



A Joint Submission of Migrant Working Group Thailand (Coalition) on Migrant Workers and Their Families in Thailand for Thailand 2nd Cycle of the Universal Periodic Review

INTRODUCTION

Migrant Working Group Thailand (MWGT) is a network of non-governmental organizations working on health, education and migrant workers' rights. The Migrant Working Group Thailand aims to exchange information among a migrant workers network, analyze problems, set agendas and conduct campaign and advocacy activities with state sector, academic sector and civil society sector for migrant workers' fundamental rights in order that they can have a better quality of life. This report has been prepared from a feedback of Migrant Working Group members collecting during August 2- September 20, 2015. The primary report was authored by Human Rights Development Foundation

1. An overview of situation concerning migrant workers

The flow of migrant workers into Thailand has begun since more than 20 years ago, though the policy to address migrant worker issues has only started to take shape in 1992 with the two major governing laws including the 2008 Alien Working Act and the 1979 Immigration Act. Migrant workers who are allowed by the RTG to work in Thailand can be divided into three groups including;

1. Irregular migrant workers, who according to the government policy are allowed to stay temporarily in Thailand and have been issued with documents to recognize their residency and work until 31 March 2016, though it is required for them to undergo nationality verification afterward in order to obtain travel documents from their countries of origin, work permits and visas.

2. Imported labour by the virtue of bilateral agreements between Thailand and its three neighbours including Myanmar, Laos, Cambodia and Vietnam.

3. Migrant workers have undergone nationality verification process and obtained travel documents from their countries of origin, permits, and visas to allow them to stay within a period of time

According to a nationwide census in 2010, it was estimated that there were 3.3 million non-Thai populations in Thailand. But according to labour registration data of the Ministry of Labour as of July 2015, there were total 2,374,443 migrant workers who have registered themselves including those 1,066,955 of all workers having undergone nationality verification and been issued with valid travel documents,; 300,097 imported workers by the virtue of bilateral agreements between Thailand and its neighbours including Myanmar, Laos and Cambodia, and 1,010,391 workers allowed to temporarily stay in Thailand to complete National Verification by March 2016. Compared with the number of workers registered in 2014, it was found the number of registered

workers has decreased by 523,284 persons. The number of registered dependents in 2014 was 92,560, and it has decreased to 38,935 in 2015 as well. In 2015, Thailand has begun to manage migrant workers from Vietnam and has endorsed on procedure to register irregular migrant workers from Vietnam but not yet official data available to public.

Recommendations

- RTG should open a new migrant registration process without time limits to allow an estimated 1 to 1.4. million unregistered migrants working in Thailand to register and enter the national verification process
- RTG should regulate services by brokers assisting migrants and employers and de-link the migrant registration from employers to increase transparency, deter corruption and control costs
- RTG should develop effective and sustainable migrant worker management policies, with consideration on a balance between sustainable national development and respect for human rights of migrants. Such policy should be developed by means of consultation with concerned stake holders and result in long term strategies.

2. Maritime migrant/refugee crisis-

According to the UN High Commissioner for Refugees (UNHCR), there are about 94,000 maritime migrants from Bangladesh and Myanmar via the Bengal Bay including children and women and the number is tipped to rise. In May 2015, a number of bodies of sea migrants were found in graveyards along the Thailand-Malaysia border. Given the tough policy against the sea migrants, the trafficking and smuggling movements were unable to bring their boats ashore. It was estimated there were more than 5,000 migrants left stranded at sea. However, the stance was later relaxed and the boats were allowed to run ashore and receive humanitarian help. The sea migrants appeared extremely exhausted and sustained traces of being abused or sickness. Once getting ashore, they were detained and subjected to screening with men being transported to various immigration checkpoints in various provinces and women and children being held in custody in children's homes. In over the past six years, Thailand has been treating the sea migrants as if they are irregular migrants or victims of trafficking in persons. No documentation of their profiles has been conducted and no attempt to verify their refugee status. Though not a party to the 1951 Convention relating to the Status of Refugees, Thailand has been cooperating with the UNHCR to screen people status as flee fighting and refugee granted by UNHCR. But without clear guidelines to deal with the sea migrants, many of them have been subject to indefinite detention and risk deportation. They can potentially become targets of an exploitative cycle perpetuated by trafficking agents. The policy to hold the sea migrants in custody at immigration checkpoints or children's homes has led to an increase of stress, physically and mentally, as a result of the crowded holding cells, being separated from their families, a lack of basic necessities, and being deprived of liberty.

