

POLICY BRIEF AND RECOMMENDATION ON UNDOCUMENTED LABOUR MIGRATION IN THAILAND

Preamble

This policy brief is based on a research project entitled “Gender, Cross-border Migrant Workers and Citizenship: A case study of the Burmese-Thai border” conducted by Asian Institute of Technology (AIT), Thailand and the University of Leeds, UK, funded by the International Development Research Centre of Canada. It also draws on the experience of the MAP Foundation, a local NGO, which has worked with Burmese migrant workers in Thailand over the past two decades. The issues covered in this paper were discussed at the “International Workshop on Gender, Migrant Workers and Citizenship in the Greater Mekong Sub-region: Economic and Political Perspectives for a World in Crisis” held on 1-3 June 2009 at AIT. Fifty two scholars and activists from Thailand, Singapore, Japan, Hongkong, China, India, USA, UK, and Australia who participated in this workshop agreed that a briefing paper should be prepared in order to disseminate as widely as possible our finding and experience concerning the gendered situation of migrant workers, which can make a contribution to informed public policy discussion.

Context

For nearly two decades, the Government of Thailand has instituted a series of policy initiatives concerning the regulation and registration of undocumented migrant workers from the neighboring countries of Burma (Myanmar), Cambodia, and Lao PDR. At the end of 2009, according to the Department of Employment, Ministry of Labour, 943,291 migrants were registered under these policies. However, unlike previous policies which, while only giving migrants temporary one year work permits, have been repeatedly renewed, the current policy comes with a serious threat of deportation after February 28th 2010. Migrants can only avoid deportation by signing up for a process of nationality verification by their country of origin as outlined in Memoranda of Understanding (MOUs) which the Thai government signed with the governments of Laos, Cambodia and Burma (Myanmar) in 2003. Because of this threat of imminent expulsion, migrants are living in a state of uncertainty, fear and insecurity. Whether or not the mass expulsions will be executed, the unending temporary nature of the migration

policies, including the MOUs, ignores the reality of migrants' lives and the reality of the labour needs of the country.

This briefing paper will review some of the consequences for migrants of current policy responses to undocumented (irregular) migration. We question whether the restrictions in the current policies are necessary and indeed, whether they work against the declared objective of regularizing migrants and actually contribute to keeping undocumented migrants in a situation of illegality. In the final section, based on our experience of grassroots work and research with migrant communities, we make some suggestions and urge increased dialogue between policy makers, local communities and migrant representatives.

Policy Responses to Cross Border Migration

Since 1992, successive Thai governments have tried to respond to the immigration of undocumented migrants from neighbouring countries by (a) allowing irregular migrant workers to register for one year's work in certain sectors of work (b) arresting and deporting migrant workers who do not have registration documents and (c) creating work sites or economic zones in the border areas with the intention of keeping migrants at the border and not in central Thailand. The latter approach was first implemented through the Ayeyawady - Chao Phraya - Mekong Economic Cooperation Strategy (ACMECS). In 2003, the government started a process which, if successful, might change the whole picture of migration in the Mekong. The MOUs which the Thai government signed with Cambodia, Lao and Burma (Myanmar) made arrangements for the countries of origin of the migrants to provide travel documents. Migrants would then be able to enter Thailand legally and apply legitimately for a work permit. Despite many set backs with the implementation of the MOUs, particularly but not exclusively with the MOU with Burma, the Thai government is concentrating all its efforts on this process and is abandoning policies for the large number of migrants who have and continue to enter the country illegally.

Restrictions in Migration Policies

Restrictions on Labour Rights

Migrants' legal status in Thailand is dependent on them being registered for work with an employer. Tying a worker to an employer decreases the autonomy of the worker and increases the opportunities for the employer to exploit the worker. Migrant workers are bound to their employers through the policies of registration for a migrant workers' card and through the new application process for a temporary passport. Thus even migrants who manage to become regularized through the nationality verification and MOU process are unlikely to enjoy protected working conditions and labour standards.

Only in certain conditions (e.g. death of employer, closure of business, exploitation) can a migrant request to change employment. The migrant then has seven days to find a new employer and to transfer the papers from one employer to the other. Restricting the time to job hunt for a new employer to seven days is impractical for migrant workers who do not have access to any employment agencies or services. Migrants consequently have to take whatever jobs are available regardless of the conditions and pay.

