-based approach from the ILO puts emphasis on protecting the human rights of migrants, with fundamental rights and decent working conditions being key factors.¹⁸ This approach will also be used as a proposal for better regulation based on the empirical studies and findings from the field study.

¹⁴ See Piore, M.J. (1979). p.86-114

¹⁵ International Labour Organization (ILO) "International labour migration: A rights-based approach." Geneva, 2010. p.13

¹⁶ See Piore, M.J. (1979). p.86-114

¹⁷ International Labour Organization (ILO) "International labour migration: A rights-based approach." Geneva: 2010. p. 209-221.

¹⁸ International Labour Organization (ILO) "International labour migration: A rights-based approach." Geneva: 2010. p. 111.

1.5 Limitations

The field study was conducted in Thailand in the cities of Bangkok and Chiang Mai, from the 27th of March to the 24th of May 2023. Due to my limited time of eight weeks in the country and the word count limitation of my essay, certain aspects have been omitted. I have chosen to only include aspects that directly relate to my research questions.

2. The Thai social and legal context

Thailand, officially the Kingdom of Thailand is located in the centre of the Indochina peninsula in Southeast Asia.¹⁹ Thailand categorises itself as a parliamentary and constitutional democracy. Following a military coup in 2014, the military has maintained significant control over the country through a new constitution that gives them and the monarchy extensive political influence. Despite the formal transition to civilian rule after the 2019 election, there has been a continued decline in Thailand's democratic status.²⁰ However, in the recent general election on May 14th 2023, two progressive anti-military junta parties received a majority vote, and are expected to form a coalition with a mutual agenda to limit the influence of the military.²¹

Thailand is governed by an elected government with King Maha Vajiralongkorn Bodindradebayavarangkun, Rama X, as head of state. The king and the Prime minister are the executive branch of power. The legislative branch of power lies with the bicameral National assembly consisting of two houses, the House of Representatives and the Senate. The legal system is predominantly based on a civil law system with influences of common law.²² Thailand is unique in Southeast Asia as it has never been officially colonised. Despite this, the country's governance has always been open and heavily influenced by outside norms and traditions.²³

¹⁹ See Keyes, E. (website) "Thailand". Encyclopedia Britannica. Accessed April 1, 2023.

²⁰ Ministry of Foreign Affairs, "THAILAND – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2021". Stockholm: (2021). p. 5.

²¹ See Wipatayotin, A. (website) "Move Forward leader foresees coalition with Pheu Thai," Bangkok Post, Accessed May 14, 2023.

²² See Suttawet (2022), p. 39.

²³ See Baker & Phongpaichit, (2009) p. 75.

Thailand is ranked as number 101 out of a total 180 countries by Transparency International in their global corruption index. In their survey, 24% of Thai citizens commented that they had to pay a bribe to a public official in the previous twelve months.²⁴ Despite having a legal framework and various institutions²⁵ in place to combat such issues, corruption remains widespread across all levels of Thai society.²⁶

2.1 Labour law and industrial relations

The Thai constitution asserts that the state should provide a labour relations system in which all parties are involved in the operation.²⁷ Labour laws in Thailand are drafted through a collaborative effort between the government, employers' organisations, and trade unions. This is known as Thailand's tripartite system for labour regulation, and it consists of around twenty bodies covering industrial relations, labour protection, health and safety, environment and so on.²⁸ The government has historically played a significant role in labour issues and industrial relations. The government's involvement in industrial relations is widely accepted.²⁹

Thailand is one of the founding members of the International Labour Organisation (ILO). The ILO was established in 1919. The Thai government has received technical assistance and supervision from the ILO to ensure that their legislation and practices align with global labour norms.³⁰ Labour law in the country has been mainly developed through formal and informal application of the ILOs labour standard. Despite this, Thailand has only ratified 19 out of the total 190 ILO conventions. Thailand has ratified six of the ILOs eight central conventions. These conventions serve as the legal foundation for human rights in the workplace³¹. ILO Conventions 87 and 98, which confer the right to organise and collectively bargain, have not been ratified by Thailand.³² According to the Labour Relations act of 1975, only Thai nationals are permitted to form a union.³³ Migrant workers are allowed to join existing unions, but not hold leadership or prominent

²⁴ See Transparency International.(website) "Thailand" Accessed April 9, 2023.