Recommendations

- The RTG should develop an administrative framework that assigns various ministries with the tasks of managing different legal categories of people and formulate a rights based framework considers the issue of migration complexity and rights to seek asylum.

3. A lack of access to justice process

In theory, Thailand ensures access to justice among all in the country, though the reality can be vastly different from what is stated in the policy. Many irregular migrant workers are too scared to complain fearing their deportation as per the Immigration Act. The law authorizes officials to carry out the arrests and deportations of undocumented migrant workers prior to their having access to judicial review and remedies, except for just victims of trafficking in persons and even though the migrant workers are victims and entitled to remedies from legal and justice process. A lack of proactive campaign has made many migrant workers lack confidence and knowledge about their right to justice process. Given the lack of interpreters friendly to the migrant workers, they often find it challenging to communicate with Thai officials in a language they do not understand. Meanwhile, state agencies are not required to provide information about due and legal rights in the languages understood by the workers.

The law enforcement officials continue to deny the right to due process of law based on biases and discrimination. For example, in the case of the two migrant workers who are accused of murdering foreign tourists on Koh Tao, South of Thailand, according to the defense lawyer, they have been subjected to torture while being held in custody, had no access to legal counsel during the arrest and interrogation of the police, had no access to interpreter they trusted, etc. Though such information has been revealed in public, the RTG tends to stay indifferent and is not inclined toward investigating the probable corrupt practice of its own officials. As a result, even documented migrant workers have the fear and lack confidence and dare not complain with state officials and justice mechanisms. The migrant workers are also vulnerable to become victims of criminal offences.

Recommendation

- An appropriate mechanism should be created to specifically enable migrant works to file complaints in accordance with the law such as interpreters available at key entry point, amnesty granted to stay temporarily to access the rights protection mechanism, legal proceeding in the migrant friendly language and other interventions.
- When migrant workers enter the judicial process, especially when they are accused of crimes, interpreters and lawyers should be provided. The accused should be informed of charges and ground of the arrest in a language they can understand. Interpretation services should be provided at no cost when migrants lodge complaints to exercise their rights or when they are accused of offences.

4. Labour Protection

Laws and the protection of migrant workers' rights

Migrant workers, regardless of their legal entry or not, are entitled to legal protection under the Thai law and under the same labour protection laws. Nevertheless, problems which have contributed to unequal protection of the migrant workers and have led to discrimination, continue unabated.

Migrant workers and access to compensation for work-related injury

The 1975 Workmen's Compensation Act provides for legal framework to protect an employee. According to the Act, an "employee" means a person agreeing to work for an employer in return for wages or a person dependent on the employee. The employer is required to provide compensation to an employee who is harmed or suffers an injury or dies as a result of the work carried out for the employer. Therefore, an employee who is harmed or suffers an injury or dies

or disappear and for whom the employer has paid the contributions, shall be entitled to compensation from the Fund which pay the money on behalf of the employer, except for employers in particular sectors including fishing and agriculture. Nevertheless, in the latter two cases, the employers are still obliged to provide compensation to their own employees, though the law does not cover homeworkers.

Nevertheless, concerning the case of migrant workers, the Social Security Office (SSO) had issued regulations which have led to discrimination and distortion of the labour protection principle during 2001-2014 whereby in order to have access to the compensation fund, a migrant worker was required to produce passport, or an alien person document, work permit or to pay taxes. Therefore, if an undocumented migrant worker with no work permit suffers from work-related injury, the SSO shall issue a letter compelling the employer to take the responsibility. During the negotiation, the employee will find themselves at disadvantage and there has been a lack of execution and in many cases. The employers simply evade their responsibility.

On 28 January 2010, migrant workers from Myanmar and his colleagues filing a lawsuit against Social Security Office (SSO) regarding the SSO guideline to provide protection of migrant workers suffering from occupational health as per the circular number RSO0711/W751 date 25 October 2011 whereby in order to have access to the compensation fund, a migrant worker was required to produce passport, or an alien person document, work permit and to pay taxes. The Social Security Office guideline was also breached the Constitution of the Kingdom of Thailand, The Universal Declaration for Human Rights (UDHR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ILO Conventions and even the Charter of the Association of Southeast Asian Nations regarding the protection and promotion on Equal Treatment.

