



Policy brief

Equality of treatment for migrant worker complaints and benefit claims in Thailand¹

Introduction

A substantial portion of the over 3 million migrant workers in Thailand are not able, willing, or aware of how to exercise their labour rights. The problem is compounded by inadequate mechanisms for resolving complaints, which do not provide an accessible means for denouncing abuses when they occur. As a result, only a small number of migrant workers attempt to file grievances with authorities and many of the cases do not receive a fair hearing. The findings of an ILO survey of over 400 migrants carried out in four provinces found that the vast majority of respondents (89 per cent) had never filed a complaint for a rights violation and that only one-third would consider contacting authorities if their wages were withheld. Official data in Samut Sakhon province, an area that employs hundreds of thousands of migrant workers, bears out these findings: only 70 migrants filed complaints with the labour office during 2013. Those that do seek assistance tend to make use of the services of civil society organizations rather than official complaint mechanisms, with any settlements reached often limited in legal enforceability and no sanctions applied as a deterrent against future violations.

Similarly, for social security and workers' compensation claims, there is a substantial gap between the rights provided to migrants under law and their application in practice. A social protection assessment carried out by a joint United Nations/Royal Thai Government research team in 2013 found that: "Although migrant workers under the MOU or who have passed nationality verification can in theory be registered under the Social Security Fund and the Workers' Compensation Fund, they encounter difficulties in fully accessing benefits because of limited compliance with the law by employers." This poses an additional barrier for many migrants to accessing these services, layered on top of the eligibility restrictions that preclude enrolment for agricultural, fishing, domestic and informal sector workers, as well as those with irregular legal status.

Discussions with the Social Security Office (SSO) revealed that 451,537 migrant workers are registered for the Social Security Fund as of October 2014. Although this represents a significant increase over previous enrolment figures, it still suggests that the gap in coverage for the migrant workforce is likely in the millions. On its own, the new policy of registering migrant workers at one-stop service centres has generated a cohort of 1.6 million workers that are entitled to register for social security.

Even for migrants who have registered and pay into the Social Security Fund each month, use of the benefits provided by the Fund remains limited. In some cases, such as for unemployment benefits, it is generally assumed by local authorities that migrant workers are not eligible. For others, including workers' compensation benefits for accidents at work, the long duration of the process and regular evasion of liability by employers are major obstacles. As migrant workers are only temporarily resident in Thailand – and often can't afford to stay after sustaining disabling injuries – these delays serve to deny them of the benefits to which they are entitled. Additional constraints to access include a lack of awareness among workers about the process to make a claim, language barriers and apprehensions about using government services.

¹This policy brief was developed by the ILO's Tripartite Action to Protect the Rights of Migrant Workers in the Greater Mekong Subregion and International Programme on the Elimination of Child Labour. Further ILO research on complaint mechanisms and social protection for migrant workers is available in the Thailand Migration Report 2014.

On 15 October 2012, a national consultation was held on the mechanisms for migrant workers to lodge recruitment-related grievances, co-organized by the ILO and the Ministry of Labour's Department of Employment (DOE). Central to the meeting was a presentation by the Asian Research Center for Migration of a study entitled *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, which highlighted the need for greater clarity on the legal framework and operating procedures for handling recruitment-related complaints from inbound migrant workers in Thailand.

To provide further support in strengthening the complaint mechanisms administrated by the DOE and the Department of Labour Protection and Welfare (DLPW), as well as access to the social security and workers' compensation benefits managed by the SSO, a better understanding of how migrants currently use these services was needed. In order to fill the knowledge gap and develop measures for improvement through social dialogue, provincial and national consultations were held with tripartite representatives and CSOs. This policy brief documents the recommendations made and suggests a way forward for implementation.

Consultation methodology

The action was initiated by a technical working group established among senior staff from the Permanent Secretary's Office (PSO), DOE, DLPW and SSO. Based upon discussions held between the ILO and the working group, data collection tools and plans for the consultations were finalized in October 2013. Focal points from each department and office were assigned to coordinate the provincial field work in seven provinces: Bangkok, Samut Prakan, Samut Sakhon, Rayong, Chiang Mai, Surat Thani and Tak (Mae Sot District).