²⁵ Anti-Corruption Act B.E. 2542 (1999) and the Organic Act on Counter Corruption B.E. 2561 (2018).

²⁶ See Transparency International.(website) "Thailand" Accessed April 9, 2023.

²⁷ Constitution of the Kingdom of Thailand B.E. 2560, chap. VI, sec. 74.

²⁸ See Suttawet (2022) p. 39.

²⁹ Interview number 1, UN official.

³⁰ See Suttawet, p. 140-141.

³¹ See ILO (website). "Thailand | International Labour Organization." Accessed, May 10, 2023.

³² See ILO (website), "Up-to-date Conventions and Protocols not ratified by Thailand," accessed May 20, 2023.

³³ Labour Relations Act, B.E. 2518 (1975) Chapter. 7., sec. 88.

positions.³⁴ Thailand's overall organised labour movement is fragmented and lacks strength, with union membership accounting for less than 2% of the overall workforce.³⁵

2.2 Labour Market

Thailand currently has a total labour force of around 38 million people.³⁶ Approximately 20.5 million or 54% of them are informal workers.³⁷ The large informal sector consists of workers who are outside the protection of formal labour and social security standards.

13% of the total Thai population are 60 years old and above, making it one of the fastest ageing countries in the world. The share of the population 60 or older is projected to rise to 31% in 2060.³⁸ This leads to a smaller working population, which in turn will create labour shortages and a higher demand for migrant workers.

2.3 Factors driving labour migration to Thailand

Historically the borders between countries in the region have been very fluid, allowing for relationships and trade between people on both sides to function smoothly. This led to the development of more formal systems for labour migration. Thailand has around four million regional migrant workers from neighbouring countries, making up more than 10% of the country's labour force.³⁹ As Thailand's population ages, there will be a growing need for migrant workers to address labour shortages.⁴⁰ As of July 2022, The Thai Chamber of Commerce estimates that the country needs at least 500,000 additional foreign workers.⁴¹

Migrants from Myanmar make up around three quarters of the migrant workers in the country, with this neighbouring country experiencing long term national insurgence and unrest in recent years. Since the military coup in February 2021, it has only increased the level of instability and uncertainty in the country, further fueling levels of migration.⁴²

³⁴ Labour Relations Act, B.E. 2518 (1975) Chapter. 7., sec. 89.

³⁵ See Kriangsak, Asian Labour Review (website). "Which Side Are You On?" Thailand's anti-authoritarian youth challenge to the labour movement" Accessed March 28, 2023.

³⁶ See Keyes, E. (website) "Thailand". Encyclopedia Britannica. Accessed April 1, 2023.

³⁷ See Suttawet (2022) p. 48.

³⁸ See World Bank(website). Aging and the Labor Market in Thailand. Accessed, May 4, 2023.

³⁹ THAILAND – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2021. Stockholm: Ministry of Foreign Affairs, 2021. p.5.

⁴⁰ See IOM (website). "Labour Mobility and Social Inclusion". Accessed, April 1, 2023.

⁴¹ See Suwannarat, Asianews. (website) "Labour Shortages Threaten Economic Recovery in Malaysia and Thailand." Accessed May 5, 2023.

⁴² MAP Foundation. "Annual Report 2021" p. 20.

According to official estimates, the wage gap between Thailand and Myanmar is significant, with wages in Thailand cited as up to ten times higher.⁴³ Apart from the dominant group of migrant workers from Myanmar, the remaining portion primarily consists of workers from Laos and Cambodia. It has been argued that migrants from Laos are favoured due to cultural and linguistic similarities (spoken Lao is mutually intelligible with Thai⁴⁴) making it much easier for Laos migrants to blend in fairly seamlessly within Thai society.⁴⁵ Assimilation into Thai society is particularly challenging for Burmese migrants. This is attributed not only to linguistic difficulties, but a long-standing historical conflict between Myanmar and Thailand, which is not as prevalent in the case of Cambodia and Laos.⁴⁶ In the last thirty years, Thailand has experienced a rapid economic growth far superior to its neighbouring countries, significantly shifting the dynamics and labour migration patterns in the region⁴⁷.

