

# Breaking the cycle of exploitation

Recommendations for responsible recruitment of migrant workers in Thailand



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Migrant Worker Rights Network (MWRN) is a migrant worker membership based organisation with offices in Thailand and Myanmar that seeks to empower migrant workers and ensure their access to rights and a good quality of life. MWRN is supported by international development organisations and global union federations amongst others and works closely with Thai businesses and industry associations to address migrant worker conditions in Thailand.



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## Introduction

Cheap labour provided by migrant workers continues to fuel Thailand's export industries by helping to keep the cost of production relatively low yet the rights of the migrant workers are being systematically violated in recruitment, during employment and when leaving or changing jobs. This briefing paper focuses on violations during the first step of the employment cycle – recruitment and job placement.<sup>1</sup> Recruitment policies and practices that are not aligned with international human rights standards increase the likelihood of rights' violations at later stages of the employment cycle as they may create a significant imbalance of power between the worker and the employer or bind the worker to the employer for example through situations amounting to debt bondage.

Part 1 of this briefing paper introduces the existing channels for low-skilled migrant workers to obtain the legal right to live and work in Thailand and explains how these governmental policies and procedures still undermine promotion and protection of the rights of migrant workers in recruitment. Part 1 concludes with policy recommendations on labour migration to the governments of Thailand, Cambodia, Lao People's Democratic Republic (Laos) and Myanmar (formerly Burma). Due to the international dimension of labour migration, States need to cooperate

across borders between the origin and destination receiving countries (and countries of transit where applicable) in order to manage labour migration and to ensure adequate protection of the rights of migrant workers.

Although States are not per se responsible for human rights abuses by companies, States do have the duty to protect against human rights abuses by third parties – including multinational companies, suppliers and recruitment agencies – and should thus take appropriate steps to prevent, investigate, punish and redress abuse within their territory and/or jurisdiction by such private actors. While States generally have discretion in deciding upon which steps to take, a State should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication.<sup>2</sup>

Part 2 of this briefing paper draws from the research conducted by Finnwatch and Migrant Workers Rights Network (MWRN) since 2012 into working conditions in a number of factories in Thailand's export industry sector.<sup>3</sup> By analysing data on these factories' recruitment practices against national laws and regulations on one hand, and international human rights standards and other instruments on the other hand, Part 2 makes recommendations on responsible recruitment of migrant workers to both Thai companies and international companies who source produce or products from these companies or who have their own production facilities in Thailand.

Companies' responsibility to respect human rights expands to entire supply chains and exists independent of the State's duty to protect human rights. As such, companies

1 Finnwatch has issued numerous reports on migrants' rights' violations in Thailand during employment. See for example Finnwatch, 2015, *On the borderline of responsibility – Case studies on the production of Tokmanni's own imports products in Thailand*, available at <http://finnwatch.org/images/pdf/TokmanniOwnImports.pdf>; 2015, *Employment available in exchange for debt – Working conditions in the Thai broiler industry*, available at <http://www.finnwatch.org/images/pdf/chickenproductionThailand.pdf>; 2014, *Caring for hands not workers – Labour conditions in the Siam Sempermed factory, Thailand*, available at [http://www.finnwatch.org/images/semperit\\_en1.pdf](http://www.finnwatch.org/images/semperit_en1.pdf); 2013, *Suomalaisen design-tuotteiden vastuullisuus – Case: Marimekko ja Iittala Thaimaassa*, available at [http://www.finnwatch.org/images/pdf/design tuotteiden\\_vastuullisuus.pdf](http://www.finnwatch.org/images/pdf/design tuotteiden_vastuullisuus.pdf) (in Finnish); 2013, *Halvalla on hintansa: Kaupan omien merkkin tuotteiden vastuullisuus*, available at [http://www.finnwatch.org/images/finnwatch\\_private\\_label\\_web\\_2\\_rev.pdf](http://www.finnwatch.org/images/finnwatch_private_label_web_2_rev.pdf) (in Finnish, *Cheap Has a High Price*, executive summary available in English at [http://www.finnwatch.org/images/cheap%20has%20a%20high%20price\\_exec%20summary\\_final.pdf](http://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf))

2 United Nations (UN), 2011, *Guiding principles on business and human rights, Principle 1*, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

3 The vast majority of cases investigated by the two organisations have involved migrant workers from Myanmar. As a consequence, most examples cited in this report also focus on labour migration from Myanmar.

cannot use a State's failure to protect the rights of migrant workers as an excuse for not meeting their own human rights responsibilities.<sup>4</sup> Although many companies have in place detailed codes of conduct that categorically forbid the use of forced labour, only a few of these companies have actually developed measures to prevent for example debt bondage resulting from recruitment. As one important means to address the systematic abuse of migrant workers' rights, it is crucial that all stakeholders involved in hiring and employment of migrant labour put in place and implement responsible recruitment policies and practices. Companies should also bring recruitment of migrant workers within the scope of their human rights due diligence and social auditing processes so as to increase transparency in their labour supply chains.

This briefing paper is part of Finnwatch and MWRN's three-year collaboration project aimed at empowering migrant workers to negotiate better terms of employment and working conditions in Thailand's export industries. The joint project between the two organisations is funded by Finland's Ministry for Foreign Affairs.

## Background

Thailand's rapid economic development in the 1980s and move towards a labour intensive export economy created a labour shortage which migrant workers from its neighbouring countries of Cambodia, Laos and Myanmar helped to fill. Due to a lack of a formal policy that would allow low-skilled manual labourers legal entry to work in Thailand, many of these workers were recruited through broker<sup>5</sup> networks linked to border control, law enforcement and employment officials and smuggled or trafficked into Thailand. In Thailand, these workers were

irregular<sup>6</sup> and as such, able to access few rights and protections effectively.

Although Thailand became a net receiving country in terms of migration already in the 1990s<sup>7</sup> it did not become possible for low-skilled migrant workers from these three countries to enter Thailand legally through formal channels to work until 2006 to 2010.<sup>8</sup> There are an estimated 2.7 million migrant workers from Cambodia, Laos and Myanmar in Thailand currently, of whom almost 1.6 million are irregular.<sup>9</sup> Despite the eventual availability of legal channels, many low skilled workers still choose to migrate irregularly because the procedures for legal entry are unknown to them or they are seen as burdensome and costly, and because regular status itself is seen to offer only a limited number of benefits if any in comparison to an irregular status. Regular migrant workers already in Thailand may also become irregular when changing jobs, if they do not renew

4 UN, 2011, *Guiding principles on business and human rights*, Principle 11

5 There is no official definition of the "broker" in international labour law instruments. In this briefing paper, the term is used to refer to individuals and informal networks that provide recruitment, job placement and documentation services to migrant workers. Brokers also facilitate irregular migration.

6 An irregular migrant is "[S]omeone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country." See International Organization for Migration (IOM), 2011, *Glossary on Migration*, available at [http://www.iomvienna.at/sites/default/files/IML\\_1\\_EN.pdf](http://www.iomvienna.at/sites/default/files/IML_1_EN.pdf)

7 International Labour Organization (ILO), 2015, *Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries*, page 4, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_356542.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_356542.pdf)

8 Laos began the recruitment of migrant workers to Thailand in January 2006 whereas Cambodia began sending migrant workers officially to Thailand in September 2009. Although a pilot project for migrant worker recruitment in Myanmar was organised in 2008 these channels became more widely available for Myanmar nationals only in 2010. See for example Mekong Migration Network, *Migration in Thailand; Timeline of facts and figures*, available at [http://www.mekongmigration.org/BEZ%20chart%20MMN\\_Thailand%20facts%20and%20figures.pdf](http://www.mekongmigration.org/BEZ%20chart%20MMN_Thailand%20facts%20and%20figures.pdf); IOM, 2010, *Migration Information Note 7*, available at <http://th.iom.int/index.php/migration-resources/facilitating-migration/migration-information-notes/Migration-Information-Note-7-SEP10-ENG/> (accessed on 30 September 2015)

9 See for example Hugué, Jerrod W., *Thailand Migration Profile*. In IOM, 2014, *Thailand Migration Report 2014*, available at [http://th.iom.int/images/report/TMR\\_2014.pdf](http://th.iom.int/images/report/TMR_2014.pdf), page 2. The total number of migrant workers in Thailand depends heavily on the estimated number of irregular migrant workers. Estimating the number of irregular migrant workers is challenging, and estimates come with a wide range of error.

their work permits, or after completing their terms of employment (see Chapter 5).

Despite the obvious importance for Thailand's economy and society, migrant workers in Thailand continue to face widespread discrimination and violations of their rights. In addition, even regular migrant workers live under constant fear of arrest and extortion by corrupted police officers or abuse from employers or brokers. In case of irregular migrant workers and their families, arrest, extortion and mass deportations are frequent occurrences. There still exist only a few effective channels for migrant workers to report allegations of rights' violations, especially during recruitment, and the Thai government is yet to take decisive action to address impunity for labour rights violations in the work sectors commonly benefiting from migrant labour.<sup>10</sup>

Still for many migrant workers, employment opportunities in Thailand provide an appealing chance to escape poverty or economic hardship at home. Some workers, especially those from Myanmar who belong to ethnic and/or religious minorities, are also fleeing persecution and systematic rights violations in their home countries.

Thailand's unemployment rate has been below one per cent since 2011.<sup>11</sup> An ageing population and declining fertility rate are expected to increase the labour shortage

in the future even further.<sup>12</sup> Given the rising educational levels and the too often poor working conditions and low wages in manufacturing, few Thai nationals are willing to take up work as labourers at the production lines in export industry (or further down the supply chains in agriculture and fisheries).<sup>13</sup> As such, it seems clear that Thailand will continue to rely on migrant workers from its neighbouring countries for many years to come.

Although Thailand is yet to develop comprehensive and fit for purpose long-term policies to manage in-bound low-skilled migration for employment, there have been some signs of incremental improvement in the recent past. In 2014, following the new military government's announcement of an imminent crackdown on irregular migrant workers in Thailand, some 250,000 Cambodian workers fled the country in panic.<sup>14</sup> Their sudden departure was immediately felt leading to greater acknowledgement of their importance to the economy and society. As a result, the government has subsequently taken steps to better facilitate registration of irregular migrant workers, for example by opening One Stop Service Centres in every province of Thailand, and to standardise and reduce the cost of work permits and extensions. There is also anecdotal evidence that corruption costs involved in migrant registration have reduced in Thailand post the 2014 coup.

10 See for example Human Rights Watch, 2010, From the tiger to the crocodile – Abuse of migrant workers in Thailand, available at [https://www.hrw.org/sites/default/files/reports/thailand0210\\_insert\\_low.pdf](https://www.hrw.org/sites/default/files/reports/thailand0210_insert_low.pdf); Mekong Migration Network, Facts and figures of raids, deportation and returns of migrants in Thailand – Chronology of events since the military coup on 22 May 2014, available at [http://mekongmigration.org/add/?page\\_id=2141](http://mekongmigration.org/add/?page_id=2141) (accessed on 5 January 2016); ILO, 2013, Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_226498.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_226498.pdf). The publication is part of ILO cooperation with the Department of Employment in Thailand's Ministry of Labour to improve the effectiveness of complaint mechanisms available to migrant workers.

11 See for example the World Bank unemployment statistics, available at <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS> (accessed on 30 September 2015)

12 See for example Wall Street Journal, 19 March 2014, Slumping fertility rates in developing countries spark labor worries, available at <http://www.wsj.com/articles/SB10001424052702304773104579265520447488200> (accessed on 30 September 2015)

13 Most migrant workers in Thailand are employed as domestic workers or in so-called 3D jobs (dirty, dangerous and demanding) in the rural sector, in manufacturing and construction or in fisheries. 3D jobs carry a high risk for work-related accidents and other health problems.

14 See for example Al-Jazeera, 28 June 2014, Cambodia: Thailand worker exodus tops 250,000, available at <http://www.aljazeera.com/news/asia-pacific/2014/06/cambodia-thailand-worker-exodus-tops-250000-2014626145249756686.html> (accessed on 4 January 2016)

However, these measures do little to change the view that migration of low-skilled workers is temporary in nature and of itself a national security threat on which Thai government's current policies and procedures pertaining to in-bound migration for employment are based.<sup>15</sup> As a consequence, the official processes created for prospective migrant workers to obtain the legal right to live and work in Thailand are at best complex, time-consuming and expensive. At worst, these channels are extortionate and a contributing factor in situations of labour exploitation and debt bondage. In practice, these systems still often lead to over-reliance on irregular brokers and recruitment agencies that largely operate in an unregulated environment without effective oversight on both sides of borders. Poor coordination between Thailand and origin countries exacerbate the situation.