Migrant populations, complaints received and Social Security registrations in target provinces



Bangkok (complaints/registrations in District 7 only)

Migrants	DOE	DLPW	SSO
611,315	-	40	8,770

Samut Prakan

Migrants	DOE	DLPW	SSO
160,324	-	192	33,220

Samut Sakhon

Migrants	DOE	DLPW	SSO
344,026	-	70	81,594

Rayong

Migrants	DOE	DLPW	SSO
110,715	-	1	12,585

Chiang Mai

Migrants	DOE	DLPW	SSO
154,236	-	364	8,629

Surat Thani

Migrants	DOE	DLPW	SSO
144,943	-	75	4,249

Tak

Migrants	DOE	DLPW	SSO
236,163	-	181	9,898

Sources: Migrant populations as of 2013 (Ministry of Interior) in Archavanitkul, K., *Facts and Figures of Migrant Workers and People having Legal Status Problems* (Forthcoming)/Migrant complaints received in 2013 (DOE and DLPW)/Migrant Social Security Fund registrations as of 2014 (SSO).

Consultations in the target sites were carried out from October to March 2014, with the process in each location to collect data through interviews and focus groups, followed by round-table meetings between stakeholders to develop recommendations. A concluding executive workshop, presided over by the Permanent Secretary of the Ministry of Labour, was held in Bangkok to prioritize the recommendations made and develop a time frame for operationalizing them.

Three immediate objectives were achieved through these activities:

1. Knowledge was increased on the challenges faced by migrant workers in accessing complaint mechanisms and claiming social security and workers' compensation benefits.
2. Good practices in providing equality of treatment for migrant workers in Thailand were documented and shared.
3. Recommendations to further strengthen complaint mechanisms and access to social security and workers' compensation benefits were developed through social dialogue.

Stakeholders consulted

Stakeholder	Informant/Location	# of Interviews
Ministry of Labour (DOE, DLPW, SSO)	Bangkok Districts 7 and 8, Samut Prakan, Samut Sakhon, Rayong, Chiang Mai, Surat Thani and Tak	26
Employers	National Fisheries Association of Thailand, Provincial Fisheries Association, Thailand Frozen Foods Association, Employers' Confederation of Thailand, Federation of Thai Industries (FTI), FTI Chiang Mai, FTI Tak, Chamber of Commerce (COC) Chiang Mai, COC Surat Thani, COC Tak, and manufacturing, distribution, transportation, forestry and fishing sector firms	15
Trade unions and CSOs	Thai Allied Committee with Desegregated Burma Foundation, Migrant Working Group, State Enterprise Workers' Relations Confederation, Labour Rights Promotion Network, Foundation for AIDS Rights, MAP Foundation in Mae Sot and Chiang Mai, Human Rights and Development Foundation in Mae Sot and Bangkok, Raks Thai, Foundation for Women, International Rescue Committee, International Organization for Migration, Foundation for Education and Development, Yaung Chi Oo Workers' Association and Pan Kant Gor Workers' Association	16
Migrant workers from Cambodia and Myanmar	Bangkok, Samut Prakan, Samut Sakhon, Rayong, Chiang Mai, Surat Thani and Tak	88

Challenges

The consultation findings revealed three main problem areas that inhibit migrant access and utilization of complaint mechanisms and social security and workers' compensation benefits: Knowledge and attitudes among complainants and claimants, the communication barrier between migrants and authorities and policy and procedural gaps.

Complainants and claimants

- Lack of awareness about rights or how to assert them
- Fear of retaliation by recruiters or dismissal by employers
- Reluctance to approach government authorities, particularly for irregular migrants
- Concerns about the impartiality of authorities
- Inability to provide the name of the employer, company or address to labour officers
- Desire to avoid the long duration, high expense and complexity of court hearings

Communication barrier

- Limited number and professionalism of interpreters based in labour offices
- Lack of interpreters for Myanmar and Cambodian languages at hotline call centers.
- Ineffectiveness of interpretation services provided due to restrictions on hiring foreign nationals
- Lack of training for interpreters on the relevant labour laws and legal system
- Requirement that forms are completed in the Thai language

Policies and procedures

- Lack of standard operating procedures or practical guidelines for implementation of legislation
- Sectoral exclusions from benefits for workers employed in agriculture, fishing, domestic and other informal work
- Insufficient awareness and acceptance among authorities on the principle of equality of treatment for migrants
- Delays in providing compensation for workplace accidents
- Siloed databases between departments and offices
- Dearth of sanction of offenders to prevent non-compliance
- Lack of a clear policy to regulate inbound recruitment and the statutory responsibilities of sub-contracting agencies
- Inaccessible office locations and opening hours
- Limited cooperation between government, employers, trade unions and CSOs to facilitate access
- No incentives for good practice provided