3 Recruitment

A central labour rights principle developed by the ILO is that the costs of recruitment should be borne by the employer, not the worker.⁴⁸ Despite this, a majority of the countries in the region allow recruiters to charge fees and costs to migrant workers for being recruited.⁴⁹

The first step in a migrant worker's journey is the recruitment process. Private recruitment agencies or brokers will advertise jobs in the home country of the migrant worker. While this is seen as a service, migrants can end up paying exorbitant fees to secure employment.⁵⁰ Sub-brokers find and recruit people from rural areas, bringing them to big cities to go through the migration process, which can result in an additional debt from transportation and other expenses for fulfilling the recruitment process. Migrant workers often resort to borrowing money from usurers and use their land as collateral to pay for

⁴³ See Pearson, Kusakabe (2013) p.34.

⁴⁴ See Landguiden, Swedish Institute of International Affairs(website) "Thailand: Befolkning och språk" accessed April 16, 2023.

⁴⁵ Interview 1, UN official.

⁴⁶ Interview 2, UN official.

⁴⁷ See OECD (website) "Thailand's Development Trajectory: Past and Future Strategies." Accessed May 19, 2023.

⁴⁸ ILO Private Employment Agencies Convention, 1997 (No. 181)

⁴⁹ See International Labour Organization. (ILO) "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand. "

⁵⁰ Interview 3, NGO official.

recruitment fees.⁵¹ The usurers have the leverage of being able to put pressure on and threaten family members that are still in the home country to make sure that the worker's debt is paid. As a result, the work becomes coercive and limits their personal agency since they have to work to pay back their debts. The debt, coupled with the fear of losing their collateral, makes it difficult for migrant workers to make independent decisions regarding their employment and their lives.⁵² IOM promotes implementing the 'employer pays model' of recruitment, which means that all recruitment costs are borne by the employer.⁵³ A problem that occurs with the implementation is the complexity of outsourcing and the lack of contractual relationships between employers and recruiters in the country of origin. Outsourcing often leads to a complex web of intermediaries involved in the recruitment process. Many different agencies and sub-brokers can be involved, making it difficult to trace the exact chain of responsibility and identify the primary actors.⁵⁴ Some companies have started to implement the employer pays principle. For the principle to have any meaning, if a migrant worker still ends up paying these fees, it necessitates a clause in business contracts. Contracts should include provisions for audits to ensure accountability and specify the course of action until the issue is remedied.⁵⁵

4 Pathways into the Thai Labour Force: Legal Framework, Challenges, and Consequences

There exists three distinct pathways into the labour force for migrant workers once they have been recruited and are heading into Thailand. First, they may register themselves under a Memorandum of Understanding (MOU) between their home country and Thailand, which lays out the legal framework to require a work permit.⁵⁶ If the migrant lacks the required documentation, he or she may be forced to remain in an irregular or undocumented status, working without legal authorization. Irregular workers can enrol in the National Verification scheme,⁵⁷ which refers to the process of acquiring a legal work

⁵¹ See Pearson, Kusakabe (2013) p.78.

⁵² Interview 6, UN official.

⁵³ See IOM (website) "CREST Factsheet CORPORATE RESPONSIBILITY IN ELIMINATING SLAVERY AND TRAFFICKING" Accessed May 1, 2023.

⁵⁴ Interview 3, NGO official.

⁵⁵ Interview 2, UN official.

⁵⁶ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Cooperation in the Employment of Workers (2002).

⁵⁷ Royal Decree on Management of Foreign Workers B.E. 2560 (2017), sec.71.

permit after working in the country illegally, essentially a form of amnesty for migrant workers.

In the following segment, the nuances and differences, strengths and benefits between these pathways will be discussed.