15 For example, Article 7 of the 2008 Working of Alien Act reads as follows: "The work that may be engaged by alien as well as working area and period shall be prescribed by the Ministerial Regulation. In the issuance of such Ministerial Regulation, regard shall be had to national security, occupation opportunity of Thais and demand for alien labour as necessary for the development of the country." Unofficial English translation available at [http://www.mol.go.th/sites/default/files/downloads/pdf/WORKING\\_OF\\_ALIEN\\_ACT\\_2551\\_DOE.pdf](http://www.mol.go.th/sites/default/files/downloads/pdf/WORKING_OF_ALIEN_ACT_2551_DOE.pdf). For a historical overview and analysis on migration policy development in Thailand, see for example Hall, Andy, Migration and Thailand: Policy, Perspectives and Challenges. In IOM, 2011, Thailand Migration Report 2011, available at [http://publications.iom.int/system/files/pdf/tmr\\_2011.pdf](http://publications.iom.int/system/files/pdf/tmr_2011.pdf)

## PART 1 – Legal processes for low-skilled migrant worker recruitment in Thailand

Currently, there are two legal processes through which low-skilled migrant workers from Cambodia, Laos and Myanmar can obtain the right to live and work in Thailand. These are:

- 1) Legal import of labour into Thailand (referred to from here onwards as ‘MoU recruitment’). The procedures for legal import of labour are established in the Memoranda of Understanding (MoUs), first adopted in 2002 between Thailand and Laos and in 2003 between Thailand and Cambodia and Thailand and Myanmar;<sup>16</sup> and
- 2) regularisation<sup>17</sup> through a two-step process of registration during a registration amnesty and then a form of nationality verification.

<sup>16</sup> The MoU between Thailand and Laos is available at [http://www.humantrafficking.org/government\\_law/80](http://www.humantrafficking.org/government_law/80); between Thailand and Cambodia at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=93356&p\\_country=THA&p\\_count=441&p\\_classification=17&p\\_classcount=59](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=93356&p_country=THA&p_count=441&p_classification=17&p_classcount=59), and; between Thailand and Myanmar at [http://www.ilo.org/asia/info/WCMS\\_160932/lang--en/index.htm](http://www.ilo.org/asia/info/WCMS_160932/lang--en/index.htm). MoUs are one of the common ways for states to manage and regulate labour migration between origin and destination countries. Contrary to legally binding bilateral agreements, these are executive agreements between ministries and have little or no primacy over national laws.

<sup>17</sup> Regularisation means “[A]ny process by which a country allows aliens in an irregular situation to obtain legal status in the country. Typical practices include the granting of an amnesty (also known as “legalization”) to aliens who have resided in the country in an irregular situation for a given length of time and are not otherwise found inadmissible.” IOM, 2011, Glossary on Migration

The MoU negotiations were the first time that the governments of the four concerned countries entered into bilateral discussions about irregular migration, the related challenges and agreed to exchange information with each other about migration flows. After the MoUs were signed, it took several years before they were implemented in practice.<sup>18</sup>

The MoUs have four goals: establishing proper procedures for the employment of migrant workers; effective repatriation of migrant workers; due protection of migrant workers’ rights; and prevention of illegal border crossing, illegal employment of migrant workers and human trafficking.<sup>19</sup> The success of the MoUs in achieving these goals has been called to question several times whilst the continuing availability of regularisation through the two-step nationality verification process is seen as one of the factors contributing towards the low numbers of MoU recruits coming legally into the country from the onset.<sup>20</sup>

<sup>18</sup> See for example Natali, C., McDougall E. and Stubbington S., International migration policy in Thailand. In IOM, 2014, Thailand Migration Report 2014, page 14

<sup>19</sup> See for example 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, Article 1, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_160932.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_160932.pdf)

<sup>20</sup> See for example ILO, 2015, Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries

The length and the complexity of both the MoU recruitment and regularisation processes have created a market for brokers and recruitment agencies on which many employers and migrant workers rely on to navigate the system. Many companies or employers continue to outsource registration, processing and even employment of their migrant workforce. However, the potential role of recruitment agencies and brokers is not reflected at all in the text of the MoUs which imply an active role for governmental agencies only in facilitating labour migration.

Recruitment agencies typically provide services such as: 1) matching work vacancies and workers without the agency becoming a party to the employment relationship; 2) employing workers with a view of making them available to a third party which assigns them tasks and supervises their performance (subcontracting or outsourcing); and 3) other services such as provision of information.<sup>21</sup>

Although recruitment agencies can play a legitimate and much needed role in the efficient operation of labour markets, and in particular with low-skilled migrant workers who may not be able to read and who have limited schooling, unscrupulous brokers and recruitment agencies often also exploit the legal, social and economic vulnerability of migrant workers for personal profit. Such profit is often shared with government officials and employer human resources staff as part of the untransparent and complex process. One too prevalent example of these practices is charging of extremely high recruitment fees to the prospective migrant workers.

In Thailand, recruitment agencies that are involved in the MoU recruitment and regularisation processes inside Thailand operate in a regulatory vacuum. Thailand's primary piece of legislation for protecting the rights of workers during recruitment is the 1985 Employment and Job-Seekers Protection

Act<sup>22</sup> which in its focus on out-bound migration only has become outdated. Although in 2013, the Thai Council of State<sup>23</sup> adopted an opinion according to which the provisions in the Act that pertain to licensing, operation and reporting of recruitment agencies can be applied also to agencies recruiting workers for employment in Thailand, this has not been implemented in practice.<sup>24</sup> There also exists legal ambiguity regarding the statutory responsibilities of subcontracting agencies under Thailand's labour protection laws, including in regard to social security provisions and compensation for accidents and injuries at work.<sup>25</sup> Many of the recruitment agencies in Thailand are also allegedly connected to government officials and this is a likely contributing factor in under-regulation and sheltering of the agencies from disciplinary actions.<sup>26</sup>

The depth and breadth of regulatory oversight of recruitment agencies in origin countries varies. In Laos, as of January 2015 there were 13 registered agencies sending workers abroad, 207 in Myanmar and 44 in Cambodia just serving the Thai market. Although these agencies are licensed there are gaps in monitoring, inspection and sanctioning of the agencies by authorities and in availability of complaints mechanisms to the workers to report recruitment-related abuse.<sup>27</sup>

In addition, recruitment agencies in origin countries often contract the services of brokers who travel to villages to find suitable recruits for the agencies, or help to place workers in Thailand. Many brokers, however, simply use legally registered recruitment agencies as a cover or rubber stamp for their

21 See for example ILO Convention 181 on Private Employment Agencies, Article 1, available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312326)

22 Thailand, 1985, Employment and Job-Seekers Protection Act. Unofficial English translation available at [http://thailaws.com/law/t\\_laws/tlaw0071\\_3.pdf](http://thailaws.com/law/t_laws/tlaw0071_3.pdf)

23 An advisory body under the Prime Minister's office.

24 ILO, 2015, Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries, page 20

25 ILO, 2015, Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries, page 20

26 ILO, 2013, Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand, page 2

27 ILO, 2015, Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries, page 19

own placement activities whereas others work independently of recruitment agencies facilitating illegal migration and labour exploitation. From the prospective migrant workers points of view, it is often impossible to distinguish between brokers who are working for a licensed recruitment agency and those who are simply utilising a license of a registered agency for their work or operating in the irregular market.

In July 2015, Thailand and Vietnam signed a MoU on Employment Cooperation and subsequently began negotiations on its implementation. Registration of Vietnamese migrant workers who were already in Thailand and in possession of passports began in November 2015.<sup>28</sup> Previously, there had been no process for low-skilled migrant workers from Vietnam to obtain the legal right to live and work in Thailand at all despite their considerable numbers across workplaces in Thailand.

The Thai government allows dependants of registered and/or regular migrant workers to register for an ID card, residence permit, and health insurance during registration amnesties.<sup>29</sup> However, in 2015, the Thai Prime Minister hinted an end to this policy from the beginning of 2017 saying that the cost of health care and education for migrant workers' spouses and children was too much of a burden for the government.<sup>30</sup> If implemented this policy may have a negative impact on migrant workers' right to a family.

28 IOM, 2016, Migration Information Note 28, available at <http://th.iom.int/index.php/migration-resources/facilitating-migration/migration-information-notes/Migration-Information-28-English.pdf/>

29 See for example UNICEF, Children affected by migration in Thailand. In IOM, 2014, Thailand Migration Report 2014

30 Bangkok Post, 4 September 2015, PM Migrant workers' dependants to be barred from 2017, available at PM Migrant workers' dependants to be barred from 2017 (accessed on 5 January 2016)

## Coming up: Migration for employment in Special Economic Zones

In June 2015, the Prime Minister's Office announced a supplement to a regulation of Thailand's 2008 Working of Alien Act pertaining to labour migration into Thailand's Special Economic Zones (SEZs). Thailand currently has five SEZs. The Mae Sot/Tak SEZ is near the Thailand-Myanmar border whereas Mukdahan SEZ is close to Thailand's border with Laos. Two SEZs, Aranyaprathet/Sa Kaeo and Khlong Yai/Trat are near the Cambodian border, and one of the SEZs is in Sadao/Songkhla in southern Thailand.

According to the announcement nationals of Cambodia, Laos and Myanmar who are in possession of a border pass<sup>31</sup> can obtain the legal right to work in Thailand for three months. This is subject to these workers obtaining a work permit, undertaking a health check and purchasing of a medical insurance through a separate process. Before the regulation can be implemented, the governments of Thailand and each of the three other countries are expected to sign a bilateral agreement confirming the details.

So far, only an agreement between Thailand and Cambodia has been signed. According to that agreement, Cambodian nationals who hold a border pass can legally stay in Thailand for 30 days at a time. This means that during the three months they can legally work in Thailand, they have to cross the border to their home country twice. It is likely that the agreement with Cambodia will serve as a model for agreements between Thailand and Laos and Thailand and Myanmar.<sup>32</sup>

31 Border passes are issued by countries of origin on a local level by district offices of the Ministry of Interior, and they are recognised in lieu of a passport for border crossing between Thailand and its neighbouring countries for nationals of the two countries only. They are easy to obtain paper-based documents that do not represent a secure travel document. Border passes are typically valid for one or two years and allow for multiple stays of 3 or 7 days in the province of entry (the length depends on the local-level agreement between the two countries/provinces involved). They do not officially function as a work permit but it is recognised that one use of the border pass is for daily or short-term work or border trade. Many migrant workers use them as a way to enter Thailand, but then travel on to other provinces or stay for longer periods on irregular status.

32 International Organization for Migration staff, email on 2 December 2015

# 1. MoU recruitment process

Before the implementation of MoUs, it was not possible for low-skilled migrant workers to enter Thailand legally to work. The MoU recruitment process, however, makes it possible for low-skilled migrant labourers to enter into Thailand. As a first step, a company wishing to recruit workers through the MoU process must contact the Provincial Employment Office to request quota for the number of workers they want to import. A recruitment agency can also obtain a quota of their own initiative and with a view to import workers whose labour they can then subcontract to other companies.

The 25-step recruitment process from Myanmar takes an estimated minimum of 89 days (see appendix 1), and an estimated minimum of 62 and 55 working days from Cambodia and Laos, respectively. The process involves a myriad of stakeholders including various governmental agencies at different levels and some duplication such as multiple health checks, all of the cost of which are typically borne by the workers. Additional steps may be required in order to obtain some of the documentation necessary to complete the formal process (e.g. copies of household registration and ID cards that many prospective migrant workers may not ever before have had) and due to the involvement of brokers and/or recruitment agencies. Many of the steps take place between government agencies and are opaque and difficult to understand to both workers and employers so that further reliance is placed on brokers and recruitment agencies to navigate these processes.<sup>33</sup> The official costs of various documents are not easy to establish and subject to frequent change. There are no set time-limits for processing of these documents also, facilitating gaps for overcharging and corruption.

According to the Myanmar Overseas Employment Agency Federation (MOEAF) the official costs that can be charged for MoU recruitment processes to a worker in Myanmar is MMK 150,000 (approximately EUR 110<sup>34</sup>). In addition, according to MOEAF, the employer in Thailand is also allowed to charge a worker THB 10,000 (EUR 250) per migrant worker which the employer can claim back, often through deductions from the workers' salary during the first months of employment. The legal basis for these deductions remains unclear, especially as according to Thailand's Labour Protection Act, no such salary deductions can lawfully be made.<sup>35</sup> Some of the costs charged by an employer to a worker may be costs advanced to brokers or recruitment agencies in the origin country.

The high costs charged to workers for MoU processes can often result in their personal documents such as ID cards, passports or work permits being unlawfully confiscated by a broker or employer as insurance against a worker deserting a workplace prior to debts being recouped. The confiscation of personal documents and limited freedom of movement this entails can take the situation into conditions equivalent to debt bondage, forced labour or human trafficking.

According to the International Labour Organization (ILO), migrant workers from Cambodia, who are recruited through the official MoU process, typically pay between approximately EUR 520-570 to a recruitment agency in their home country through a combination of upfront payments and deductions from salaries after they have started working. On top of these costs, will also pay a fee to recruitment agency in Thailand. In the case of MoU recruitment from Laos to Thailand, ILO quotes anecdotal evidence that suggests the fee of

<sup>33</sup> ILO, 2015, *Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries*, page 11

<sup>34</sup> All exchange rates used in this document are as of 16 May 2016.

<sup>35</sup> ILO, 2015, *Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries*, page 17. See also Thailand, 1998, Labour Protection Act, Article 76. Unofficial English translation available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49727/65119/E98THA01.htm>

around THB 19,500 (approximately EUR 490) to migrant workers which the agencies have to advance to the worker but that they can later claim back through salary deductions.<sup>36</sup>

In February 2016, there were approximately 290,000 migrant workers in total who had entered Thailand through the MoU process and were in possession of a valid work permit. Until 2013, the vast majority of MoU workers with valid work permits in Thailand were Cambodian nationals but since 2014, the majority have come from Myanmar.<sup>37</sup> Although the number of MoU workers in Thailand has increased, the relatively low proportion of MoU workers in the total migrant worker population is attributable to the complexity and long duration of the recruitment process and the high fees charged by brokers and recruitment agencies for their services. In addition, many migrant workers see the MoU process as offering few benefits in comparison to other channels for obtaining the legal rights to work in Thailand.