On 9th September 2015, though the Supreme Administrative Court read out his final decision and affirms the legal principle regarding the **Workmen's Compensation Laws** which aims to provide protection to all employees who suffer from injuries, disabilities, disappearance or death relating to the work or while serving the interest of their employer or get sick with causes relating to the characteristics or nature of the work or work-related diseases, for which the employer shall be held liable to their employee. Therefore, the "Workmen's Compensation Fund" has been established as a fund and guarantee for the provision of such compensation to the employee on behalf of the employer who is supposed to pay contributions to the Fund. The protection is intended to cover **all employees without any discrimination or categorization of the employees**. The Court thus overturns the ruling of the Administrative Court of the First Instance and decides to rescind the Circular no. Ro Sor 0711/Wor 751, "only on the clause which requires that in order to have access to the Workmen's Compensation Fund, migrant worker has to be able to produce evidence proving that their employer has paid contributions to the Worker Compensation Fund not less than the minimum wage and the migrant worker has to submit the personal income tax form to Thailand, and the ruling shall become effective since the day the ruling is made...."

Recommendation

- The RTG should review, revise and revoke regulations which are found to discriminate against migrant workers depriving them of the right to have access to the Workmen's Compensation Fund of the Social Security Office immediately.

Fishing labour

In 2015, the RTG has implemented measures to ensure labour in fishing vessels and the fishing vessels are kept in a system subjected to accountability. The labour and vessels are required to get registered through the Coordinating Centre for Fishing Labour and the One-stop Service Centre for Migrant Worker Registration. In addition, labour inspection has been carried out in fishing vessels both on and off shore. Nevertheless, in practicality, the inspection has only been carried among vessels on-shore only, and it mostly covers the paper checking including licenses. No inspection has been made on vessels off-shore. The narrow and inflexible interpretation of the law has often led to the inquiry officials or public prosecutors decide to not prosecute the cases even though the workers have been lured by agents to work on fishing vessels and were obliged to work to service tends of thousand baht of debt they owed. In addition, the legal action can only reach the agents leaving out the liability of the employer as a result of weak evidence.

Social security

Migrant workers are supposed to have access to social security as provided for by law. Nevertheless, it has been found that a number of migrant workers have been left out from such social benefits and have encountered barriers including language, short-term employment, being uninsured worker, etc. One estimate goes that only 30-40% of migrant workers are insured with the Social Security Fund office' Workman Compensation fund. Many of the workers have no knowledge of the procedure and are not aware or unable to verify their insurance status. Everything is left in the hand of the employer. This reflects how there has been a lack of legal enforcement.

Minimum wage and wage gap

Thailand has a law regulating minimum wage whereby an employer is required to pay a minimum wage of 10 USD per day regardless of the worker's nationality and immigration status. But in practicality, gaps can be found and migrant workers are not paid the minimum wage as provided for by the law. A number of employers also have the attitude that a migrant worker needs not be paid equally to their Thai counterparts and is deprived of their other fundamental rights.

Unionization

The 1991 Labour Relations Act requires that a person to register a labour union has to be of Thai nationality and a migrant worker can only become a member. Being deprived of the right to association, the migrant workers have found themselves deprived of their leverage when having to negotiate with the employers. Some employers also attempt to suppress the employees from getting unionized including by penalizing the workers who have come out to demand their rights by having them fired, having their salaries deducted, and other sanctions. Thailand has also not ratified the ILO Conventions no.87 and 98.

5. Migrant Workers Rights to Access to Remedy under Damages for Injured Persons, Compensation and Expense for Defendants in Criminal Cases, Act B.E.2554 (2001)

The 2001 Damages Act, regarding damages for injured persons and compensation and Expense for accused in criminal cases was promulgated according to the 1997 Constitution of the Kingdom of Thailand which provides for the right of parties aggrieved by criminal action committed by another party to have access to remedies from the state if there is no other way to

address the situation. The law is applied universally to protect to persons, regardless of their race, nationality, religion, language, or other status. As such, the law encompasses migrant workers in Thailand. If the injured person or defendants meet the relevant criteria are eligible to apply for compensation or damages from the Rights and Liberties Protection Department. Applications for compensation are reviewed and awarded/denied by the Compensation Committee.

Since the enforcement of the Act in 2001, migrant workers have been able access to the compensation.