4.1 Memorandum of understanding

Thailand has MOU schemes for registering migrant workers. MOUs are bilateral agreements between Thailand and the worker's country of origin. Thailand has MOU agreements with several countries, including Cambodia⁵⁸, Laos⁵⁹, and Myanmar⁶⁰. The MOU sets out the terms and conditions for migrant workers to legally work in Thailand. To be able to enter under the MOU scheme, the worker needs to have a passport with a visa and a work contract. The work contracts are valid for two years, and can then be renewed for another two years thereafter. After four years have passed, they have to return to their country of origin to be able to apply for a new work contract.⁶¹

The benefits of the MOU scheme is that once the registration is successfully completed, the worker is qualified for social benefits such as the national minimum wage and health care.⁶² Officially registered migrants more often receive the minimum wage.⁶³ Even though the social protection for migrants have been extended in recent years, many still have very limited access to the protection. According to IOM, only two in five regular migrant workers enjoy the benefits that they are entitled to such as maternity leave, unemployment support and injury compensation.⁶⁴

A problem with the MOU scheme is that it can only process around 600 migrants per day⁶⁵. Even though it's impossible to find an accurate number of how many workers that enter

⁵⁸ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Cooperation in the Employment of Workers (2002).

⁵⁹ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Lao People's Democratic Republic on cooperation to combat trafficking in persons especially women and children (2004).

⁶⁰ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on cooperation in the employment of workers (2002).

⁶¹ Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017).

⁶² See Suttawet (2022), p. 50.

⁶³ Interview 3, NGO official.

⁶⁴ International Organisation for migrants(IOM)" Thailand Social Protection Diagnostic Review: Social protection for migrant workers and their families in Thailand" Bangkok: p.80.

⁶⁵ Interview 1, UN official.

the country each day, it is estimated by NGOs to average anywhere around 1000-2000 migrants per day entering Thailand.⁶⁶ A situation that sporadically occurs is that migrant workers who enter the country through the legit MOU scheme are later found to have been trafficked and are working in much worse conditions than were agreed upon before arrival. The working conditions can be very poor and deviate from what was stated in their contracts. If they have issues, they have to contact the recruitment agency instead of the local labour protection office, and the agency is often a private company in their home country⁶⁷.

This leads to another issue with MOU. It links the work permit to a single employer for a specific type of job in a particular location.⁶⁸ Even though it is technically possible for migrants to change employers, it is very difficult to do so with the current regulation. Firstly, it requires notifying the relevant authorities within a two-week period that you have terminated your old contract, and to find a new employer and register with them instead. Also, the system only provides unemployment benefits after a waiting period of 14 days, making it impossible for migrant workers to access these benefits.⁶⁹

Another downside with the MOU is that it has a fairly considerable pricetag. Migrants entering Thailand through the MOU reported spending an average of 24,000 Thai Baht (THB), or the equivalent of 740 USD on the process, which is practically one third of a migrant's annual earnings.⁷⁰

4.2 Nationality Verification scheme

Migrant workers who have entered the country illegally can become legal by undergoing another type of registration with the nationality verification scheme.⁷¹ This is a form of amnesty for workers that have been working illegally in the country to become legal without repercussions. To enter the scheme, the migrant worker needs to acquire a passport by visiting the Myanmar embassy or consulate. However, there is a backlog of 3-4 months, since the Myanmar government is experiencing difficulties operating due to

⁶⁶ Interview 5, lawyer.

⁶⁷ Interview 1, UN official.

⁶⁸ See Pearson, Kusakabe(2013). p .90-101

⁶⁹ Interview 3, NGO official.

⁷⁰ MAP Foundation. (2015). RegularRights Second Edition: A Study on the Impact of Regularization of Migrant Workers from Myanmar (Burma) in Thailand. Chiang Mai, Thailand. p.4.

⁷¹ Royal Decree on Management of Foreign Workers B.E. 2560 (2017), sec.71.

the ongoing disruptive conflict in the country. Migrants can't apply for a visa with expired documents, putting them in a state of limbo with uncertain and insecure documentation status. Because of the delay, many people opt to double-register with a new name and documentation. The registration process is entirely ad hoc. It is very difficult for the government to keep track of how many times someone has exited or entered the country or how many times they've registered in the scheme.⁷²

4.3 Irregular status

Undocumented migrants often have to pay bribes to manage the constant risk of raids, arrests and deportation. This in turn leaves them more vulnerable to exploitation.⁷³