At the end of the recruitment process in their country of origin, all MoU workers should be in possession of a passport, a Thai visa (n.b. this may be issued on the Thai side of a border also) and a two-year work permit (which can be extended by a further two years), as well as an employment contract. One challenge for MoU workers is that, unless in exceptional cases, they are not allowed to legally change employers and if such a worker wants to change work, they had to return to their origin country and re-enter under a new MoU quota and contract (see also chapter 4).

In Thailand, MoU workers are in theory entitled to the same rights and protections under Thailand's labour protection laws – including

the Labour Protection Act, Social Security Act, and Workmen's Compensation Act – as Thai nationals, and can obtain a driving licence and travel unrestricted within Thailand.

For the first 90 days of their employment, migrant workers can apply to be covered by the Ministry of Public Health's migrant workers' health insurance (which the workers may have to pay for themselves) during which time their employer should enrol them to the social security scheme, including medical cover and compensation for accidents at work place.<sup>38</sup> In order for migrant workers to be able to access social security benefits, they themselves and their employer must both contribute five per cent of the worker's salary to the social security fund for a minimum of three months. Workers' contributions are deducted from their salaries. Some employers are unwilling to pay their share and sometimes migrant workers themselves are also unwilling to contribute as they want to avoid salary deductions and do not see themselves as needing or being able to access services. Finnwatch and MWRN have also documented cases in which an MoU workers' contributions have been deducted from their salary but the migrant worker has not been in a possession of social insurance card and the deducted sums have not actually been paid into the funds but presumably pocketed by the employer, a recruitment agency or corrupted individual(s).<sup>39</sup>

Even when social security contributions are paid, a number of factors hinder equality of treatment including language barriers, lack of awareness, fear of retaliation and loss of work permit, evasion of responsibility by the employers, documentation requirements and long duration of the processes

36 ILO, 2015, *Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries*, pages 16-18

37 As of July 2013, the numbers of MOU workers with a valid work permit by country of origin were as follows: Cambodia 85,733; Laos 16,665 and Myanmar 36,650. As of June 2014 the numbers were 99,401; 21,866 and 148,841 respectively, and as of September 2015, 117,742; 28,213; and 135,360. See IOM, *Migration Information Notes* 21, 24 and 29. Available at <http://th.iom.int/index.php/component/remository/facilitating-migration/migration-information-notes/orderby,1/page,8/?Itemid=0> (accessed on 3 May 2016)

38 *Migrant workers in the so-called informal sector – fishing, agriculture, forestry, animal husbandry and domestic work are excluded from social security scheme*. According to official statistics, as of 2013 there were only 323,526 migrant workers enrolled to the system despite more than one million being eligible. See for example IOM, 2014, *Thailand Migration Report*, page 37

39 See for example Finnwatch 2015, *Employment available in exchange for debt*; 2013, *Halvalla on hintansa* (Cheap has a high price)

involved.<sup>40</sup> In some cases, the local authorities whose role it is to provide protection to job-seekers and workers have been found to have limited understanding of their responsibilities towards in-bound migrant workers in Thailand.<sup>41</sup>

40 See for example Harkins, Benjamin, *Social Protection for Migrant Workers in Thailand*. In IOM, 2014, *Thailand Migration Report*, pages 36-38

41 ILO, 2013, *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, pages 49-50

Furthermore, part of migrant workers' social security contribution goes towards pension and unemployment schemes which they have not been entitled to in practice. It was only in October 2015 that the Thai authorities adopted an amendment to the Social Security Act, clarifying the condition under which non-Thai nationals can access pension and unemployment benefits.<sup>42</sup>

42 IOM, 2016, *Migration Information Note 28*

## Trafficking for labour exploitation in Thailand

Human trafficking is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."<sup>43</sup> Importantly, a trafficking victim's earlier consent for example to work for an employer becomes irrelevant if their labour is exploited by means such as those described above.

The Thai government in 2014 investigated 58 cases of alleged forced labour and prosecuted 27 traffickers or forced labour (the corresponding figures for 2013 are 154 and 109). 195 victims of forced labour were taken into government run shelters. In some cases, the NGOs who worked with government teams reported that local Thai officials had limited experience and understanding of trafficking. For example,

some official did not recognise debt bondage or manipulation of migrant workers fear of deportation as a form of coercion, or forced labour in cases of migrant workers having originally consented to work but having been deceived about working conditions.<sup>44</sup>

MWRN has recently criticised the use of government shelters to hold all victims of human trafficking as a precondition for them to receive compensation or retain victim status, including those migrant workers who are not seeking witness protection, rehabilitation or other support services and who have entered the country legally and have expressed willingness to leave the shelters. In shelters, the victims have their freedom of movement restricted and cannot, for example, seek or attend work freely. In some cases, this kind of incarceration policy may discourage other victims of trafficking from coming forward to report alleged cases of human rights violations for fear of being held in these shelters for extended periods of time.<sup>45</sup>

43 UN, 2000, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

44 US Department of State, 2015, *Trafficking in Persons Report*, pages 332 and 333, available at <http://www.state.gov/documents/organization/245365.pdf>

45 MWRN, 25 April 2016, *Thailand's human trafficking policy leads to involuntary detention of Myanmar migrant broker exploitation victims*

## 2. Regularisation

Irregular migrant workers who are already in Thailand have in the past frequently been able to regularise their status through a two-step process of registration and nationality verification. The first step of registration regularises their employment status but not their immigration status. The immigration status of registered migrant workers remains “pending deportation”.<sup>46</sup> Registered migrant workers can then regularise their immigration status by completing step two of nationality verification. Although all registered migrant workers are in theory required to enter the nationality verification process at the earliest opportunity, many don’t or the process is significantly delayed.

Migrant workers who have completed the regularisation process are entitled to the same rights and protections under the Thai laws as MoU workers who enter the country regularly in the first place. In practice these workers suffer from the same barriers as MoU workers in accessing their rights and benefits.

### 2.1 REGISTRATION

Thailand allows irregular migrant workers to obtain the legal right to live in the country if they complete Temporary Stay Registration (Tor Ror 38/1) with the Ministry of Interior during a ‘registration amnesty’. After completing the registration process with the Ministry of Interior, registered migrant workers can report to the Ministry of Labour and, subject to a health exam, receive a Thai government issued photo ID card for non-Thai nationals (currently known as a ‘pink card’) which since 2014 has doubled as a work permit and also a health insurance card. The pink card is typically issued for up to one year at a time with up to 10 years validity.

The periodic registration amnesties were introduced unilaterally by the Thai government in the mid-1990s in recognition of a growing number of irregular migrant workers

in the country. They have since been in use on a near annual basis, most recently in 2014. These amnesties were originally limited to border provinces and a few work sectors but were rolled out nationwide and to all low-skilled work sectors by 2001. In 2004, registration was offered free of charge. That year, 1.2 million migrant workers were registered, the majority of whom came from Myanmar.<sup>47</sup> During the 2014 registration amnesty, nearly 1.6 million migrant workers were registered.<sup>48</sup>

The travel of registered migrant workers within Thailand is generally restricted to the province where they are employed. Registered migrant workers are not eligible to enrol Thailand’s social security scheme but they are in theory entitled to health care under the migrant health insurance scheme (which they have to pay for themselves) and all rights and protections under the Labour Protection Act. In practice, similar obstacles as those described above prevent their ability to access such benefits in practice.

### 2.2 NATIONALITY VERIFICATION

According to the article 3 of the MoUs mentioned above, “The authorised agencies (i.e. ministries of labour) of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.”

To implement this provision, the system of nationality verification was created as a way to regularise irregular (or rather, semi-regular i.e. registered) migrants who were

47 ILO, 2015, *Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries*, page 5. See also Mekong Migration Network, 2013, *Migration in Thailand: Timeline of facts and figures*

48 IOM, 2014, *Migration Information Note 25*, available at <http://th.iom.int/index.php/migration-resources/facilitating-migration/migration-information-notes/Migration-Information-25-ENG/> (accessed on 3 May 2016)

46 Thailand, 2008, *Working of Alien Act*, Article 13



Since 2014, migrant workers have been able to complete the registration process in One Stop Service Centres in each of Thailand's 77 provinces. Authorities should ensure that the centres are adequately resourced and that sufficient translation services are available.

already living and working in Thailand. MWRN were heavily involved in the evolution of this process with the Myanmar government. Now, all registered migrant workers are in principle required to enter the nationality verification process within a certain time period following the end of a registration amnesty – otherwise their pink card/work permit will expire.<sup>49</sup> By completing the nationality verification process, migrant workers who have undergone the registration process can remain working legally in Thailand for up to six years and obtain a passport or certificate of identity (CoI) as well as a Thai visa and work permit.<sup>50</sup>

Like the MoU recruitment process, the 13-step nationality verification system is complex to navigate and as such many employers and migrant workers have turned to brokers and/or recruitment agencies for help and assistance to navigate the process (see appendix 2).

The nationality verification process is further complicated by the fact that the system is

under-resourced leading to delays and extensions of deadlines and suffers from poor coordination between countries involved. No clear timelines for processing documents again opens avenues for corruption and lack of transparency. To facilitate the nationality verification process, the country of origin has to send officials to Thailand to issue passports to their nationals but typically the nationality verification centres are overwhelmed with the number of applications and cannot issue passports to all applicants within the time-limits set by the Thai authorities.

Although the purpose of the nationality verification is to confirm a person's identity and personal details, Finnwatch and MWRN have documented several cases of for example underage workers from Myanmar having obtained passports with inaccurate date of birth that state their age as over 18. According to these workers, the authorities have simply used the details they have given them at the time without checking the details further.<sup>51</sup> As a further sign of the lax nature of the former, expensive nationality verification process, the Myanmar government did not for example, recognise the previously issued temporary passports to migrant workers as sufficient verification of identity for them

49 Thai Cabinet decision on Nationality Verification etc, 19 January 2010, unofficial English translation available at <http://www.burmalibrary.org/docs08/Nationality-verification%28en%29.pdf>

50 Unregistered migrant workers cannot enter the nationality verification process. A short-lived exception to this rule, was the regularisation process in 2013 when unregistered migrant workers were also able to enter the nationality verification process. For more information see Natali, C., McDougall E. and Stubbington S., International migration policy in Thailand. In IOM, 2014, Thailand Migration Report 2014

51 See for example Finnwatch 2015, On the borderline of responsibility; 2014, Caring for hands not workers; 2014, Out of a ditch, into a pond

to be able to register to vote in the 2015 general election.<sup>52</sup> More recently, Myanmar has stated that from 2016 it will issue Col as

52 See for example Myanmar Times, 10 July 2015, Complex procedures dull interest in election, available at <http://www.mmtimes.com/index.php/national-news/15435-complex-procedures-dull-interest-in-election.html> (accessed on 3 May 2016). By completing the national verification process, registered migrant workers can obtain a 'temporary' or 'ordinary' passports or a certificate of identity (Col) issued by their home government. Unlike an ordinary passport which is recognised and can be used anywhere, a temporary passport can only be used for travel between a migrant worker's home country and Thailand. Lao nationals obtain a one-year temporary passport, Cambodian nationals a three-year ordinary passport. Myanmar nationals used to obtain a six-year temporary passport but since 2012 have been issued with a five-year ordinary passports.

a stepping stone to a later nationality verification process to workers with pink cards who do not have Myanmar household registration or ID cards. Workers with the latter documents can apply for ordinary passport at the Myanmar Embassy in Bangkok (see text box on page 19).

## Migrant workers in the fisheries

Migrant workers in the fishing or seafood related industries have since 2014 been able to register in a separate bi-annual registration process. The official cost of registration for migrant workers in these sectors in 2015 was between THB 3,160 – 3,180 (EUR 80), including non-Thai ID card, work permit for one year and one year health insurance.<sup>53</sup>

In recent years, increasing international attention has been paid to the dire working conditions in Thailand's fishing industry. During years 2014 and 2015, numerous reports were published detailing serious problems in Thai fisheries including bonded labour, trafficking, extreme violence and even killings.<sup>54</sup> Although there are no official statistics of fatalities or injuries in the fishing industry, a recent survey of fishers found that 21 per cent of them had experienced an accident at work requiring

medical attention at a clinic or hospital.<sup>55</sup> The situation is exacerbated by both overcapacity in the sector and overfishing. On one hand, increased competition between fishing fleets due to overcapacity creates pressure to reduce the costs. At the same time, overfishing pushes the fishing fleets further out in the sea, increasing the cost. In order to remain profitable, fishing fleets rely on cheap migrant labour, including trafficked labour, and workers at sea are required to work longer hours and fish in remote areas with fewer visits to shore, increasing their vulnerability to exploitation and abuse.<sup>56</sup>

In an attempt to protect the workers in fisheries, ministerial regulations have been adopted which apply specifically to fishing boats and include provisions on pay, rest periods, written employment contracts, sick leave, and minimum age.<sup>57</sup> The effectiveness of these measure depends on their implementation and oversight. A possibly important tool to ensure effective enforcement are increased labour inspections at sea.