Good practices

Despite the significant remaining challenges, it should be acknowledged that some important elements of a functional system to respond to complaints, enable social security enrolments and facilitate benefit claims from migrant workers are gradually being put into place. Noteworthy examples of good practices include the following: (1) the DLPW has clearly communicated the message to its officers that migrant workers must receive equality of treatment regardless of their legal status to work in Thailand; (2) through a budget allocation from the Social Security Fund, the SSO has hired a Burmese speaking interpreter at its office in Samut Sakhon which has greatly increased migrant registrations for social security; (3) the provincial office of the DLPW in Rayong has begun hosting a Cambodian speaking programme officer from a local NGO to provide greater access to assistance for complaints; (4) the SSO established a technical working group on migrant workers that has proposed a set of recommendations to the central ministry; (5) a consolidated database is being developed to support greater information sharing and coordination between Ministry of Labour departments on labour migration; and (6) Departmental hotlines have been set-up that could provide an accessible means for migrant workers to file grievances anonymously (particularly important in increasing access for women, statistics have shown) if the remaining barriers can be reduced.

Recommendations

Participants at the national executive workshop were divided into three groups according to their engagement with the mandates of the departments of the Ministry of Labour. These key tripartite and CSO stakeholders jointly reviewed the recommendations made at provincial consultations to determine which were high priorities and classify them as measures to be implemented in the short-term (Green: within 3 years), medium-term (Yellow: within 3-5 years) or long-term (Red: within 5-10 years).

Recommendations to be implemented in the short-term (within 3 years):

- 1) Government agencies should establish public/private partnerships with local CSOs to provide interpretation services. The competent authorities will provide the interpreters with training on the relevant labour laws, the functioning of the legal system and ethical practices in handling complaints and benefit claims.
- 2) A unified hotline should be established within the Ministry of Labour (with links to the Ministry of Social Development and Human Security trafficking hotline) so that there is no confusion about where migrants should call for assistance. To ensure utilization after its launch, promotional campaigns and interpretation services in migrant languages, as well as an effective referral mechanism and extended hours of operation, are needed.
- 3) The Recruitment and Job Seekers Protection Act should be amended to regulate inbound recruitment and standard operating procedures developed for resolving recruitment-related complaints from migrant workers. In particular, jurisdiction over complaints against unlicensed labour brokers needs to be further clarified and enforcement against violators increased. Consultations should be held with all stakeholders involved (employers, workers, CSOs, international organizations, etc.) to allow them to provide input on the amendment of the law.
- 4) A clear process for migrant workers to change employers should be established, pursuant to the Alien Employment Act, so that migrant workers can leave abusive employers without losing their legal right to work.
- 5) The Labour Protection Act should be amended so that domestic workers receive full rights under the law. In addition, the Welfare Committees required under the Act for

businesses employing more than 50 workers must provide proportional representation for migrant workers.
6) The penalty provisions within the Labour Protection Act, Recruitment and Job Seekers Protection Act and Social Security Act should be reviewed to ensure that they are stringent enough to act as an effective deterrent against abuses. Blacklisting and progressively severe penalties should be enforced against repeat offenders.
7) Migrant workers in the agricultural and fishing sectors should be entitled to receive coverage under the Social Security Act, supported by outreach to facilitate greater utilization of benefits. Coverage for domestic workers is also needed but may take longer due to the isolated nature of their workplaces and limited public recognition of domestic work as work.
8) Outreach by authorities should be conducted jointly with CSOs and trade unions, including distribution of flyers, public service messages on community television and radio stations and training/video presentations as part of registration or renewal of work permits.
9) An integrated database is needed that links DLPW, DOE, and SSO data on migrant workers, as well as relevant data from the Ministry of Interior and the National Statistical Office – a project which is currently underway. After completion, the data on complaints and benefit claims should be aggregated and analysed to inform policy and practice, and shared publicly when confidentiality is not a concern.
10) Cooperation with the diplomatic missions of countries of origin should be increased to provide interpretation services and reassure migrant workers about the impartiality of complaints and benefit claims processes.
11) Replicating a good practice developed by the SSO in Samut Sakhon, unrestricted or external funding should be sought to hire interpreters for work in provincial departments. This provides a workaround for the regulation requiring that interpreters must be Thai nationals with at least bachelor's degree if paid for through the regular government budget.
12) Additional training should be delivered to labour authorities on the principle of equality of treatment for migrant workers and mediation skills for resolution of disputes.
13) Incentives for good practice by recruiters and employers should be developed such as reduced fees or administrative requirements.