Thailand has an anti trafficking police force. They conduct inspections in various sectors with high concentrations of migrant workers. Their primary focus is to identify forced labour.⁷⁴ However, the legal definition of forced labour in Thailand is broad and vague.⁷⁵ Forced Labour is defined as coerced work, including work subjective to violence, confiscation of documents and debt bondage.⁷⁶ Because of widespread corruption within the country, factory owners often get tipped off about upcoming audits or police checks. The owner can therefore hide said workers and any proof that illegal practices are taking place. and stow away proof that illegal practices are taking place.⁷⁷ There have been many instances where the police have found no evidence of forced labour during an inspection, but the workers were later found to have been exploited and illicit paying practices had taken place.⁷⁸ One example is when a multinational groceries and general retailer were accused of using forced labour garment suppliers in Thailand. They hired a third party auditor to control their supply chain. The auditor conducted an audit at the noted garment factory, but failed to identify exploitation due to a lack of evidence. This occurred even though workers had presented them with their payslips that showed violation of legal

⁷² Interview 4, NGO official.

⁷³ MAP Foundation. RegularRights Second Edition: A Study on the Impact of Regularization of Migrant Workers from Myanmar (Burma) in Thailand. Chiang Mai, Thailand, 2015 p.23.

⁷⁴ Interview 5, lawyer.

⁷⁵ Anti-Trafficking in Persons Act B.E. 2562 (2019). Sec. 6/1.

⁷⁶ See Muntarbhorn, Bangkok Post (website) "Grappling with human trafficking, forced labour," June 10, 2021, Accessed March 25, 2023.

⁷⁷ Interview 1, UN official.

⁷⁸ Interview 4, NGO official.

requirements, both when it came to paying approximately $\frac{1}{3}$ of the minimum wage and working 100 hours a week.⁷⁹

The problem for the migrant workers was that their payslips were actually “*a small, hand torn piece of an A4 paper with numbers scribbled down by hand*”.⁸⁰ The auditor found it unbelievable that this was in fact the payslip that had been provided by the employer, and the migrants were discarded. In contrast, the evidence presented by the company to demonstrate compliance with legal standards appeared to be highly credible. The claims of forced labour were discarded.⁸¹

The upside of staying irregular is that migrants in some ways have more personal agency and are not bound by a single employer. They have greater flexibility and are free to seek out alternative employers, since they don't have a work permit that ties them to a single employer.⁸²

4.4 Illicit pay practices

Migrant workers in Thailand are often subject to forced and systematic coercion to remain employed, which is facilitated through illegal pay practices. These practices include signing contracts for 1-2 years with full payment not provided until the end of the contract period, despite Thai law stipulating full payment every month into a bank account.⁸³ Employers may withhold ATM cards and create false compliance with the law by depositing wages in a manner that conceals their illegal practices.⁸⁴ The minimum wage in Thailand is at its lowest 328 THB (9 USD)⁸⁵ per day, with migrants often receiving wages much lower.⁸⁶

⁷⁹See Dugan, The Guardian (website), "Workers in Thailand who made F&F jeans for Tesco trapped in effective forced labour," December 18, 2022, accessed May 10, 2023.

⁸⁰ Interview 4, NGO official.

⁸¹ Interview 4, NGO official.

⁸² Interview 4, NGO official.

⁸³ Labour Protection Act B.E. 2541 (1998)", specifically Section 77.

⁸⁴ Interview 1, UN Official.

⁸⁵ ASEAN Briefing(website). "Thailand Increases Daily Minimum Wage Rates for 2022." Last modified December 14, 2021. Accessed on May 2, 2023.

⁸⁶ Interview 5, lawyer.

4.5 Exclusion from the right to unionise

As mentioned before, migrant workers are legally precluded from forming their own unions.⁸⁷ In migrant dominated sectors such as agriculture, fishing and manufacturing this is a massive problem since there are scarcely any existing unions for migrants to join that represent them and their interests.⁸⁸ The few unions that exist primarily focus on the public sector and are not typically trade unions, e.g. The State Railway Workers Union Of Thailand.⁸⁹ They are often localised and represent workers in specific industries where close to no migrant workers are employed. There are some unions for factory workers, but these unions are often not present in the same geographic locations as migrant workers. Migrants tend to work in isolated areas with predominantly migrant populations.⁹⁰

5 Routes to decent work

In this chapter, I will examine the challenges faced by migrant workers regarding their access to collective bargaining and enforcement of labour rights.