However the Compensation Committee issued the new decree to prohibit the undocumented migrants to access the fund in May 2015. The Compensation Committee outlining the decree as the committee was agreed that the undocumented applicant of compensation fund is not involved in the accused crime and met with criteria for the legal definition of the victim however the committee decided not to award the compensation to the victim due to irregular status. The committee exercised the legal authorization to prohibit the payment of remedy to people without regular entry status. The Compensation Committee is clearly breached the Constitution of the Kingdom of Thailand, The Universal Declaration for Human Rights (UDHR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and article 2 for the International Covenant on Civil and Political Rights (ICCPR)

Recommendations

- RTG must ensure strict measures to investigate officials' misconduct and arbitrary abuse of power regarding migrant workers. RTG must enforce measures to punish violators and provide remedies migrants who are victims of abuse of power.
- RTG should support mechanisms that strengthen access to labour protection: provide interpretation service, application forms in local language
- RTG should end the restriction on the right of migrant workers to assemble in order to form labour unions in accordance with the Labour Relations Act and recommendation can be advanced by removing the requisite Thai citizenship as necessary qualification for the founding of labour union or service as directors of labour union
- RTG should review, revise and revoke any decision of Compensation Committee which are found to discriminate against migrant workers depriving them of the right to have access to the damages for injured persons and compensation and expenses for the accused in criminal cases.

6. Right to health

The health insurance for migrant workers in Thailand can categorized as health insurance card for migrant workers which can be voluntarily purchased by them and their dependents and social security system. As for documented workers in formal sector, the policy is geared toward ensuring their being part of the health insurance system, though it has stumbled on many obstacles including the fact that a migrant child aged younger than seven years and has no income is required to buy insurance benefits at the same amount of premiums paid by an adult. Health facilities may also find it a risk to sell health insurance benefits fearing it may not cover the costs. Other nuisance requirements include that a migrant is required to produce ID card in order to be eligible to buy health insurance. There are employers who hire a large number of migrant workers who continue to have no access to health insurance.

Thailand's advancement in health system innovations has been noted, particularly in the development migrant health officer/volunteer to enhance access to health services among the migrant workers. The volunteers help as medical assistants and interpreters and spread

knowledge and ensure surveillance of communicable diseases in the community of migrant workers. It is still optional for a health facility to operate such a program and there is no specific policy to support the work of such migrant health officer/volunteer.

Recommendations

- RTG should create a more efficient and effective public health administration structure that monitor the use of health insurance monies and services and is able to allocate funds to area based on needs, including for rehabilitation. The staff structure should be clear and held accountable.

7. Right to education

UNESCO has distributed a report “The Economic Cost of Out of School Children in Southeast Asia 2015” and estimated that more than two hundred thousand children in Thailand are left out of school system. Most of them are children of migrant workers. Major factors include formidable expense, language, the need to travel, and other unnecessary requirements for enrolment.

The RTG has launched the Education for All policy and has made a cabinet resolution in 2005 to ensure that undocumented children still have the right to schooling. But in 2015, the RTG has allowed the drafting of the Ministry of Education’s 2015 Regulation on per head assistance for students in private schools which will have led to the subsidization of budget for only students with ID numbers issued by the Ministry of Interior. The Regulation is in conflict with the Education for All policy since it deprives of the right of undocumented children from getting enrolled in school and Thailand is obliged to disconnect between the right to education and immigration status.

Recommendations

- RTG should review and amend the National Education Act, which existed prior to the cabinet resolution of July 2005, placed strong focus on the education of Thai children and therefore fail to address access for non-Thai children. At the implementation level, the National Education Act is still the dominating framework as opposed to the cabinet resolution which explicitly mandated education for children of all backgrounds and status.
- RTG should actively work together among various ministries, not just Ministry of Education, to effectively bring about schooling changes to improve the lives of migrant and unregistered children and eliminate the barriers to access education for migrant children

8. Migrant children

Arrest of a child

It is estimated that there will be around 300,000 child migrant workers while there are only 38,935 children under 15 who have been registered. There have been raids conducted by special operation units of the police to arrest children and dependents of migrant workers in various communities of migrant workers. For example, on 16 April, a hundred children were rounded up and arranged for deportation to the countries of origin without any trial and coordination with any child protection agencies. It is important to note that the parents who accompanied them on

that day had mostly entered the country legally, but they had been unable to arrange for legal documents for their children. The deportation of the children as irregular immigrants without their parents accompanying them shall put the lives of the children at risk and it is tantamount to gross violation of the rights of the children.

Recommendations

- The RTG should provide for a policy to recognize the status of a migrant child who is born here and lives in Thailand. They should be assisted to continue living with their parents and families. Also, the deportation and separation of the families must be stopped.
- Thailand should ratify the International Convention on the Protection of the Rights of
- all Migrant Workers and Members of Their Families (ICRMW)

9. Gender

The Ministerial Regulation for the Protection of Domestic Workers was issued in 2014, but its legal frameworks are largely different from those provided for in the Labour Protection Act, particularly about minimum wage discrimination, overtime pay and the ceiling of 48 hours per week. In addition, both domestic workers and informal labour are not covered by the social security system.