53 IOM, 2015 and 2016, Migration Information Notes 27 and 28, available at <http://th.iom.int/index.php/component/remository/facilitating-migration/migration-information-notes/orderby,1/page,8/?Itemid=0> (accessed on 3 May 2016)

54 See for example Associated Press, 25 March 2015, Are Slaves Catching Fish You Buy?, available at <http://bigstory.ap.org/article/b9e0fc7155014ba-78e07f1a022d90389/ap-investigation-are-slaves-catching-fish-you-buy> (accessed on 1 October 2015), Guardian, 10 June 2014, Asian slave labour producing prawns for supermarkets in US, UK, <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour> (accessed on 1 October 2015).

55 Harkins, Benjamin, Social Protection for Migrant Workers in Thailand. In IOM, 2014, Thailand Migration Report, page 34

56 27 NGOs including Finnwatch, Letter to EU Commission regarding yellow card designation for Thailand, February 2016, available at <http://www.laborrights.org/publications/letter-eu-commission-regarding-yellow-card-designation-thailand> (accessed on 16 May 2016)

57 IOM, 2015, Migration Information Note 26

### 3. Changing jobs

MoU workers and migrant workers who have completed the nationality verification process are not free to change jobs as their work permit is tied to a particular employer. Changing employers is possible for regular and/or regularised migrant workers only under “the most necessary situations, including the employer’s death, an employer’s activities cease, an employer breaches the rights of workers or commits a violent act, or the employer does not act in accordance with the labour protection laws.”<sup>58</sup> As allegations of labour rights abuse are rarely investigated in Thailand, making a successful claim for changing jobs on the basis of abuse of rights, violence or breach of the labour protection laws is near impossible. The time-limits<sup>59</sup> and lack of clear guidelines also make it in practice impossible for most migrant workers to legally change employers. However, in practice migrant workers do sometimes change employers. This involves informal and unregulated processes and high fees paid to corrupt officials which are borne by the workers themselves.

An exception to the rule are the workers in Thailand’s fisheries and seafood processing sector who, following the introduction of new

legal protections aimed at improving their ability to escape rampant abuse in the sector (see text box on page 16 ), now can legally change their employers without restrictions within the industry. According to Ministry of Labour, as of November 2015, around 1,550 workers in the fishing industry had already done so.<sup>60</sup>

Migrant workers whose contracts of employment are terminated by their employers can take up new employment – provided that they can find new employment within set time-limits. However, depending on regional variations, the employer must generally provide the dismissed employee a letter known in Thai as bay jeng awk which the worker will then need to present to his or her new employer before their work permit can be changed under the new employer. Some employers charge the migrant workers irregular fees for the bay jeng awk letter.

The official cost of making changes to work permits due to change of employers irrespective of the reason is THB 900.<sup>61</sup>

58 Thai Cabinet Resolution, 19 January 2010. Unofficial English translation is available at <http://www.burmalibrary.org/docs08/Nationality-verification%28en%29.pdf>

59 The migrant workers wishing to leave their employer must complete the process of finding new employment – in the same work sector – within 15 days; confusingly migrant workers who become unemployed are at the same time required to leave Thailand within seven days. See for example ILO, 2015, Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries, page 21

60 Thailand, 2016, Trafficking in persons report 2015: The Royal Thai Government’s Response January 1 – December 31, 2015, page 14

61 IOM, 2010, Migration Information Note 4, available at <http://th.iom.int/index.php/migration-resources/facilitating-migration/migration-information-notes/Migration-Information-Note-4-FEB10-ENG/> (accessed on 25 January 2016)

## 4. Length of and extending stay

According to the MoUs, migrant workers can obtain a legal right to live and work in Thailand for maximum of four years.<sup>62</sup> Many migrant workers' rights groups and employers have protested the four-year stay limit in MoUs. Having invested in to training of their workers, the employers would like to be able retain their workforce beyond the limits set in the MoUs.

Initially, the intention was that upon completion of their terms of employment, migrant workers should return to their home country for a minimum of three years before they could return to Thailand for work. In March 2015, the length of the required break period was reduced to 30 days although this has not been formally changed in the MoUs.<sup>63</sup>

The first MoU workers from Myanmar entered Thailand in 2010 and completed their four years of employment in 2014. Instead of returning home, many of them have overstayed their visas in Thailand and become irregular. Some of these workers would have simply thrown away their passport and registered during the 2014 registration amnesty using a different name.<sup>64</sup> As a result, they would no longer have been entitled to social security including workmen's compensation for accidents and injuries at work place and had their freedom of movement restricted to the province of registration in Thailand. To

restore their regular status and subsequent entitlement to social security and freedom of movement, such workers would have had to complete the nationality verification process and pay the fees all over again.<sup>65</sup>

Migrant workers who have completed the two-step regularisation process have been able to obtain work permits for between four and six years, and as of February 2016, some of them have been able to extend their stay with a further two years until 2018. Migrant workers from Myanmar who completed the nationality verification process at the earliest opportunity in 2009 completed their four years of employment in Thailand at the end of 2013. At the time, there were no clear guidelines or policy on how those workers who wanted to continue working in Thailand could legally extend their stay. In practice, many lapsed to an irregular status.<sup>66</sup>

Since this time, the Thai authorities have continued to issue ad-hoc, temporary measures allowing migrant workers who have completed the registration or the two-step regularisation processes to extend their stay for two more years at a time (see text box on page 19). Notably, these extensions have not, seemingly discriminatorily, been available to MoU workers. Often the temporary measures have been announced so late that in the absence of clear instructions, many migrant

62 Article 9, MoU between the government of the Kingdom of Thailand and the government of the Union of Myanmar on cooperation in the employment of workers

63 IOM, 2015, Migration Information Note 26. See also Article 9 of the MoUs. The MoUs also include provisions for a repatriation fund to which migrant workers would have been required to contribute a percentage of their salary which they then could have accessed after having left Thailand and returned to their permanent address within a required timeframe after having complete four years of continuous employment – the fund has however, never been implemented.

64 Myanmar nationals often have multiple names, and changing one's name is easy.

65 See MWRN, 2015, Appeal to address challenges faced by migrant workers in Thailand, available at <https://www.facebook.com/youy5958941/posts/920252438067058> (accessed on 3 May 2016)

66 Following numerous protests, in March 2014, the Thai government issued a resolution granting migrant workers from Cambodia, Laos and Myanmar who had completed four years of employment a temporary grace period of 180 days to continue living and working in Thailand. During this time, the workers were able to apply for a non-immigrant visa the length of which was determined according to the remaining validity of their passport, and if they then reported to a One Stop Service Centre they would have received a work permit valid until the end of March 2015. At the expiry of their work permits, many would have become irregular again. See IOM, 2014, Migration Information Notes 23 and 24, available at <http://th.iom.int/index.php/component/remote/facilitating-migration/migration-information-notes/orderby,1/page,7/?Itemid=0> (accessed on 3 May 2016)

workers would have made (costly) arrangements to return home for the purpose of renewal of their work permits based on outdated information and assumptions. Furthermore, the authorities typically publicise these policy changes in the media but most migrant workers do not speak or read Thai and many are illiterate. As such, the impromptu policy changes further increase their reliance on brokers and recruitment agencies, and they have been criticised as “money-making schemes”.<sup>67</sup>

### **Poor coordination between countries and lack of administrative resources exacerbate the situation:**

#### **Case of 2014 registration amnesty and nationality verification**

During the 2014 registration amnesty which lasted from June to October 2014 more than 1.6 million migrant workers and their dependants were registered. More than 600,000 of the the workers were from Myanmar, nearly 700,000 from Cambodia and over 200,000 from Laos.<sup>68</sup> The high number of registered workers during the 2014 registration amnesty is partly explained by opening of One Stop Service Centre in each of Thailand’s 77 provinces that year where workers could complete the registration process more easily than before.

During the 2014 registration amnesty, the official cost of the necessary documents were as follows: registration document THB 80 (EUR 2), health examination THB 500 (EUR 12), and medical insurance for one year THB 1,600 (EUR 40). Registered migrant workers were in 2014 given pink cards/work permits that were valid for eight months (or until 31 March 2015) at a cost of THB 900 (EUR 22). The total official cost of the registration process therefore during the 2014 amnesty was THB 3,080 (EUR 77).<sup>69</sup> However, as the workers and their employers would typically engage a broker/recruitment agency to help them to navigate the process, the workers would pay inflated prices well over the official cost for the documents and a high service fee on top.

After having completed the registration process, the migrant workers were expected to enter the nationality verification process and complete it before the expiry of the pink cards/work permits on 31 March 2015.

68 IOM, 2014, Migration Information Note 25

69 IOM, 2014, Migration Information Note 24, available at <http://th.iom.int/index.php/migration-resources/facilitating-migration/migration-information-notes/Migration-Information-24-ENG/> (accessed on 3 May 2016). The cost of registration can vary between different amnesties as policies change; there is also variation in the cost of work permit depending on length of validity and work sector. Different cost pertain to dependants of migrant workers.

67 See for example Myanmar Times, 8 March 2016, Workers in Thailand told to re-register for pink cards, available at <http://www.mmmtimes.com/index.php/national-news/19233-workers-in-thailand-told-to-re-register-for-pink-cards.html> (accessed on 3 May 2016)

Upon completion of the nationality verification process, migrant workers received a passport from their home governments, and a Thai visa and work permit which will be valid until March 2016, and a permission to continue working for the next two years after March 2016.<sup>70</sup>

The official cost of nationality verification process during the October 2014 – March 2015 window consisted of visa fees at THB 500 (EUR 12) and a work permit application fee and work permit fee totalling THB 1,000 (EUR 25). In addition, migrant workers are generally required to cover the cost of a passport, which depends on the country of origin and processes involved.<sup>71</sup> As above, most of the migrant workers and their employers would have been using the services of a broker/recruitment agency to facilitate the nationality verification process, and the workers would have paid inflated prices for the documents and a high service fee.

By the March 2015 deadline, only about 200,000 of the 1.6 million registered migrant workers had completed the nationality verification process. The director-general of the Thai Ministry of Labour's Department of Employment identified two reasons behind the low number: inadequate resources allocated to nationality verification centres and migrant workers not being in the possession of the required documentation to complete the process.<sup>72</sup>

Those migrant workers who had not received a passport from their home government by the 31 March 2015 deadline (but whose pink card/work permit issued during the registration amnesty had expired) were then required to report to the One Stop Service Centre to apply for a new work permit before the end of June 2015. The official cost of the new work permit, and other necessary documents and a health check and medical insurance, was THB 3,160

(EUR 79). As above, many migrant workers would have paid much more to their broker or agency. The new work permits were valid until 31 March 2016.

By the initial June 2015 deadline, a significantly lower number of migrant workers than expected had applied for a new work permit. For example, compared with more than 600,000 migrant workers from Myanmar who registered before the October 2014 deadline, only around 430,000 had extended their pink card status within the time-limit. In other words, nearly 200,000 of them had become irregular and risked deportation or had returned home.

Furthermore, the government of Myanmar unilaterally announced in August 2015 that instead of issuing passports to most of the 436,154 migrant workers due for nationality verification before 31 March 2016 deadline, it would be issuing them with CoIs instead. Only those workers in possession of a Myanmar ID card and household registration could apply for a passport. Those issued with a CoI could apply for a passport at a later stage when they had obtained the necessary documents – a requirement that for many of the workers would mean a time-consuming and an expensive trip home. However, the Thai government was quick to announce that they would not recognise CoIs in lieu of passports and thus would not be able to issue the migrant workers with CoIs visas and work permits. The Myanmar government withdrew its plan to issue migrant workers with CoIs in December 2015. The likelihood of the Myanmar government being able to issue passports to the migrant workers instead by the 31 March 2016 seemed low.

In February 2016, the Thai government announced that migrant workers who were holding a pink cards due to expire in 2014, 2015

70 IOM, 2014, Migration Information Note 26

71 IOM, 2014, Migration Information Note 24

72 Myanmar Times, 23 July 2015, Millions of migrant workers miss out under new programme, available at <http://www.pressreader.com/myanmar/the-myanmar-times/20150723/281943131575972/TextView> (accessed on 2 October 2015)

or 2016 as well as those migrant workers who have completed the nationality verification process and four or six years of employment (or who have a passport and valid or expired visa or a passport but not visa), should re-register for pink cards between 1 April and 29 July 2016. Subsequently they would be allowed to live and work in Thailand until 31 March 2018.<sup>73</sup>

The official costs associated with this latest re-registration are as follows: medical examination fee THB 500 (EUR 12), two-year health insurance THB 3,200 (EUR 80, for those migrant workers who are not eligible for social security only), two-year work permit THB 1,800 (EUR 45), application fee THB 100 (EUR 2,5) and a possible counter-service fee of THB 10 (EUR 0.25) depending on where they pay the fees.

Pending the February 2016 policy announcement, many of the registered migrant workers would have invested in travel to their home country in order to obtain the necessary documents to complete the nationality verification. The new policy which allows them to only extend their pink card status, renders this retroactively unnecessary.