5.1 Collective bargaining and access to justice

Migrant workers commonly experience a sense of exclusion from state protections, stemming from a combination of factors such as limited awareness of their rights, unfamiliarity with the procedures for filing complaints, and challenges posed by language barriers. These circumstances collectively contribute to migrants' perception that they lack adequate legal safeguards and are left vulnerable to potential exploitation.⁹¹

Even though there are no unions for migrants, they can under certain circumstances be able to engage in collective bargaining. Burmese migrant workers can turn to an independent organisation called "Delta Migrant Advocacy Support Network" (pseudonym).⁹² This non-union entity operates as a Community-Based Organization (CBO)⁹³ and operates in a complex legal context. While it provides crucial assistance to

⁸⁷ Labour Relations Act, B.E. 2518 (1975) Chapter. 7., sec. 88.

⁸⁸ International Labor Rights Forum(2020). "TIME FOR A SEA CHANGE: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry." Accessed April 17, 2023.

⁸⁹See The State Railway Workers Union Of Thailand(website), Accessed April 17, 2023.

⁹⁰ Interview 4, NGO official.

⁹¹ Interview 5, Lawyer.

⁹² Interview 3, NGO official.

⁹³ See Cornell Law School, (website) "Community-based organisation definition" Accessed May 16, 2023.

migrant workers, the Delta Migrant Advocacy Support Network operates in a legal grey area, navigating challenges and limitations in its efforts to advocate for the rights and welfare of migrant workers without being officially recognized as a union.⁹⁴

Workers come to the centre seeking assistance with various issues including unpaid overtime, holiday entitlements, non-payment of minimum wage, and lack of rest days. Capacity building training is provided to empower them with knowledge about their rights under labour laws and the available courses of action. Among the options taught, collective bargaining is emphasised, including the process of organising and selecting leaders. The outcomes of negotiations with factory owners vary; some result in successful resolutions while others only bring partial improvements. For instance, negotiations may lead to enhancements in housing conditions or water quality. Additionally, negotiations may address matters such as exemption from paying factory electricity bills, provision of couple rooms, or permission for workers to prepare their own meals instead of being deducted for disliked food. Negotiations concerning wages and working hours are particularly complex, requiring careful proration and deliberation.⁹⁵

The CBO is not recognized as a union and as it operates in a legal grey area, it and the migrant workers don't have the legal protection as formal unions do when they collectively bargain.⁹⁶ In the event that negotiations reach an impasse or a worker is terminated for attempting to negotiate, a legal process starts. The first step is to contact the local Labour Protection Office to file a case, for example of unfair dismissal. The Labor Protection Office (LPO) is a government agency responsible for safeguarding and promoting the rights and welfare of workers. It is tasked with enforcing labour laws, resolving labour disputes, and ensuring compliance with employment regulations.⁹⁷ It is important to note that the decision made by the LPO is not legally binding for the parties involved, but rather serves as a recommendation on how the dispute should be resolved.⁹⁸

A favourable decision from the LPO entitles the worker to receive proper severance pay and one month's notice prior to termination. Workers can then also retroactively claim compensation for up to two years for unpaid wages. After the decision from the LPO, it is

⁹⁴ Interview 1, UN Official.

⁹⁵ Interview 4, NGO official.

⁹⁶ Interview 1, UN Official.

⁹⁷ See Ministry of labour(website) "About Us. Ministry of Labour, Thailand." Accessed April 30, 2023.

