

MIGRANT WORKERS' RIGHTS AND WELFARE

COMBATING THE WORST FORMS OF CHILD LABOUR IN SHRIMP AND SEAFOOD PROCESSING AREAS OF THAILAND THA/10/50/USA

Migration is a global phenomenon which is growing in scope and complexity. In 2010, some 214 million people — 3 per cent of the world's population — lived outside their country of origin. The majority of migrants cross borders in search of better economic and social opportunities. Of the hundreds of millions of people living outside their countries of birth, the ILO estimates that almost 90 per cent are migrant workers and their families. Youth account for a large share of migrants. About a third of the migrant flow from all developing countries is in the age range of 12 to 24. This includes millions of children under the age of 18 who migrate internally or across national borders, with or without their parents.

While international migration can be a positive experience for migrant workers, many suffer poor working and living conditions, including low wages, unsafe work environments, lack of access to social security, denial of freedom of association and workers' rights, discrimination and xenophobia. Child migrants have a double vulnerability, as both underage persons and migrants. Public perceptions towards migrants are often inaccurate and based on misconceptions due to limited awareness of the contributions that the migrants bring to the economy and society of the host country. Language barriers, unfamiliar surroundings, lack of information or social support, and conflict with immigration law leave migrants vulnerable to exploitation, including forced labour. Insufficient enforcement of labour protection legislation and the lack of effective legal processes leave migrants vulnerable to abuse by employers.

People in search of work and better livelihood opportunities face greater risk of being deceived or trafficked, by falling victims to unscrupulous job brokers and employers.

Despite efforts to increase access to regular channels of migration, a significant proportion of labour migrants continue to use irregular channels due to high recruitment costs and lengthy time of administrative processes associated with regular migration.

Labour migration to Thailand

Following Thailand's rapid economic growth in the 1990s, the number of women and men migrant workers from neighbouring countries entering Thailand increased. Migrant workers represents an estimated 5% of the Thai labour force, primarily working in agriculture, construction, fishing and seafood processing, manufacturing and domestic work. Between 2010 and 2012, 1,331,637 migrants completed nationality verification process, of whom about 88.6 per cent were workers from Myanmar, 8.8 per cent and 2.6 per cent were Cambodia and Lao PDR respectively.

Migrant workers mitigate labour shortages in low-skilled sectors, help retain Thailand's competitiveness, and support mobility of Thailand's own labour force to semi- and higher- skilled sectors. The increasing income disparity between Thailand and neighbouring countries, coupled with Thai demographics changes (characterized by decreasing fertility rate and increased aging of the population), and high economic growth means that the country is expected to continue to attract and rely on migrant labour.

Overview of international standards and policies

The eight ILO Core Conventions concerning forced labour, child labour, discrimination and freedom of association, the ILO Conventions on Migration for Employment (No. 97) and Migrant Workers (No. 143), and the UN Convention on the Protection of All Migrant Workers and Members of Their Families (1990) are the primary source of reference for international policies and standards.

ILO MIGRATION FOR EMPLOYMENT CONVENTION (No. 97), 1949	ILO MIGRANT WORKERS CONVENTION (No. 143), 1975	THE UN CONVENTION ON THE PROTECTION OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (1990)
- Prior to leaving their home country, employees recruited from abroad should receive written documentation of their working conditions and wages; - Administrative costs of recruitment, introduction and placing should not be borne by the migrants; - Migrant workers lawfully residing should receive treatment no less favorable than that which applies to nationals with regard to: - remuneration - hours of work - overtime arrangements - social security - trade union membership and collective bargaining benefits	Each Member for which the Convention is in force undertakes to: - respect the basic human rights of all migrant workers; - adopt all necessary and appropriate measures to suppress clandestine movements of migrants for employment, and against the organisers of illicit movements of migrants for employment, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and eliminate abuses of migrant workers; - pursue a national policy designed to promote and to guarantee equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory	- The Convention emphasizes the connection between migration and human rights; - The Convention protects all migrant workers and members of their families, irrespective of their legal status. However additional rights are granted to documented migrant workers. - The Convention incorporates and builds upon ILO Conventions No. 97 and No. 143. The Convention is based on the principle of equal treatment of migrants and nationals rather than on 'minimum standards' as characterized by other international legal instruments - The Convention proposes that actions be taken to eradicate clandestine movements, notably through the fight against misleading information inciting people to migrate irregularly, and through sanctions against traffickers and employers of undocumented migrants.