For migrant workers who have already completed the nationality verification process, and whose status in Thailand is that of a regular migrant, will now be “downgraded” to a semi-regular status. There are concerns that this means that their travel within Thailand will now be restricted and they are no longer entitled to social security benefits including compensation for accidents at work – even though for at least the past two years, they have been paying social security contributions. In April 2016, Myanmar and Thailand however announced informally that CoI would soon be issued to migrant workers with pink cards to enable freedom of movement and ensure access to the social security fund.

73 See MWRN, 2016, Observations and recommendations regarding the implementation of the cabinet resolution on the management of alien labour in 2016, available at <https://www.facebook.com/youy5958941/posts/969517999807168> (accessed on 3 May 2016); IOM, 2016, Migration Information Note 29

## 5. Recommendations to Governments

ILO recommends that good governance of labour migration should include the following basic principles: consistency with international standards and good practices, policy coherence, gender sensitivity, transparency and flexibility, social dialogue, and formulating of policies based on evidence or data.<sup>74</sup>

The existing policies and procedures pertaining to low-skilled in-bound migration for employment to Thailand are outdated. Based on the premise that such migration is short-term in nature and in and of itself, a national security threat, these policies do not meet the current needs of the labour market and are inadequate to protect the rights of the migrant workers. Of particular concern are the gaps in law and practice on registration, licensing, monitoring and sanctioning of brokers and recruitment agencies. The fees charged by brokers and agencies add to the overall cost of recruitment and reduce the amount of remittances that migrant workers are able to send back home – often a significant factor in the economy of the sending countries. Such fees can, and regularly do, contribute to situations of debt bondage akin to human trafficking.

Under international human rights law, migrant workers are recognised as a vulnerable group in need of special protection. The UN International Convention on the Rights of Migrant Workers and Their Families builds on the existing principles embodied in other human rights treaties such as the International Covenants on Civil and Political Rights, on Economic, Social and Cultural Rights, on Elimination of All Forms of Racial Discrimination, on Elimination of Discrimination Against Women, on Rights of the Child and on ILO Conventions. It protects the rights of all migrant workers and their families, irrespective of their irregular or regular status. Thailand, Laos and Myanmar have not signed the Migrant

Workers Convention. Cambodia signed the treaty in 2004 but has not ratified it yet.

### Thailand

The Thai authorities should devise, adopt and implement in law and in practice a holistic, long-term in-bound migration policy for low-skilled migrant workers in accordance with human rights principles and respective of the needs of the labour market. Such policy should be developed in cooperation with the sending countries and in consultation with the migrant workers representatives and include specific measures aimed at eradication of exploitative recruitment practices and fees that can lead to forced labour and human trafficking.

Pending such policy introduction, the Thai authorities should urgently:

- seek to encourage through available means that employers and establishments directly employ and process employment for migrant workers themselves
- introduce legislation or regulations that assign recruitment fee costs to employers or establishments in line with international standards. Pending this, clear recruitment fee limits should be set for costs to be borne by workers
- introduce effective registration, licensing, monitoring and sanctioning of recruitment agencies or brokers importing migrant workers to Thailand or facilitating regularisation processes and ensure agencies are not acting simply as a legal cover for irregular broker practices
- introduce time-limits for processing documentation involved in MoU process or regularisation such as quotas, work permits or immigration documents for migrant workers and allocate adequate resources and translators to One Stop Service Centres

<sup>74</sup> ILO, 2015, *Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries*, page 27

- introduce a grace period for migrant workers who have completed their terms of service during which the procedures for extending stay beyond four or six years should be clarified
- revise the provisions relating to change of employers with a view to increasing flexibility for all migrant workers to change employers and clarifying procedures while ensuring that adequate time is allocated for the completion of the process of changing employers
- ensure improved dissemination of information on human rights, labour protection laws and social security provision in Thailand to migrant workers coming into the country for the first time and when registering and changing employers
- ensure improved dissemination of information and training on human rights, labour protection laws and social security provisions pertaining to migrant workers in Thailand to provincial and local level authorities, including police
- strengthen existing and introduce new complaint mechanisms as necessary to ensure that migrant workers have effective channels to report recruitment related abuse and seek remedy, including cross-border mechanisms especially for cases involving contract deception
- promptly, independently and impartially investigate allegations of abuse of migrant workers rights, including cases involving allegations of corruption between brokers, recruitment agencies and/or employers and government officials
- revise the Labour Relations Act with a view to guaranteeing migrant workers equal right to freedom of association as Thai nationals
- ratify, incorporate into domestic law and implement in policy and practice
  - ILO Conventions 181 on Private Employment Agencies, 97 on Migration for Employment, 143 Migrant Workers (Supplementary provisions), 87 on Freedom of Association and Protection of the Right to

Organise, and 98 on Right to Organise and Collective Bargaining

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>75</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

### **Governments of Cambodia, Myanmar and Laos should:**

- devise, adopt and implement in law and in practice a holistic, long-term out-bound migration policy for low-skilled migrant workers in accordance with human rights principles. Such policy should be developed in consultation with migrant workers representatives and include specific measures aimed at eradication of forced labour and human trafficking
- cooperate with increasing effectiveness with the governments of destination countries on addressing migration challenges and recruitment issues, including in handling recruitment related complaints
- ensure effective registration, licensing, monitoring and sanctioning of agencies involving in sending low-skilled migrant workers to neighbouring countries and ensure agencies are not acting simply as a legal cover for irregular broker practices
- allocate adequate resources to nationality verification centres and simplify the requirements for documentation need to complete the process
- ensure improved information about the labour rights in destination countries is provided to migrants leaving the country for the first time and explain clearly complaint mechanisms available to workers in destination countries

<sup>75</sup> Only 48 countries worldwide have ratified the Migrant Workers Convention. Finnwatch has also urged the government of Finland to ratify the treaty, see [http://www.finnwatch.org/images/ruggie\\_kirjallinen\\_lausun-to\\_0606\\_final.pdf](http://www.finnwatch.org/images/ruggie_kirjallinen_lausun-to_0606_final.pdf) (in Finnish)

- strengthen the services provided by embassies in destination countries to migrant workers
- promptly, independently and impartially investigate allegations of corruption between employers, brokers and recruitment agencies and local authorities including in recruitment of migrant workers
- ratify, incorporate into domestic law and implement in policy and practice
  - ILO Convention 181 on Private Employment Agencies
  - International Convention on the Protection of the Rights of All Migrant Workers

## PART 2 – Company recruitment policies and practices

Common violations of migrant workers rights during recruitment include charging of recruitment fees to the workers, contract deception and retention of identity and/or travel documents. The latter two are indicators of forced labour<sup>76</sup> whilst high recruitment fees are often a contributing factor in situations of debt bondage. Migrant workers tied to their employer through debt are at high risk of labour exploitation and other human rights violations. Those unable to leave their job without risking the loss of their personal documents are unable to seek help or access services. Those who have been recruited through deception cannot be considered to have freely chosen their employment and may be victims of human trafficking.<sup>77</sup> Thus, acknowledging and addressing potential human rights violations

at the recruitment stage is key to preventing and mitigating other violations, including some that might only appear at later stages of the employment cycle. A comprehensive and transparent responsible recruitment policy for migrant workers is one means to achieving increased protection of migrant workers. Another key means to address recruitment related abuses is inclusion of the recruitment stage to all human rights due diligence processes and social audits.

In Thailand, the lack of effective complaints mechanisms further exacerbates migrant workers vulnerability to abuse and contributes to widespread impunity for recruitment related abuse. Operational level grievance mechanisms are one way through which the access to justice of victims of recruitment related abuse could be improved. Such grievance mechanisms could also function as early detection mechanisms for other issues and improve the communications between the migrant workforce and management in companies. Existing limitations on migrant workers ability to form and join trade unions further require responsible companies to put in place mechanisms to encourage social dialogue as a means to enable migrant workers organising to drive and sustain betterment of working conditions and terms of employment, including responsible recruitment practices.

76 ILO, Indicators of forced labour, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/--declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--declaration/documents/publication/wcms_203832.pdf). In June 2014, ILO adopted a new protocol on forced labour. The protocol is a supplement to the Forced Labour Convention and among other things, emphasises protection of migrant workers from possible abusive and fraudulent practices during the recruitment and placement processes. At the time of its adoption, Thailand was the only country to vote against the protocol but due to fierce criticism, it later recanted its position. See for example Nation, 15 June 2014, Thailand reverses earlier decision, backs ILO protocol on forced labour, available at <http://www.nationmultimedia.com/national/Thailand-reverses-earlier-decision-backs-ILO-proto-30236260.html> (accessed on 4 January 2016)

77 ILO, Operational indicators of trafficking in human beings, available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf)

## 6. Recruitment fees

Migrant workers are typically charged all or some of the following types of recruitment related fees: recruitment agency service fees on one or both sides of the border; different type of charges for documents such as visas, work permits, origin country labour cards, passports, quotas and permission letters; fees for applications and postage thereof; cost of health examination and medical insurance; training course fees (including accommodation, electricity, water and food during the course); contract signing fees; and transportation or food costs and luggage fees during what can often be a several months process of travel between origin country villages, cities and eventually the destination country and factory. Some of these charges are incurred in the origin country and others in the destination country during job placement. In addition, migrant workers are also charged fees for the renewal of the above mentioned documents, for changing employers, and sometimes for 90-day reporting which every foreign national residing in Thailand for more than 90 days is required to do every three months. Finnwatch and MWRN have also documented several occasions where migrant workers had been charged other irregular fees which might be corruption-related.

The fees that are being charged to the migrant workers are typically unspecified and appear far removed from the true cost of services provided. The Thai authorities do not regulate or place limits to the amounts that recruitment agencies can charge, and charging all costs to workers is standard practice. Instances of workers paying for toilet and shower facilities and even tissue have been documented during stays at border areas. Finnwatch has documented recruitment fees as high as THB 19,000 (approximately EUR 470) charged to the migrant workers from Myanmar in Thailand. Of the 14 factories producing goods for the export market investigated by Finnwatch in Thailand since 2012, workers reported no recruitment fees whatsoever only on two

occasions. In both those cases, the factories in questions were employing irregular and undocumented migrant workers who were working in Thailand illegally.<sup>78</sup>

Although the cost of documents such as Thai visas and work permits is supposedly officially set, the extensive involvement of brokers and recruitment agencies in assisting workers and employers to navigate the processes for legal entry and regularisation – and for document renewals – means that migrant workers typically pay inflated prices for the documents and the renewal thereof. Finnwatch has documented documentation fees as high as THB 14,000 for a work permit (EUR 350) and THB 12,000 for a passport (EUR 300).<sup>79</sup>

Finnwatch has documented fees in association with a change of employers up to THB 3,000<sup>80</sup> (EUR 75) for bay jeng awk on top of which the worker would typically be required to pay recruitment fees associated with the new job. For the 90-day registration the workers have reported being charged fees as high as THB 150 (EUR 4).<sup>81</sup> There is no legal basis or official cost associated with either of these procedures.

According to migrant workers testimony during interviews on Finnwatch research, the workers have typically paid all or most of these fees to an employing company's human resources staff, company translators, or brokers or recruitment agency staff. In some cases the fees have been deducted from the workers' salaries over a period of

78 Finnwatch, 2015, *On the borderline of responsibility – Case studies on the production of Tokmanni's own imports products in Thailand*; 2013, Halvalla on hintansa (Cheap has a high price)

79 Finnwatch, 2014, *Out of a ditch, into a pond*, available at [http://www.finnwatch.org/images/finnwatch\\_out\\_of\\_a\\_ditch\\_into\\_a\\_pond.pdf](http://www.finnwatch.org/images/finnwatch_out_of_a_ditch_into_a_pond.pdf)

80 Finnwatch, 2014, *Out of a ditch, into a pond*

81 Finnwatch, 2015, *Employment available in exchange for debt*

time even when Thailand's Labour Protection Act does not permit such salary deductions.<sup>82</sup>

Many migrant workers also report being required to pay corruption related and other irregular fees allegedly passed on from payments made by brokers and recruitment agencies to officials. In Finnwatch and MWRN's experience, this situation also applies to those migrant workers who have come to Thailand initially on a tourist visa, overstayed their visa, and who therefore were illegally in the country at the time of recruitment but in a possession of a passport.<sup>83</sup> Some migrant workers have reported monthly "recruitment agency fees" up to THB 600 (approximately EUR 15), or in some cases, an annual payment of around THB 1,000 (approximately EUR 25) which they say are in reality corruption related fees to local authorities and police channelled through the agencies.<sup>84</sup>

The above described fees are often extortionate or excessive for migrant workers who are typically paid the legal minimum wage of THB 300 (EUR 7) per day or less and come from conditions of relative poverty or economic hardship. Many migrant workers take loans at a high interest rate or offer their possessions (such as their family land or home in their country of origin) as securities against repayment. Thus, high recruitment fees often lead to situations of serious indebtedness and bind the worker to the employer, creating a significant imbalance of power between the

82 The Labour Protection Act (article 76) allows salary deductions only for the following purposes: (1) payment of income tax in an amount shall be paid by an employee or other payments provided by law; (2) payment of labour union dues according to the regulations of a labour union; (3) payment of debts owed to the saving cooperatives or other cooperatives of the same description, or of debts relating to beneficial to of the employee solely, with the prior consent of the employee; (4) payment as a deposit under Section 10, or as compensation to the employer for damage caused by the employee either wilfully or with gross negligence, with the prior consent of the employee; or (5) payment as contributions under an agreement relating to a provident fund.