⁹⁸ Interview 4, NGO official.

presented to the employer, who is responsible for fulfilling the payment. If the employer refuses or disputes the claim, the matter is escalated to the labour courts. The labour courts do not impose any additional penalties on the employer beyond what is owed.⁹⁹ Moreover, there are no provisions for compensating workers who have been blacklisted.¹⁰⁰

5.2 Enforcement insufficiency

If the migrant worker and the organisation decides to pursue the case to its full extent in the labour court, they may obtain a ruling in their favour. However, the enforcement of these rulings can be challenging, particularly when dealing with employers who reside abroad or are foreigners themselves. Despite the labour courts generally siding with migrants, especially if the case has already undergone a favourable ruling from the labour protection office, there is limited enforcement power. The existing system lacks robust enforcement mechanisms to ensure compliance with labour-related rulings and the subsequent payment of obligations. Employers that fail to comply with the law are supposed to face up to six months in jail and/or a 100,000 THB (3,076 USD) fine. However, enforcement of such penalties has been essentially nonexistent in cases that involve migrant workers.¹⁰¹ The Ministry of Labour and its affiliated authorities frequently encounter significant staffing shortages, undermining their ability to adequately monitor and supervise the recruitment process and enforce labour standards.¹⁰²

In situations where the employer refuses to comply with the court's ruling and fails to make the required payments, migrant workers find support through NGOs that have forged alliances with influential networks of global organisations dedicated to upholding workers' rights in the garment industry.¹⁰³

In September 2019, an investigation by Reuters revealed that migrant workers in garment factories in Mae Sot, Thailand, were paid below the legal minimum wage and were severely overworked.¹⁰⁴ The factory produced merchandise for global brands such as Tesco, Starbucks, Disney, and NBC Universal. The brands were exposed to have used

⁹⁹ Act on Establishment of Labour Courts and Labour Court Procedure B.E. 2522 (1979).

¹⁰⁰ Interview 5, Lawyer.

¹⁰¹ MAP Foundation. (2015). "RegularRights Second Edition: A Study on the Impact of Regularization of Migrant Workers from Myanmar (Burma) in Thailand." Chiang Mai, Thailand. p.8.

¹⁰² Interview 5, Lawyer.

¹⁰³ Interview 3, NGO Official.

¹⁰⁴ See Dugan, The Guardian (website), "Workers in Thailand who made F&F jeans for Tesco trapped in effective forced labour," December 18, 2022, accessed May 10, 2023.

trafficked migrant labour. The gravity of the situation prompted the Thai government to respond by dispatching the anti-trafficking police to investigate. The enforcement action undertaken by the authorities predominantly focused on conducting immigration checks rather than specifically targeting labour trafficking. After the raid the factory was shut down and all the workers lost their jobs. The factory owner owed the workers a total of 3.5 million THB(100 000 USD) in unpaid wages.¹⁰⁵ When the factory owner did not pay, the workers filed a legal case with a local labour court to demand compensation from the factory.¹⁰⁶

Civil society organisations critically evaluated the situation and proactively engaged with the brands directly and also through social media campaigns to demand proper compensation for the affected workers. Tesco, Starbucks, NBC, and Disney fulfilled their obligations by providing full compensation to the workers for the wages owed to them by the factory owner. The response from the brands, driven by their awareness of the potential repercussions and reputational damage associated with labour rights abuses, indicates a greater willingness to respond to pressure and take appropriate measures to rectify the prevailing circumstances.¹⁰⁷ The payment marked the first time that underpaid workers in Mae Sot had received the full amount owed to them in a wage dispute.¹⁰⁸

6 Analysis

The purpose of this analysis is to examine the legal challenges and discriminatory practices experienced by regional migrant workers in Thailand, with a focus on the implications and the need for protective measures. Here the theoretical frameworks previously mentioned will be applied to the findings of the study.

¹⁰⁵See Dugan, The Guardian (website), "Workers in Thailand who made F&F jeans for Tesco trapped in effective forced labour," December 18, 2022, accessed May 10, 2023.

¹⁰⁶ Interview 4, NGO Official.

¹⁰⁷ Interview 5, Lawyer.

¹⁰⁸ Interview 4, NGO Official.