Recommendations to be implemented in the medium-term (within 3-5 years):

1) A government fund should be established to support the work of CSOs providing services to migrants in local communities, allowing for greater cooperation and partnership between key stakeholders.
2) Restrictions on freedom of association for migrant workers should be removed to facilitate greater mutual aid and collective bargaining.
3) The budget allocation for hiring of interpreters should be augmented in order to increase the number employed and to provide them with competitive wages and long-term contracts for improved retention.
4) The Ministry of Labour and the Ministry of Social Development and Human Security should establish a shared hotline and pool of interpreters to provide more efficient and effective services to migrant workers.
5) The requirement that interpreters hired to work by government agencies must be of Thai nationality should be removed in order to employ native speakers in migrant languages who will be better able to build trust with migrant worker communities.

Recommendations to be implemented in the long-term (within 5-10 years):

- 1) Thailand should ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
- 2) The Alien Working Act should be regularly amended to keep it up-to-date with changing labour market conditions.

Way forward

In order to maintain the substantial momentum that has been generated for reform of policy and implementation of practical measures to support increased access, and begin the process of contextualizing and applying the regional recommendations made at the 6th ASEAN Forum on Migrant Labour (See Appendix 1), the ILO recommends the formation of tripartite plus CSO working groups on complaint mechanisms and social security and workers' compensation benefits for migrant workers at provincial and national levels in 2015.

Guided by the outcomes of the consultations, each working group should be assigned to develop a work plan and resource mobilization strategy to implement activities in their local catchment areas. The national body can be tasked with introducing the recommended policy changes at central level and responsibility for oversight; reviewing the plans of the provincial working groups and monitoring progress achieved. The ILO fully supports the implementation of the recommendations made for improving equality of treatment for migrant workers and offers continuing technical cooperation for the activities of this initiative.

Appendix 1: Recommendations from the 6th ASEAN Forum on Migrant Labour

Held on 26-27 November 2013 in Bandar Seri Begawan, Brunei Darussalam, the 6th ASEAN Forum on Migrant Labour recognized the importance of access to effective complaint mechanisms for migrant workers in countries of origin and destination. In order to promote and protect the rights of migrant workers in-line with international human rights and labour standards, the Forum participants recommended the following concrete actions be implemented in ASEAN Member States:

1. Develop complaint mechanisms for migrant workers in ASEAN Member States that are transparent, accessible and simplified for recruitment, employment and in case of deportation. In this regard, it is important to ensure that the integrity of complaints be carefully examined;
2. Ensure that complaint mechanisms are gender-sensitive and responsive to the vulnerabilities of migrant workers;
3. Support the development of "one-stop" service centres for migrant workers that facilitate access to complaint mechanisms and assistance, including interpretation and free legal counseling/referral, in collaboration with all stakeholders to ensure that the services are accessible.
4. Ensure that information on the availability of such service centres and complaint mechanisms is disseminated to migrant workers and their families through appropriate communication channels, such as electronic and print media, migrant worker resource centres, outreach programmes, pre-departure trainings, pre-employment orientation seminars and diplomatic missions;
5. Strengthen the role of labour attachés and consular officials in supporting the use of complaint mechanisms by migrant workers;
6. Dispute resolution, mediation and other alternative means to resolve complaints should be fully explored before resorting to administrative or judicial processes;

7.	Ensure timely notification and communication between countries of destination and origin on judicial hearings for migrant workers, and extend cooperation to allow migrant workers to file cases for violation of their rights in the country where the offense took place;
8.	Promote cross-border trade union collaboration to support migrant workers in complaint cases;
9.	Ensure joint accountability of employers and recruitment agencies for migrant complaints when recruitment agencies are responsible for recruiting and placing workers abroad;
10.	Ensure that adequate arrangements for repatriation are provided by employers;
11.	Promote sharing of experiences and information among ASEAN Member States in implementing complaint mechanisms for migrant workers through assessment of their respective processes; and
12.	Consider developing regional guidelines and tools for the establishment of key elements and standards for complaint mechanisms for migrant workers.