The government has no specific policy to address the needs of migrant workmen living in Thailand. Women from Myanmar who work in Thailand comparatively receive lower wages, though they have to work harder. They have to work for long working hours, have problem to communicate and have no life skills needed for survival. The women migrant workers are also subject to domestic violence including be forced to accept sex preference of children, being scolded and abused, being exposed to violence committed by government officials and a lack of sensitive reproductive education and negative attitude toward pregnant migrant workers.

Recommendations

- The Thai government should consider signing the C189 Convention concerning Decent Work for Domestic Workers to expand the protection available to employees beyond receiving wages or other social benefits. Measures must be meted out to ensure that domestic workers are protected against violation, intimidation, and all forms of violence including enabling labour inspector to have better access to the residence of the employers employing domestic workers.
- An effort should be made to develop quality of life and welfare of the domestic workers by revising the Social Security Act. Workmen's Compensation Fund, and labour relations law.

10. Trafficking in persons

Fact-finding on trafficking situation by MWG has indicated that there are a very small number of cases in which employers are prosecuted and mostly anti-money laundering measures against human traffickers are not imposed. There appears to be some gaps in bringing the perpetrators before the justice system.

As per fact-finding of MWG, there has been a general increase in the number of human trafficking cases filed by the police division. The Commissioner-General of the Royal Thai Police has issued an internal order calling for the concentrated efforts to suppress human The gap between the number of cases investigated, and the number of cases finally prosecuted could be

indicative of the fact that because of inadequate investigation, not proper evidence of committing crimes relation to human trafficking could be found against the suspected persons.

A high number of complaints registered by the police could also be related to the fact that there is a State policy to free high-risk areas from human trafficking. And in order to show their progress towards achieving this goal, police maybe filing complaints, but not conducting proper investigation into the complaints in order to collect required evidence.

Though ‘practices resulting in forced extortion’ is one of eight forms of human exploitation recognized as human trafficking in Anti-Trafficking in persons Act B.E. 2551 (2008) till date, though there are reports that forced extortion is an issue, no case has been filed before the courts of law under that provision. This could be attributed to the fact that investigators fail to provide the prosecutor with required evidence of exploitation by the brokers or the employers. Thus, the prosecutor will not file human trafficking charge against the perpetrator.

As per fact-finding by MWG Rohingya people are usually arrested while they are in illegal detention camps, waiting to be transferred to another places. Even though there is clear evidence that they have been smuggled, detained and beaten up by the brokers for exploitation and ransom, however, as their destination is still vague and the act of ‘forced labour’ has not yet occurred, so police often classify these cases as smuggling of people rather than cases of trafficking.

For the mediation of labour dispute cases of human trafficking victims, it has been noted that throughout the mediation process, the officials and meditators often fail to realize that the employees had been subjected to forced labour. Thus, while intervening in such cases, there is an assumption of normal employer-employee relations, where as in reality it is not so. Specific mediation process concerning labour disputes relating to human trafficking needs to recognise this important fact.

Recommendation

- Accede to the Palermo Protocol and continue improving its implementation of policy and legal framework related to human trafficking especially victim screening for sea migrants including Rohingya
- At policy level, Thailand issued the short term policy to provide humanitarian assistance and temporary detaining of the arrival group of sea migrants however the practice at policy level is not contributing to victim center approach. RTG still continues deporting and indefinite detaining Rohingya and other irregular sea migrants/refugees. Therefore Thai Government should pay attention to the policy implementation to be consistence with the national legal framework and international legal obligations.

11. ASEAN

- a. The drafting of the ASEAN Agreement on the protection and promotion of the rights of migrant workers

As to labour migration and cooperation among ASEAN countries concerning labour issues, it was proposed by civil society since 2007 for ASEAN to endorse the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers or ACMW. The Declaration promotes the potential and dignity of migrant workers and recognizes fundamental rights of the workers and their families living in the destination countries. Though it is applicable to both the countries of origin and destination countries, but fails to cover migrant workers. ASEAN country

members have been found to be redundant in terms of the development of ASEAN mechanism to protect and promote the rights of migrant workers since ASEAN country members have failed to agree on the protection of both documented and undocumented migrant workers.

Recommendation

- Royal Thai Government should embark on an effort to develop ASEAN mechanism to protect and promote the rights of migrant workers .