6.1 The Dual Labour Market

The theory of the Dual Labour Market separates the market into two categories, a secondary and primary. The division creates structural imbalances between the groups of workers, and those in the secondary sector face greater vulnerability. The theory also suggests that the main reason for labour migration is the pull factor in the developed country, rather than the push factor in the migrant's country of origin. Due to Thailand's rapid economic growth and ageing population, this has created internal labour shortages which comes with a demand for low-skilled migrant workers. With the new workers, the government and employers have to create employment policies for this group. Analysing the findings from my research, the Thai labour market is segmented. The primary labour market is the formal economy for Thais. As the study finds, migrant workers are stuck in the secondary sector, left out with very little tools to control their position on the labour market. The secondary sector also enwraps the informal economy. The explanatory model suggests that the vulnerable position of migrant workers, can be primarily attributed to the legal obstacles imposed upon them. The legal framework allows for recruitment fees to be borne by the migrant, which creates a debt-cycle which heavily impacts the mobility of the labour market.

The debt-bondage hinders the migrant to seek better jobs and to protest against labour law violations. Even though illicit pay principles are illegal, there is a lack of effective control and enforcement mechanisms in place within the system to address the issue. The absence of monitoring by relevant authorities, such as the police, allows the exploitative practices to continue. According to the theory, by hiring migrant workers, employers can easily scale down on production based on demand, without having to provide the contractual relationship and job security usually provided to domestic workers. Interestingly, this contradicts the theoretical concept of the market's invisible hand, where high demand should naturally regulate wages to attract labour. In reality, this mechanism fails to function as expected.

The question arises as to which extent the state is responsible for maintaining this imbalance in the labour market. The formal exclusion from the right to unionise takes away the formal protection to take action against poor working conditions. The MOU system ties you to one employer and one workplace with limited and narrow opportunities to change employers. The price of registering with the MOU system, or not being able to obtain the right documents, forces migrants to stay irregular, making them vulnerable to exploitation and forced to pay bribes to stay in the country. The insufficient protection of the legal framework and lack of attainability and enforcement of the rights that they are owed, creates a segmented labour market with migrants trapped in the secondary sector.

6.2 Rights-based approach

The Rights-based approach from the ILO puts emphasis on protecting the human rights of migrants, with fundamental rights and decent working conditions being key factors. The purpose of using this model is to analyse legal areas where it is crucial that improvements can be made.

Migrants form almost what can be described as a captive workforce in the country, with very limited ability to exercise their labour rights. Regardless of the legal documents they hold, migrants employed in low-skilled work often face exploitation and abuse because of inadequate protection of labour rights during recruitment and employment. A key factor that puts the migrant worker in vulnerable positions with little personal agency is debt bondage. By it being legal to have the worker carry the financial burden of paying for the recruitment process in combination with the relatively high cost to register with the MOU system, many migrant workers end up in precarious working conditions with little personal agency. This applies to both irregular and regular workers. To avoid the coercive power of debt, implementing the employer pays principle is key. This also needs to be complemented with contract clauses that stipulate what will happen if the cost is wrongfully borne by the worker instead of employer/recruiter. Only applying the principle is not enough because of the complex modality of the contractual relationships and complex modality of outsourcing. Even though the principle is implemented, it is hard for employers to keep track of what is happening in the country of origin, hence why it's important to have clauses that stipulate a regulation of the situation.

Just as with the employer pays principle, the right to unionisation is principal. To have migrant workers be discriminated against from the right to unionisation upholds the power imbalance and segregated labour market. To be able to access justice, migrant workers are heavily dependent on NGOs and well-connected civil society. Even though these organisations play a great role in the migrants' access to justice, this should not overshadow the responsibility of the government and legislators to establish proper legal frameworks and enforcement mechanisms that protect and enforce the rights of all migrants. The important role that NGOs play highlights the need for systemic changes and a shift towards a more inclusive and equal approach to protecting the rights of migrant workers.

6.3 Final thoughts

The policy gap and its insufficient implementation does not fairly reflect the importance of low-skilled migrant workers in Thailand, as the prosperity of many sectors are heavily dependent on the output and earnings of these workers. The migrant workers are not a temporary part of the economy, but instead permanent cogwheels. A more concise, long term and holistic approach to regulating migrant workers is needed. Further examination of the role of recruitment agencies and brokers in the migration process is necessary to understand the extent of exploitation and potential human rights abuses they may facilitate, as well as the effectiveness of existing regulations and oversight mechanisms. Another topic of importance is further study of the reasons why so many migrant workers chose to stay in the irregular labour market instead of registering with the Thai authorities.

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