These restrictions on migrants contradict the right of all workers in Thailand to seek protection under the Labour Laws regardless of immigration status. In the current situation, migrants who have filed complaints of non-payment, exploitation or violations of working conditions, are regularly dismissed from their work. Loss of employment leads to the loss of legal status and the migrant being deported before the dispute can be settled.

Many migrants are also dependent on their employer for their housing as local authorities encourage employers to house migrants on work site. Migrants who have disputes with their employers therefore also risk losing their accommodation. Even where migrants are not forced to live on site, there are few options available since local authorities do not make provisions for more social housing to be built and extra public utilities to be provided in areas where the population has been increased substantially by the arrival of migrant workers.

Time Restrictions

All policies on migration have been and continue to be temporary and insecure, and none have included any measures which provide for a more secure option for long term migrants in employment. The registration exercises over the last two decades have allowed migrants to register for three months, six months or one year. Only in 1996 were migrants able to register for a two year period. Migrants entering the country legally with a temporary passport from 2010 will be allowed to work for two years and then to apply for an extension of two years. At the end of four years, the migrants are bound to return home and not return to work in Thailand for a further three years.

Mobility Restrictions

Migrants who registered for the temporary migrant workers' card are not allowed to travel outside of the area where they registered. This is a violation of a fundamental human right. It also creates an artificial situation within the country. Unable to move freely to where there is work, seasonal workers stay in place even when the season is over, creating an over-supply of workers in certain areas for out-of-season periods, and thus further pushing the wages down.

The restriction of internal movements of migrants within Thailand also creates situations where migrants are liable to arrest and deportation despite registering as required. If a migrant is subcontracted to another area, or travels to another area for leisure or personal business, the police may arrest and deport the migrant. If a migrant needs to travel to another area they can only do so clandestinely. The suffocation of migrants hiding in trucks while being transported from one area to another has been a direct, tragic consequence of this restriction. The lifting of such restrictions for migrants entering the country with travel documents is a welcome improvement.

Unionization Restrictions

According to the Labour Relations Act, B.E. 2518 (A.D. 1975) union officials must be Thai-born Thai nationals which thus bars migrants from forming new unions or becoming officials in

existing ones. Although migrants can join Thai unions, in many of the geographical areas where migrants work there are no union offices. In addition, migrants, and particularly migrant women, frequently work in jobs which are not traditionally unionized such as domestic work, sex work and agricultural work. Nor are these occupations protected by the labour laws which leaves migrant workers without any form of collective bargaining.

These restrictions on migrants' freedom of association and collective bargain are contrary to the spirit of decent work and workers rights as set out by the ILO.

Family Restrictions

Although migrant workers themselves have been able to obtain the status of temporary workers in Thailand since the early 1990s, the existence of their dependents has only been recognized in occasional policies, and family members live with daily uncertainty and instability. The MOU process makes no provision for the dependents of migrant workers. This contradicts the Cabinet Resolution on the Education of Non-Documented and Non-Thai People July 2005 which allows for all children, regardless of legal status to attend Thai schools and to register for a ten year status while studying. It is therefore possible that within a single migrant family, each member may hold a different legal status which could then lead to separation in raids and deportation.

Social Security Restrictions

Employers of migrant workers have previously been prohibited from entering their employees in the National Social Security Schemes or joining them up to Workers' Compensation Fund. Under the new regulations employers of migrants with temporary passports may enter their employees into the schemes but are not obliged to. The social security system in Thailand offers free health care and a social safety net for workers. Migrant workers who are excluded from the system are deprived of their rights for compensation for workplace accidents and social welfare benefits, such as free health care and severance pay packages.

Reproductive Rights Restrictions

The reproductive rights of migrant women have been brought into question many times over the last decade. Pregnant women have been threatened publicly with deportation. Local authorities have encouraged employers to return pregnant women. Maternity leave for migrant women is unheard of. This has frequently resulted in migrant women having to seek abortions which are illegal in Thailand. Many women die or suffer long term damage from these back street abortions. Women who decide to keep their babies, have to struggle to survive without any supportive social services and without their extended family.