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Furthermore, the ILO Multilateral Framework on Labour Migration (non-binding instrument) provides a comprehensive set of guidelines to assist governments in developing effective labour migration policies and management using a rights-based approach.

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers adopted in 2007, to which Thailand is a signatory, was a significant milestone in strengthening the efforts of ASEAN countries to revisit their labour migration policies and aim for them to reflect the fundamental human rights of migrants, the need for promoting the welfare and upholding human dignity of migrant workers.

Overview of national policy

According to the Constitution of Thailand, migrants enjoy equal protection under the law. There are a number of laws in Thailand which govern labour migration. They include, the Alien Working Act (2008), Prevention and Suppression of Trafficking in Humans Act (2008), Labour Protection Act (amended in 2008), Immigration Act (1979) and Employment and Job-seeker Protection Act (1985).

Thailand started to reform its labour migration policy in 2001. The government's policy has moved towards regularisation of irregular migrants through an open registration and nationality identification process of migrants and their family members. In the recent past, the access of migrants to nationality verification process has been improved by the establishment of One Stop Service Centres in 12 provinces by the government in February 2013 and through closer collaboration with neighbouring countries on this issue.

The government has also pursued other national legislation to legally recruit migrant workers. To facilitate the process of legalizing migrant entries and employment, a Memorandum of Understanding (MOU) between Thailand and its three neighbouring countries, Cambodia, Lao PDR, and Myanmar was concluded during 2002-2003.

The government is also aiming to prevent illegal migration by strengthening bilateral multilateral dialogue and cooperation; and has a policy of encouraging migrant workers to return to their home countries upon the expiration of work permits. To strengthen migrant workers' rights, the government has also promoted the application of the minimum wage and employment conditions as applicable under the Labour Protection Act, and increased access to social security and health care for migrant workers.

The policy shift has included efforts to link the number of migrants to the demand for migrant labour in specific sectors through actions such as the collection of levies from employers who hire migrant workers; and the introduction of permission for employment of daily and seasonal migrant workers along provinces in the border areas.

Despite these domestic laws governing labour migration, Thailand has not ratified the above mentioned ILO and UN instruments concerning migration for employment and migrant workers.

EMPLOYMENT AND JOB-SEEKER PROTECTION ACT (1985)	PREVENTION AND SUPPRESSION OF TRAFFICKING IN HUMANS ACT (2008)	ALIEN WORKING ACT (2008)
- The Act stipulates that job placement services for domestic and overseas employment are only to be conducted by agencies registered with the Central Employment Registrar - No domestic employment licensee shall demand any money or property from a job-seeker other than service charge or expense (Sec 26)	The act establishes penalties for: - Engaging in trafficking - Incentivising or coercing trafficked persons to not approach or cooperate with authorities - Concealing, damaging, or falsifying documents or evidence of trafficking - Actions which would publicly identify a person cooperating with an investigation into trafficking in persons	Aliens shall be permitted to do work stipulated under the Ministerial regulation upon receiving a Work Permit; Employers desiring to employ aliens may submit the application for the Work Permit, and pay the fees on behalf of aliens, Employees receiving Work Permits shall contribute to the "Alien Out-of Kingdom Repatriation Fund" as a guarantee to cover repatriation expenses A Work Permit holder desiring to change or increase the category or nature of work, employer, working locality or place or conditions must seek permission from the Registrar

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Migrant children and access to social services

In the context of multiple vulnerabilities and disadvantages faced by migrants, the children of migrant workers and children on the move draw special attention. More often than not, when child migrants travel across borders, they do so illegally without proper documentation and identification. This limits their ability to access basic social services and makes them vulnerable to child labour and other forms of exploitation, in particular when they migrate independently. Though some children who migrate voluntarily may become trafficked in the process of migration, there are many who are not.