83 Since August 2015, Myanmar nationals have been able to enter Thailand visa free for the duration of 14 days per entry. Nationals of Cambodia and Laos can enter Thailand visa-free for 30 days.

84 Finnwatch, 2014, Out of a ditch, into a pond; 2015, Employment available in exchange for debt

**Debt bondage** means "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." Under such circumstances, a migrant worker can more easily be manipulated to compromise on their contractual rights and/or to accept lower wage, longer working hours and poor working or living conditions. In addition, workers ability to change their place of employment, challenge or report on their treatment or seek redress is also be severely hampered. Debt bondage is also one of the ILO indicators of forced labour, and under certain circumstances, it can also constitute forced labour in itself.

two. Workers families can face challenges in home villages if a worker is not able to repay debt promptly on arrival to Thailand. Due to debt, the first few months after arrival in Thailand is often the most challenging time for such migrant workers.

Although Thailand's Working of Alien Act appears to at least imply that the employer should bear the cost of recruitment, or at least the work permit,<sup>85</sup> the Thai employers typically in their responses to Finnwatch have considered it only appropriate or natural that migrant workers should pay the "market price" for the documents themselves.

85 Thailand, 2008, Working of Alien Act, Article 11 "[W]hoever desires to engage an alien living abroad to work for his business in the Kingdom may apply for the permit and pay fee on behalf of that alien."

However, the ILO Convention 181 on Private Employment Agencies<sup>86</sup> clearly indicates that the employer and not the worker should bear the cost of recruitment. According to the Article 7 of the Convention, “[p]rivate employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.” Any exceptions should be in the interest of the workers concerned, and implemented only after consulting the most representative organisations of employers and workers. Echoing the ILO Convention, the International Confederation of Private Employment Agencies Ciett also forbids its members from charging fees to the workers.<sup>87</sup>

Recently, and as a result of dialogue between Finnwatch, MWRN and companies, some larger employers and industry associations in Thailand have recognised the negative impacts of charging all of such high recruitment fees to migrant workers and agreed to cover the fees, at least in part, themselves. In addition, there is increasing evidence of companies understanding the weaknesses and challenges of using subcontract agencies to recruit migrant workers or process documents and therefore, making a commitment to hire workers directly.

For example, Thai Union Group recently announced a new “zero recruitment fees” policy in all its factories and processing

plants.<sup>88</sup> MWRN is involved in monitoring of the implementation of the policy. Thai Union Manufacturing (TUM), part of the Thai Union Group, already earlier made a commitment to support migrant workers in paying documentation fees. The workers at TUM in 2015 only paid the official costs of documentation and health checks whereas the company covered the additional fees charged by the agency that was responsible for processing documents.<sup>89</sup> Similarly, Charoen Pokphand Foods, an agro-industrial and food conglomerate, has adopted a specific foreign labour hiring policy according to which the company will bear the hiring process related fees in the country of origin and in Thailand. However, in both cases migrant workers are still required to pay some expenses, such as passport, visa and health checks, and as a significant shortcoming in the Charoen Pokphand Foods case, no external oversight of the implementation of this policy has been overtaken. Whereas these are welcome steps, companies are encouraged to further work towards the situation where no recruitment related fees be charged to the workers at all, and the responsible recruitment policy is implemented, and its implementation monitored, throughout their supply chains.

86 Private employment agencies were looked upon unfavourably and even banned in many countries during much of the twentieth century. The ILO Convention No 181, which came into force in 2000, was developed in recognition of the positive role that recruitment agencies can play in improving efficiency of labour markets to regulate such agencies and to help prevent human trafficking and other forms of labour exploitation. Thailand has not ratified the Convention. So far, only 31 countries have. One possible contributing factor towards its low ratification rate is the principle of no-fees-charged-to-the-worker. Instead of a total ban on recruitment fees charged to the worker, many countries still prefer to set limits to the amounts that can be charged.

87 Ciett, 2015, Code of conduct, available at ADD Link. Ciett has no members in Thailand. Ciett is involved in the design and implementation of ILO’s Fair Recruitment Initiative.

88 Thai Union, 28 April 2016, Thai Union leads in opting for zero recruitment fees policy – a major step towards eliminating potential abuses of labor and human rights welcomed by migrant rights group, available at <http://tu.listedcompany.com/newsroom/20160428-tu-news1-en.pdf>

89 Finnwatch, 2015, Improvements at tuna fish factories in Thailand, available at [http://www.finnwatch.org/images/pdf/Finnwatch\\_followup\\_tuna\\_2015.pdf](http://www.finnwatch.org/images/pdf/Finnwatch_followup_tuna_2015.pdf)

*Charoen Pokphand Foods foreign labour hiring policy:*<sup>90</sup>

- when hiring migrant workers, the company shall not use any form of labour subcontractors in Thailand but rather hire workers directly
- when migrant workers are recruited in their country of origin, an authorised recruitment agency shall be used
- the company shall bear any recruitment related costs both in the country of origin and in Thailand. The workers shall cover personal expenses such as passport and visa fees, and fees for medical check-up.

*The Electronic Industry Citizenship Coalition (EICC) Code of Conduct:*<sup>91</sup>

“Workers shall not be required to pay employers’ or agents’ recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.”

*SA8000 International Standard:*<sup>92</sup>

“The organisation shall ensure that no employment fees or costs are borne in whole or in part by workers.”

*European Commission/Shift/IHRB Employment & recruitment agencies sector guide on implementing the UN Guiding Principles on Business and Human Rights:*

“All E&R agencies should follow industry good practice and make explicit commitments not to charge fees to workers, directly or indirectly, in whole or in part, for any services relating to work placement (such as for concluding a contract of employment). All such fees should be paid by the client company/user enterprise.”<sup>93</sup>

*Coca-Cola Company, HP Inc., Hewlett Packard Enterprise, IKEA and Unilever in May 2016 announced a collaboration – Leadership Group for Responsible Recruitment – to promote ethical recruitment and combatting the exploitation of migrant workers in supply chains and incorporating the “employer pays principle”:*<sup>94</sup>

- migrant workers should not be required to pay for their employment
- the costs and fees associated with recruitment, travel and processing of migrant workers should be covered by the employer, including pre-departure costs such as skills test, medical examinations; costs associated with documentation and permits; orientation and on-boarding; transportation and lodging, costs associated with return
- employers should pay the costs of recruitment directly. If this is not possible, migrant workers should be reimbursed by the employer.

*Thai Union ethical migrant recruitment policy:*<sup>95</sup>

- migrant workers must only be sourced from formally approved or registered/licensed recruitment agencies. Wherever and to whatever extend desirable, workers will be recruited directly
- the company covers recruitment fees and pre-department training fees, and food and drinking water during transportation, from the border or pre-department training point. The employee pays fees such as passport and visa fees, fees for medical check-up, accommodation during passport processing and work permit renewal related fees
- all workers will have access to remedy concerning recruitment process through monitoring and grievance mechanisms. These include, for example, independent third-party investigation of complaints by local NGOs.

90 Charoen Pokphand Foods, 31 March 2015, Memorandum on Foreign labor hiring in Thailand

91 EICC, Additional changes to EICC Code of Conduct. Approved on March 27, 2015, available at <http://www.eicc-coalition.org/media/docs/Approved%20Changes%20to%20EICC%20Code%20of%20Conduct%20A1.pdf>

92 Social Accountability International, 2014, Social Accountability 8000, page 8, available at [http://sa-intl.org/\\_data/n\\_0001/resources/live/SA8000%20Standard%202014.pdf](http://sa-intl.org/_data/n_0001/resources/live/SA8000%20Standard%202014.pdf)

93 European Commission/Shift/IHRB, 2013, Employment & recruitment agencies sector guide on implementing the UN Guiding principles on business and human rights, page 20, available at [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/employment\\_and\\_recruitment\\_agencies.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/employment_and_recruitment_agencies.pdf)

94 Leadership Group for Responsible Recruitment, 2016 Statement of intent, available at <http://www.ihrb.org/pdf/reports/IHRB-Statement-of-Intent-Employer-Pays-Principle-Leadership-Group-for-Responsible-Recruitment.pdf>

95 Thai Union, April 2016, Ethical migrant worker recruitment

## 7. Contract deception

Migrant workers often find themselves working under terms of employment and in workplaces or conditions that are significantly different than what was represented to them at the point of recruitment or departure. In particular, promises about high levels of earnings, provisions of housing or food are often used to convince prospective migrant workers to accept high recruitment fees.

In one of the more blatant cases documented by Finnwatch and MWRN, migrant workers at Vita Food Factory, a pineapple juice producer in Thailand, who had been recruited through the MOU process from Myanmar had been promised higher wages than what they were in fact paid, free accommodation and tools, and necessary documentation at a lower rate than what they were charged for it in the end. Some had also been under the impression that they were going to be working in Myanmar but were in fact taken over the border to work in Thailand. Others alleged they had been threatened with violence. The contract that they had been given, was an unofficial translation and allegedly a fake made by the recruitment agency.<sup>96</sup>

A common form of deceptive recruitment practices is contract substitution. Contract substitution occurs when the employment contract signed by the worker at his or her home country differs from the contract offered on arrival to the destination country or the actual employment conditions in practice. Typical examples include longer than expected working hours and unexpected deductions from salaries that render migrant workers' take-home pay lower than what they had been promised or even below the legal minimum wage limit. Deductions might be made to pay back recruitment related fees, to cover living expenses or as disciplinary measures or for damaged goods during production – even when such deductions are

illegal under Thailand's Labour Protection law (see page 27).

In addition, some workers may be asked to sign a blank contract paper, or a contract in a language that they don't understand, or are given a contract that bears no relation to their actual work place or working conditions.<sup>97</sup> Often native language contracts of employment state different conditions to official or standard contracts issued between Thailand and neighbouring countries and that must be signed as a condition of recruitment and documentation processing. Contracts that do not establish legally recognisable employment relationship between the employee and employer, are particularly problematic as they may not be endorsed in a court of law. This deprives workers of rights and access to remedy under national law in the country of employment should the employer want to contest the employment status.<sup>98</sup>

Deceptive recruitment practices are one of the ILO indicators of forced labour (and also an element of human trafficking). Under circumstances as those discussed above, a worker cannot be considered to have given their informed consent when signing the contract – or if the contract is a verbal contract, when agreeing to the terms as presented to them – and as such, to have chosen their employment freely as is their right under international human rights standards.<sup>99</sup>

Recruitment agencies commonly import migrant workers through the MoU process into Thailand with a view to subcontracting

<sup>96</sup> Finnwatch, 2014, *Out of a ditch, into a pond*. In this case, in addition to deceptive recruitment, several other indicators of human trafficking are also present.

<sup>97</sup> See for example Finnwatch, 2013, *Halvalla on hintansa* (Cheap has a high price)

<sup>98</sup> In Thailand, some recruitment agencies that are involved in import of migrant workers to the country, establish themselves as the employer of the migrant workers whose labour they then subcontract out. In such circumstances, there exists legal ambiguity over the statutory responsibilities of the agency for example in case of work-related accidents or injuries.

<sup>99</sup> See ILO Convention number 97 on Migration for Employment Convention, Annex; and, Article 23 of the Universal Declaration of Human Rights; Article 6 of the International Covenant on Economic, Social and Cultural Rights

their labour out once they are in Thailand, or sometimes simply to cheat them out of recruitment fees.<sup>100</sup> In such cases, the workers might have been recruited through false promises of a particular kind of a job and it is only upon arrival that they find out that there is in fact no job whatsoever available to them. When they have nevertheless paid the recruitment fees, and in some cases even taken out loans to cover the cost of recruitment, they are likely to accept jobs at much worse terms than what they had originally agreed to. Lack of jobs upon arrival is one of the most common reasons migrant workers seek advice from the MWRN legal advice centre in Thailand (see text box on page 34).

<sup>100</sup> See for example Finnwatch, 2014, *Out of a ditch, into a pond*

## 8. Retention of documents

Finnwatch and MWRN have documented a widespread practice of retention of migrant workers' original work permits, passports and even health insurance documents, social security cards, origin country labour cards, ID cards, and receipts for payment of documentation fees<sup>101</sup> by employers and recruitment agencies. Sometimes, but not always, migrant workers whose documents have been confiscated are in possession of photocopies of their documents only.<sup>102</sup> At least in two instances the reason why the employee has retained migrant workers' documentation has been the outstanding debt (due to unpaid recruitment and/or documentation fees).<sup>103</sup> In one case, workers who had their passports and work permits confiscated had to pay THB 10,000 in order to get them back when their employment contracts were terminated.

Some migrant workers whose documents are retained have reported that they are able to access their original documentation against a deposit for the purpose of visiting home but have to hand them back upon return to work.<sup>104</sup> In other instances, the employer has explained that they were holding on to the migrant workers' documents only for the initial 90-days of the employment for the purpose of registering new workers but the workers have said that it has taken much longer for them to get the documents back.