Appendix 2: International standards

Several ILO and United Nations conventions are relevant to the establishment of complaint mechanisms for labour rights violations against migrant workers, including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No.143), and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families. Another fundamental ILO instrument for encouraging Member States to make such mechanisms more widely available to migrants is the non-binding *Multilateral Framework on Labour Migration*, which provides a comprehensive set of rights-based guidelines and principles developed through tripartite global consensus. Within Principle 10 of the Framework, the guidelines state that national laws and regulations should include the following provisions for protecting migrant worker rights:

10.5	providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;
10.6	providing for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;
10.7	providing effective sanctions and penalties for all those responsible for violating migrant workers' rights;
10.8	providing information to migrant workers on their rights and assisting them with defending their rights;
10.9	providing information to employers' and workers' organizations concerning the rights of migrant workers;
10.10	providing interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary;
10.11	offering legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration.

The Private Employment Agencies Convention, 1997 (No. 181) provides standards for the regulation of private employment agencies to ensure fair practices and help prevent human

trafficking and other forms of exploitation. Article 10 of the Convention establishes the basis in international law for enacting recruitment complaint mechanisms:

“The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.”

A significant number of ILO conventions provide standards on equality of treatment for migrant workers in access to social security and workers’ compensation benefits. In addition, United Nations declarations and conventions have recognized social protection as a universal right for all members of society. The applicable international treaties and their relevance to social protection of migrants is summarized in the table below:

International instrument	Relevance to social protection of migrants
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	✓ Guarantees equal rights to compensation for those who suffer personal injury due to work-related accidents regardless of nationality.
Universal Declaration of Human Rights, 1948	✓ Advances the universal right to social protection (Article 22). ✓ Promotes the importance of the principle of equality of treatment (Article 2).
Migration for Employment Convention, 1949 (No. 97)	✓ Establishes the principle of equality of treatment for migrants in relation to social security (Article 6).
Social Security (Minimum Standards) Convention, 1952 (No. 102)	✓ Sets minimum standards for the nine branches of social security. ✓ Elaborates standards for equality of treatment for social security (Permits exclusion of non-nationals where benefits are payable wholly out of public funds) (Article 68).
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	✓ Ensures the application of the principle of equality of treatment for the nine branches of social security. Within its territory, a State party to the convention must provide equal treatment to nationals of any other State that has ratified the Convention (reciprocity). ✓ Provides for the maintenance of acquired rights and the export of benefits.
Migrant Workers (supplementary provisions) Convention, 1975 (No. 143)	✓ Addresses the rights of irregular migrant workers to equality of treatment in respect to past employment with regard to remuneration, social security, and other benefits (Article 9).
Maintenance of Social Security Rights Convention 1982 (No.157) and its Recommendation, 1983 (No.167)	✓ Provides for the maintenance of acquired social security rights or rights in the course of acquisition and for benefits acquired abroad to be effectively provided when migrants return to their country of origin.

	✓ The accompanying recommendation contains model provisions for bilateral and multilateral agreements to facilitate maintenance of rights.
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	✓ Promotes equality of treatment for a broad range of social protection benefits (Articles 25, 27, 28, 43, 45, 54).
Social Protection Floors Recommendation, 2012 (No. 202)	✓ Recommends establishing national social protection floors to ensure that all members of society enjoy at least a basic level of social security (including resident migrant workers).

Of the above international labour standards, Convention No. 19 is the only treaty that Thailand has yet ratified. Continuing concerns about enforcement of Convention No. 19 in relation to migrant workers in Thailand led the ILO Committee of Experts on the Application of Conventions and Recommendations to adopt observations requesting explanation, legislative review and improved implementation in 2009 and 2011. The requests made for a detailed Government report on these issues remained unanswered until the 85th Session of the Committee held in November-December 2014, after which the following observation was issued:

“The Committee welcomes the efforts undertaken by the SSO to facilitate access of migrant workers to benefits from the Workmen’s Compensation Fund (WCF) and to explore the possibility of developing a social insurance scheme for migrant workers. The Committee requests the Government to provide information on the decisions taken by the SSO, as well as on the practical effects of these measures on compliance by employers with their obligation to compensate their workers, whether documented or undocumented, in case of occupational injuries.

With respect to the situation of migrant domestic workers, seasonal workers and workers in agriculture and fisheries, who, according to the report, are exempt from coverage by both the social security scheme and the WCF due to limitation of collection of contributions, the Committee recalls that these categories of workers are fully covered by the Convention and therefore entitled to equal treatment with national workers in respect of employment injuries. It therefore requests the Government to take steps to comply with the Convention and further requests the Government to provide in its next report more detailed information about their situation both in law and in practice, including disaggregated data on the number of documented and undocumented migrant workers in the above categories.”

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