The driving factors behind child migration are multi-faceted and differ from place to place. Migration can be triggered by economic factors (e.g. unemployment in rural areas, poverty), cultural factors (e.g. gender discrimination, history of migration, conflict, threat of marriage at an early age), personal factors (e.g. peer pressure, domestic violence, HIV/AIDS), and external factors (e.g. climate change, seasonal flooding). Child labour may also be common among migrants' communities, due to the need of families to earn more money, barriers to access to child care or limited schooling opportunities.

Children typically work in fisheries and seafood processing, agriculture, construction and manufacturing and domestic service. Children are engaged in hazardous tasks and expose themselves to multiple health and safety risks and exploitative conditions such as low wages and long hours. In extreme cases, children fall victim to trafficking and forced labour. In their home communities, adolescent girls are often found taking care of young siblings to enable their parent/s to work and earn the living while having limited or no chance of accessing education and training opportunities. Despite reforms in policy, multiple challenges continue to exist for many irregular migrant workers to access registration, thus undermining entitlements to accessing health and education services for irregular migrant workers and their family members, including children. Similarly, access to social services among regular/registered migrant workers has been constrained by the lack of favourable attitudes and government resources to make these services available, and by a lack of information and language barriers for migrants.

Many migrant children, in particular those without legal status, are denied access to basic social services, such as education and healthcare, and have difficulties obtaining legal assistance, which in turn adds to their vulnerability and increases the likelihood of them ending up, or staying in child labour. Without any means of support, child migrants need to work in order to survive.

Access to education service

Thailand's laws provide for universal access to education for Thai and non-Thai children until the age of 15 years. The right to formal schooling for all children in Thailand, regardless of nationality or legal identity status was extended by a 2005 Cabinet resolution. However, barriers to school enrolment remain for migrant and stateless children. Children may face difficulties in obtaining the identification number required for enrolment, adverse attitudes by school authorities toward maintaining higher enrolment of Thai children, inadequate facilities and budget allocation for schools to accommodate migrant children, negative attitudes and insensitivity towards migrants, and language barriers. Non-formal educational opportunities are offered to migrant children, and these are often delivered by NGOs and faith based organisations. The tested models of non-formal education interventions for migrant children and mainstreaming within formal schooling need closer attention and consideration of educational authorities for replication and expansion.

Access to health service

A Compulsory Migrant Health Insurance program was introduced in 2001 targeting registered migrant workers, which was applied to dependents of migrant workers only on voluntary basis. In March 2013, the Ministry of Public Health issued a ministerial notification on the health exams and insurance for migrant workers from three neighbouring countries. This new regulation applies to migrant workers who are eligible for and awaiting entry to the social security scheme, migrant workers who are not eligible for the social security scheme and their dependents, and children of migrant workers under 15 years of age.

LABOUR PROTECTION ACT B.E. 2541 & 2551	LABOUR RELATIONS ACT B.E. 2518	SOCIAL SECURITY ACT, B.E. 2533 AND OTHER LEGISLATION
Migrant workers are entitled to wage and other benefits that local workers are eligible for including:	Non-Thai Nationals: Can join unions (Sec. 95)	All employees aged 15 through 60 are insured (Ch. 1, Sec. 33)
Minimum wage	Cannot form a union (Sec. 88)	Employers must register employees with the Social Security Office within 30 days (Ch. 1 Sec. 34)
Maternity leave (Sec 41)	Cannot be union committee members (Sec. 101)	Employers must pay Social Security contributions for all employees (Ch. 2, Sec. 46)
Protection from termination due to pregnancy (Sec. 43)	Employers are prohibited from (Sec. 121):	After paying contributions for 3 of the past 15 months, an employee is entitled to non-occupational injury and sickness benefits (Ch. 2)
Overtime pay (Sec. 61)	Terminating an employee for joining a union	After paying contributions for 7 of the past 15 months, an employee is entitled to maternity benefits (Ch. 3)
Severance pay (Sec. 118)	Preventing an employee from joining a union or incentivizing an employee to refrain from union membership	Workman's Compensation Fund: Annual employer contribution of 0.2-1% of payroll, no employee deduction
Other protections as applicable under the law	Incentivizing union officers to refrain from accepting an employee as a member	Protection of the health and safety of migrant workers under Occupational Safety, Health and Environment Act B.E. 2554