In Thailand like other countries, any foreigner caught without documentation that proves their legal right to stay and/or work in the country, risks deportation. For example, according to Thailand's 2008 Working of Alien Act, a foreigner who is caught working without the appropriate work permit faces up to five years in prison or a fine up to THB 100,000 (approximately EUR 2,490), or

both.<sup>105</sup> Migrant workers in Thailand report being detained by the police when caught without the necessary documents, for the purpose of extortion of money or other valuables.<sup>106</sup> The fear of deportation, fines and/or detention limits the migrant workers freedom of movement. Furthermore, when workers are unable to access their identity or travel documents on demand, and if they feel that they cannot leave their job without risking their loss, the retention of such documents is an indicator of forced labour.<sup>107</sup>

Retention of identity or travel documents is also a breach of international human rights law. According to the Article 21 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, "[I]t shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family."

101 See for example Finnwatch, 2015, *Employment available in exchange for debt*

102 See for example Finnwatch, 2013, *Halvalla on hintansa (Cheap has a high price)*

103 See for example Finnwatch, 2014, *Out of a ditch, into a pond*; 2015, *Employment available in exchange for debt*

104 See for example Finnwatch, 2013, *Halvalla on hintansa (Cheap has a high price)*

105 Thailand, 2008, *Working of Alien Act*, Article 51. According to Article 24 of the same act, a work permit holder must also keep the permit with their person for inspection at any time, and the work permit should be available for inspection at place of work also; failure to comply is punishable with a fine of up to THB 10,000 (Article 53).

106 See for example Finnwatch, 2015, *Employment available in exchange for debt*. See also Human Rights Watch, 2010, *From the tiger to the crocodile – Abuse of migrant workers in Thailand*

107 ILO, *Indicators of forced labour*

## 9. Complaints mechanisms

The responsibility of business enterprises to respect human rights includes the responsibility to respect the right to remedy. All victims of human rights violations have the right to an effective remedy, including victims of recruitment related abuse perpetrated by brokers or recruitment agencies. A company that has caused or contributed to an adverse human rights impact and does not enable remediation has failed to fulfil its responsibility to respect human rights.

Although effective, State-based judicial mechanisms are at the core of ensuring access to remedy, non-State based grievance mechanisms – including those administered by companies – can play an important role too. They can also have advantages over judicial mechanisms, such as speed, accessibility and reduced cost.<sup>108</sup>

According to Article 10 of the ILO Convention 181 on Private Employment Agencies, a “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”. However, a recent ILO investigation into the complaint mechanisms available to migrant workers in Thailand concluded that “[t]here is no systematically available legal channel for inbound migrant workers to register complaints about recruitment abuses, and it appears that fears of discrimination and retaliation would prevent most low-skilled migrant workers from accessing such channels even if they did exist.”<sup>109</sup>

Thailand’s Recruitment and Job-Seekers Protection Act establishes complaints mechanisms for outbound migrant workers related to recruitment abuse, but it does not include

provisions that would explicitly establish similar mechanisms for workers to migrate to Thailand.<sup>110</sup> Other laws, including Thailand’s Criminal Code<sup>111</sup>, in theory enable migrant workers to file cases against abusive recruitment agencies and employers but language barriers, lack of awareness and resources, and fear of retaliation from employers in practice render these channels unavailable to most migrant workers.

Informal channels that are available to inbound migrant workers to file recruitment abuse related complaints include diplomatic representatives of their home country, recruitment agencies and local NGOs. The ILO investigation into the complaint mechanisms, however, found these ineffective in practice. According to the ILO, the diplomatic representatives typically upon receipt of such a complaint refer it to Thai authorities for informal settlement, and in many cases the provincial level authorities in Thailand would have limited understanding of their duties to ensure the protection of the rights of inbound migrant workers. The recruitment agencies on the other hand, have an obvious conflict of interest in helping the migrant workers to negotiate the matter with their employer – and no complaint against the agency’s own conduct could be filed with the agency itself. Finally, NGOs have no recognised authority to negotiate with either employers or other parties involved, and can thus in most cases only provide (valuable) legal advice and information services.<sup>112</sup>

108 For more information, see UN Guiding principles on business and human rights, Part 3 Access to remedy

109 ILO, 2013, *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, page 58

110 According to the Department of Employment statistics, between 1,781 and 3,220 people filed complaints annually during the period from 2006-2011 related to recruitment abuse. ILO, 2013, *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, page 25

111 The Criminal Code includes, for example, offence of committing cheating or fraud, offence of providing false information to the public, and an offence of deceiving ten persons or more to work without pay or pay less than agreed to

112 ILO, 2013, *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, page 38-40

## MWRN legal advice centres

MWRN operates legal advice centres for migrant workers in Samut Sakhon and Songkhla Provinces in Thailand. The most common issues that migrant workers come to the centre to seek advice on are

- 1) dismissal without severance pay. According to Thailand's Labour Protection Act, worker who has worked for at least 120 consecutive days is entitled to severance pay if dismissed.<sup>113</sup>
- 2) remuneration below the national minimum wage rate. Thailand introduced national minimum wage rate that apply to all industries in all provinces in January 2013. The rates, which have not been revised since, are THB 300 per 8-hour working day and THB 56 per hour for overtime. Migrant workers are often paid below the minimum wage rate, or have deductions – some of which illegal and due to high recruitment fees – taken from their salary so that their take-home falls below the limit. Finnwatch has documented daily salaries as low as THB 120, and overtime compensation as low as THB 12 paid to migrant workers.<sup>114</sup> Although the introduction of the national minimum wage increased production costs (for example, the average salary was expected to raise by nearly 70 per cent in some provinces, and 22 per cent nationwide<sup>115</sup>), according to Thailand's Ministry of Labour the workers' productivity had also risen by 12 per cent in the areas where the minimum wage had been piloted before its nationwide adoption.<sup>116</sup>
- 3) no job despite having been brought to Thailand through the MoU recruitment process. Recruitment agencies bring migrant workers to Thailand to work for a particular em-

ployer when the employer has approached the agency to help fill the vacancies they have. In such cases, the migrant worker is employed by the factory. Recruitment agencies, however, also bring migrant workers to Thailand, establish themselves as their employer, and then subcontract their labour out when a suitable employment opportunity arises. In such cases, where the migrant workers are employed by the recruitment agency, the statutory responsibilities of the recruitment agency as the employer under labour protection laws are unclear. For the period they are not working, the migrant workers are not paid but may instead be charged by the recruitment agency for things like accommodation and food, and in most cases they would also have occurred debt already before having entered Thailand in order to be able to pay the recruitment related fees. Financial plight and serious indebtedness increases their vulnerability to labour exploitation. Thai companies that have adopted responsible migrant labour recruitment policies have often also stopped using subcontracted agency labour in order to mitigate these risks.

- 4) occupational health and safety / accidents at work place. According to the Workmen's Compensation Act<sup>117</sup>, the employer should cover the workers' medical expenses and rehabilitation costs in case of an illness or injury. In addition, the workers or their family are entitled to compensation for loss of income, and/or in case of disablement, loss of an organ, or death. Migrant workers who are within the scope of social security system in Thailand are entitled to compensation from the Workmen's Compensation Fund in case of a work-related accident. In reality, migrant workers access to such benefits is hampered by the lack of awareness of their rights and employers' avoiding of responsibility. Other factors, such as language and cultural barriers, also limit the migrant workers ability to access these benefits.

113 Thailand, 1998, Labour Protection Act, Article 118

114 Finnwatch, 2015, On the borderline of responsibility

115 Asia Foundation, 30 January 2013, Thailand adopts nationwide minimum wage policy amid controversy, available at <http://asiafoundation.org/in-asia/2013/01/30/thailand-adopts-nationwide-minimum-wage-policy-amid-controversy> (accessed on 15 January 2016)

116 Ministry of Labour, 15 January 2013, Labour Permanent Secretary: Wage hike increases labour productivity by 12% available at <http://www.mol.go.th/en/anonymouse/content/labour-permanent-secretary-wage-hike-increases-labour-productivity-12> (accessed on 15 January 2016)

117 Thailand, 1994, Workmen's Compensation Act, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/46852/91104/F527139440/THA46852.pdf>

The lack of effective and accessible complaints mechanisms exacerbate the situation for migrant workers who are victims of recruitment related abuse. The long-term solutions to the absence of effective and accessible channels for accessing justice in case of recruitment related abuse must include State-based mechanisms, and the Thai government must guarantee victims of human rights violations, including all victims of company perpetrated abuse, access to effective judicial and/or non-judicial remedy. However, companies should also ensure migrant workers access to operational-level grievance mechanisms that are timely and meet the effectiveness criteria of the UN Guiding Principles.<sup>118</sup>

Compared with State-based mechanisms for judicial or non-judicial grievance mechanisms, operational-level grievance mechanisms have the additional benefit that they can be used as feedback mechanisms or as mechanism for early-detection before the situation has escalated to the level of a rights violation. As such, operational-level grievance mechanisms can support companies' human rights due diligence processes and also improve communications between migrant workforce and company management.

118 UN Guiding Principles on Business and Human Rights define operational-level grievance mechanisms as "a formalized means through which individuals or groups can raise concerns about the impact an enterprise has on them – including, but not exclusively, on their human rights – and can seek remedy".

## **UN Guiding Principles on Business and Human Rights – Guiding Principle 31 Effectiveness Criteria for Non-Judicial Grievance Mechanisms**

The Principle 31 of the UN Guiding Principles set effectiveness criteria for grievance mechanisms, including operational-level mechanisms. They are

- (a) Legitimacy: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessibility: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictability: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitability: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparency: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Compatibility with rights: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) Continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

## 10. Freedom of Association

Workers ability to have a say in work related matters and to participate in defining their working conditions is a key element of decent work. Effective social dialogue<sup>119</sup> requires, among other things, respect for the fundamental rights of freedom of association and collective bargaining and an enabling legal and institutional framework. Thailand, however, has not ratified either of the ILO Core Conventions pertaining to freedom of association and collective bargaining – although recently, it has indicated an intention to do so.<sup>120</sup> Furthermore, Thailand's 1975 Labour Relations Act effectively strips migrant workers from the right to form trade unions.<sup>121</sup> Although the Act allows migrant workers to join unions, according to the article 88, elected trade union officials must be Thai nationals. At just 1,5 per cent, Thailand has the lowest unionisation rate in all of South East Asia, and trade unions are rare in the sectors that commonly employ migrant workers.<sup>122</sup>

Altogether 13 cases have been filed against Thailand with the ILO Committee on Freedom of Association, most recently by the global trade union federation IndustryALL in October 2015 and International Transport Workers' Federation, the Thai Airways International Union and State Enterprise Workers Relations

Confederation in January 2016.<sup>123</sup> In response to IndustryALL, the government of Thailand has (reportedly) said that they are reviewing relevant legislation including the Labour Relations Act.<sup>124</sup> Any revisions to the law must guarantee migrant workers equal rights to Thai nationals to form and join trade unions and to be elected as union officials.

In addition to the ILO Conventions, the right to form and join a trade union is enshrined in a number of other international human rights standards, including the Universal Declaration of Human Rights and the International Convention on Economic, Social and Cultural Rights. The ILO Convention 97 on Migration for Employment and UN Convention on Migrant Workers Rights further stipulates that the right of migrant workers to unionise should be no less favourable than that of nationals of a country.<sup>125</sup>

119 Social dialogue is defined as all types of negotiation, consultation or simply the exchange of information between representatives of governments, employers and workers on issues of common interest. It covers tripartite processes and institutions of social dialogue, such as social and economic councils; institutions, such as trade unions and employers' organizations; and processes such as collective bargaining. See for example ILO, 2011, Social Dialogue Indicators <http://laborsta.ilo.org/applv8/data/TUM/TUD%20and%20CBC%20Technical%20Brief.pdf>

120 See for example UN, 2011, Report of the Working Group on the Universal Periodic Review – Thailand, Article 86, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.8\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.8_en.pdf)

121 Thailand, 1975, Labour Relations Act, Article 88, available at [http://www.mol.go.th/sites/default/files/images/other/labourRelation2518\\_en.pdf](http://www.mol.go.th/sites/default/files/images/other/labourRelation2518_en.pdf)

122 IndustriALL, 7 October 2015, IndustriALL files ILO complaint against Thai Government, available at <http://www.industrialall-union.org/industrialall-files-ilo-complaint-against-thai-government> (accessed on 3 May 2015)

123 See ILO Freedom of association cases database at <http://www.ilo.org/dyn/normlex/en/?p=1000:20060:0:FIND:NO::>

124 The IndustryALL case against Thailand includes 18 counts of trade union and worker abuses in Thailand. According to IndustryALL, they include a company that sacked and replaced 60 per cent of its workforce to stop the unionisation of its plant. Workers are frequently sacked for being trade unionists or trying to bargain collectively. In cases where the courts have ordered workers to be reinstated, companies often ignore the ruling or put intolerable pressure on workers to quit. In other instances, court proceedings drag on for so long that the workers are forced to accept a payout and resign. See also ITUC Survey of violations of trade union rights, Thailand, available at <http://survey.ituc-csi.org/Thailand.html?lang=en#tabs-2>

125 Article 6, ILO Convention 97 on Migration for Employment (Revised), available at [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242); Article 8, ICESCR, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Thailand has not ratified the ILO Convention 97 but it is a State party to the ICESCR.



*Workers are deciding who to vote in the first democratic welfare committee elections at Thai Union Frozen. MWRN helped to organise the elections.*

## **Welfare committees as a stepping stone towards social dialogue?**

According to Thailand's 1998 Labour Protection Act, all workplaces with 50 or more employees must have a welfare committee. A welfare committee must have a minimum of five elected members representing the workers and meet at least once every three months. The Labour Protection Act describes the duties of the welfare committee as follows:

- (1) To participate in discussions with the boss in order to arrange for welfare benefits for the employees.
- (2) To give advice and recommend opinions to the boss in the matter of welfare arrangements for the employees.
- (3) To inspect, supervise and look after welfare arrangements provided by the boss for the employees.
- (4) To propose comments on and guidelines to the labour welfare committee for welfare arrangements which are beneficial to the employees of the labour welfare committee.

In most factories investigated by Finnwatch since 2012, the migrant workers were either not aware of any welfare committee at their work place or felt that it was ineffective and did not represent the views of migrant workers.

To empower migrant workers, MWRN has worked together with three Thai industry associations TTIA, TFPA and TFFA on a joint project on model welfare committees. The project aims to organise workers into welfare committees and encourage social dialogue, and is currently at a pilot stage.

In February 2016, MWRN helped Thai Union Frozen, a member of the TFFA, to organise democratic welfare committee elections. There were altogether 63 candidates in the election, of whom 48 were migrant workers. 19 workers established the committee in April 2016. MWRN is undertaking a project with Thai Union Group to ensure effective social dialogue in all its main export facilities in Thailand.

## 11. Recommendations to companies:

- All companies, including Thai companies and international companies, that source products or produce from them or have their own production in Thailand should adopt responsible recruitment policies. Such policies should include as a minimum
  - the principle of no recruitment fees being charged to the worker in case an agency or broker is utilised for recruitment purposes. The employer should bear the full cost of recruitment. The prohibition on fees charged to the workers should be explicitly included in purchase agreements between buyers and their suppliers, and in contracts with recruitment agencies,
  - require that all workers be given written employment contracts in a language that they understand that explain the terms of employment using clear and concise language. The translation should be identical with the original. Given concerns that many migrant workers may be illiterate or challenged to fully understand the terms of employment, employment conditions should be fully explained to all workers in training sessions or during comprehensive inductions. The workers should be compensated for the duration of the training,
  - strictly forbid any retention of workers identity and/or travel documents, and work permits. Companies should take steps to provide migrants workers access to safe, individual storage for their documentation and other valuables, which could be located, for example, in the workers' living quarters. Use of such storage should be voluntary. If storage cannot be located in the workers' living quarters or a place where the workers can access it freely at any time, the company must obtain a written consent from the worker for storing their documents for them and clear and transparent procedures must be established for migrant workers to access their documents at any time they wish. Companies must also obtain from workers their informed and documented consent for holding on to their documents for the duration of initial registration.
- Companies that employ migrant workers and use the services of recruitment agencies should use only authorised recruitment agencies that abide by responsible recruitment principles, and cease using the services of agencies that are known to be charging fees to the workers or retaining workers' documents. Companies should also establish mechanisms for oversight to monitor recruitment agencies' compliance with responsible recruitment principles and ensure irregular brokers are not utilising registered agencies as a rubber stamp for irregular recruitment practices.
- Pending adequate registering, licensing, monitoring and sanctioning of recruitment agencies by the competent authorities, companies should favour hiring of migrant workers directly over the use of subcontracting agencies.
- The workers' consent to the terms of employment should always be obtained without coercion or threats.
- In addition to contractual information, it is also important to provide employees prior to recruitment in an origin country detailed information about company policies, including the company's recruitment policy, and acceptable practices as well as national legislation pertaining to migrant workers in Thailand, including employment and immigration legislation. Such transparency enables migrant workers to know the rights they are entitled to, and to recognise forbidden behaviours and practices if they are subjected to those. It may encourage migrant workers to seek justice and remedial action when their rights are being violated.
- All companies should actively promote social dialogue, freedom of association and collective bargaining among their work force, including migrant workers.

- Migrant workers should be able to freely engage with representatives of migrant workers organisations. No member of the migrant workers organisation should be discriminated or retaliated against.
- Companies should establish operational-level grievance mechanisms in line with the effectiveness criteria set out in the UN Guiding Principles on Human Rights. These should be accessible in migrant workers' own language.
- Companies should guarantee the workers right to employment (and accommodation if provided for by the employer) while they pursue complaints.
- Where recruitment fees are found to have been irregularly charged to migrant workers in breach of conditions agreed at the time of recruitment between workers, agencies and the employing country, prompt remedial action should be taken. Any identity and travel documents held by the employer or a recruitment agency should be promptly returned to the workers.
- Allegations of contract deception should be investigated and prompt, appropriate remedial action should be taken as necessary.
- Companies should include recruitment fees, contract deception, retention of documents, and recruitment related complaint mechanisms into human rights due diligence procedures and social auditing, and increase transparency over their labour supply chains. These should cover all stages of recruitment in both the origin and destination country (and country of transit if applicable) as well as possible labour subcontracting arrangements.
- Companies should include migrant workers right to freedom of association into any human rights due diligence processes, and ensure that it is covered in social auditing.
- Companies should work with social auditing and certification schemes to strengthen their criteria for compliance where they are lacking in regard to recruitment policies and practices and actively advancing freedom of association.

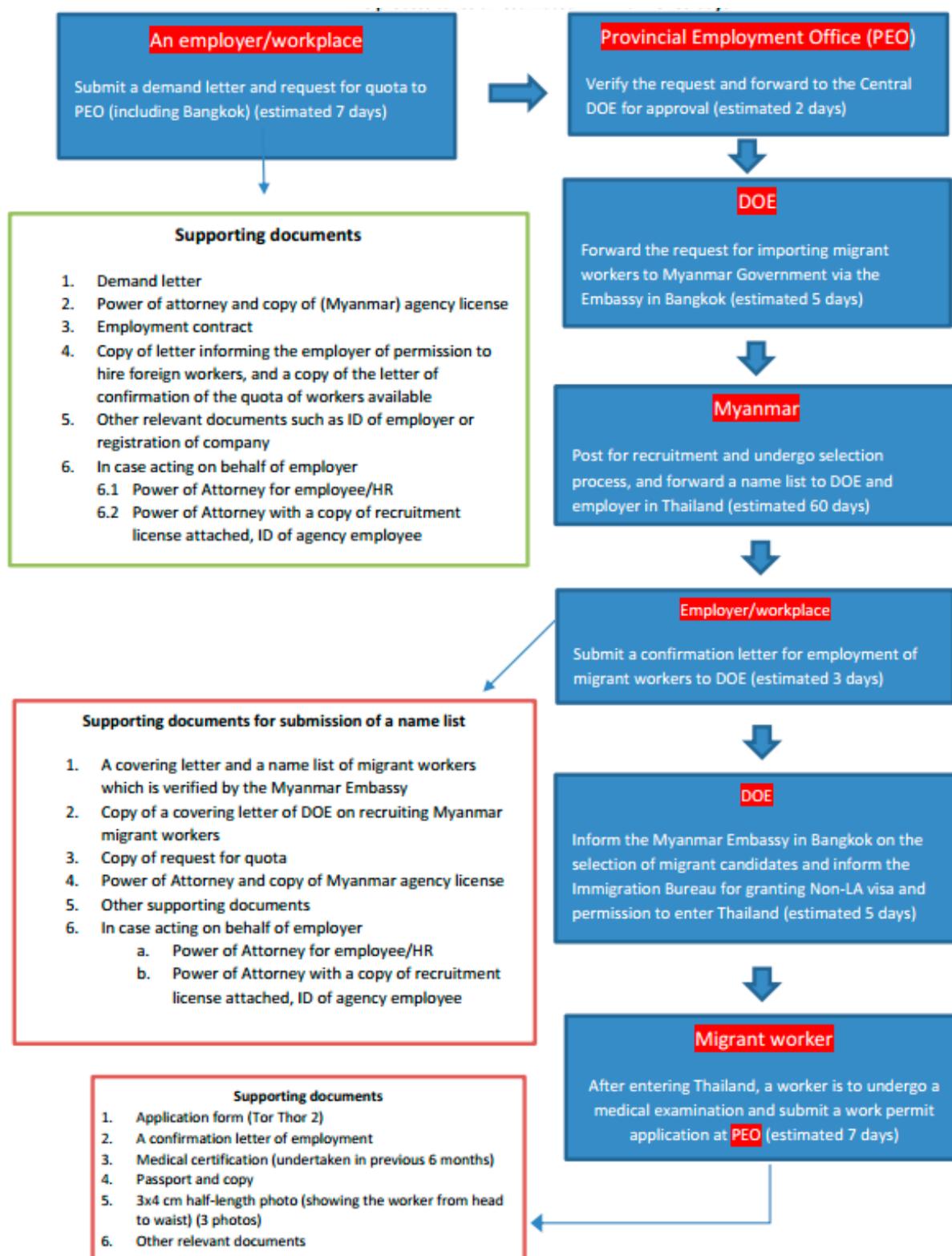
### **Resources on responsible recruitment:**

Dhaka Principles for Migration with Dignity --- <http://www.dhaka-principles.org/>

Resources for Responsible Recruitment by Verite --- <http://www.responsiblerecruitment.org/>

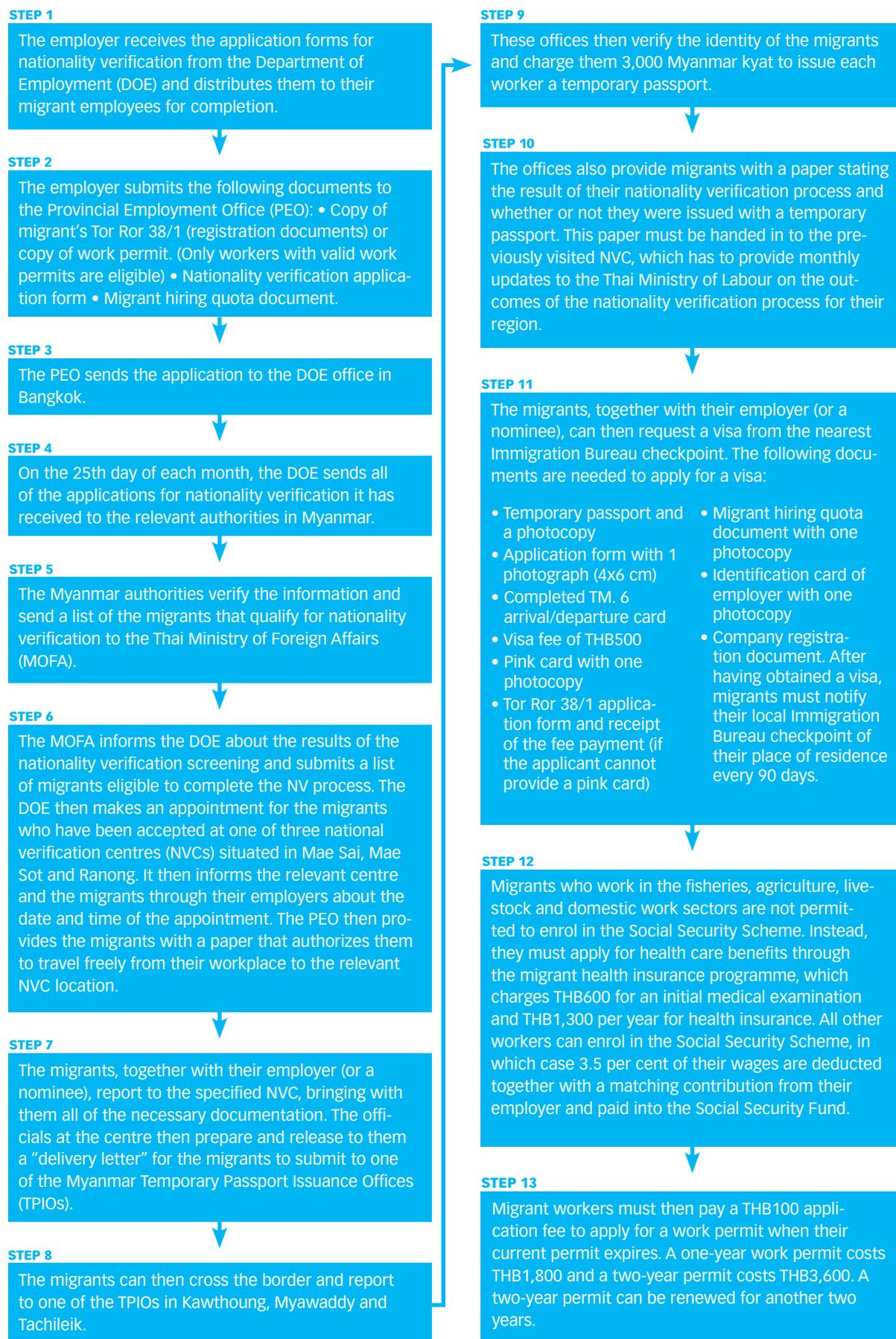
ILO Fair Recruitment Initiative --- <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>

## Appendix 1 – MOU recruitment and placement process for workers from Myanmar as of 3 July 2014



Source: ILO

## Appendix 2 – Nationality verification process for migrant workers from Myanmar (as of 2011)





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