Universal Access Restrictions

Only registered migrants can pay into the National Health Care system and access the national health system. Dependents of migrants are not able to pay into the system. Migrants are subject to certain restrictions in health care, including access to ARV treatment for HIV positive migrants under the National Health Care.¹

Restrictive Processes for Legalization

The registration of migrant workers who entered the country illegally has cost migrants 3,800 baht (US\$115), the equivalent of one month's salary each year. Participation in the new MOU process, involves trips to the border for nationality verification, issuing of a temporary passport, application for work permit and health insurance. Since the process is complicated and time consuming, employers and migrants are utilizing private brokers which increases the costs. Only migrants currently registered in Thailand, with enough money and time and a willing employer can hope to become legalized under the new system but many migrants will not fulfill these conditions. Some fear that their nationality will not be verified by the Burmese regime; others will not dare to submit their details to the regime that they have fled, with many fearing the repercussions of admitting leaving Burma (Myanmar) illegally, with the additional fear that their families will be taxed or their names will be used to vote in the election without their knowledge. It may therefore be possible that the legalization process of migrants may result in more migrants

¹ Some migrants currently access ARVs through special programs and support such as the Global Fund to Fight HIV/AIDS, Malaria and TB

becoming illegal and an increased number of migrants being stateless as both the country of origin and destination deny their existence.

Restrictions from Participating in Society

None of the current policies on migration have addressed the integration of migrants into Thai society. The unwritten policies of housing migrant workers on site rather than in residential areas and not enforcing labour laws so that migrants have long working hours and little free time, all result in segregated communities. Only the education policy which provides for migrant children to integrate into Thai schools makes any contribution to acceptance of migrant families into Thai society; but since a large number of these children have to return to the construction site or plantation or orchard in the evenings, they are unlikely to be able to fully and fruitfully be integratee into Thai society. Segregated communities become distrustful and fearful of each other and breed tensions.

Multiple Restrictions

The unprotected and precarious situation of migration to Thailand serves to erect barriers between the country of origin and country of destination - barriers which do more to prevent migrants returning home than they do to prevent them arriving. Migrants are more likely to remain in the country of destination, even during an economic crisis when they are not fully employed or fully paid, if it were possible to return home temporarily. If temporary return is not possible, they will try and stay in Thailand, even if they loose their jobs

Suggestions To Protect Migrants' Rights and Facilitate Migration

In our view it would be preferable for the Thai government to adopt an open and transparent policy which would cover all migrant workers in Thailand, and offer them protection under the national laws and regulations. The introduction of a new system of migrant registration in March 2010 provides a good opportunity for the government to revise its procedures to effect a more straightforward and effective migrant registration policy

The restrictions, limitations and difficulties of the registration process often have the perverse effect of increasing the number of undocumented migrants, who are still able to obtain paid work without the expense and risks of becoming legally registered. Less restrictive migration policies would also mean that migrants are more likely to return to their countries of origin when work is not available, which would be a preferable situation for both the migrants themselves and the Thai authorities.

The temporary nature of the policies which force migrants to return after one year or after four years, being contrary to the nature of migration and the nature of the labour needs of the country, serves only to increase the number of migrants who, even if they have legal status, revert to illegality in order to be able to remain in the country.

Simplified Processes for Legalization

To respond to the reality of the situation where migrants will continue to arrive in the country without documents due to the political situation in Burma (Myanmar), a different, simplified process of registration could be employed. The following is one such suggestion:

- (1) Develop Registration Booths at the Thai side of the border where a migrant ID card could be issued on the spot with a computerized system.
- (2) Provide migrants with these ID cards access to the Thailand's Department of Employment's job finding services. Official information booths could supply information about job demands around the country and migrants could legally travel to find work.
- (3) Institute a system whereby, when migrants found a job, they would register with the local authorities for their ID card to be activated in that province and be able to access health, education and social services.

Ease Dependency on Employers

Migrant workers who wish to change their employment, should be allowed a reasonable time to find new employment (minimum two months).

Migrant workers should have the right to choose their accommodation and local authorities should ensure that sufficient housing is available with proper public facilities (water supply, garbage collection, etc.)

Migrants who file complaints against their employers should be protected from automatic dismissal and should not lose their legal status as a consequence of exercising their labour rights. Migrants pursuing legal cases should be provided protection and status to stay for the duration of the process.

Ease Mobility Restrictions

Since migrants will always travel to where there is work available, they should be allowed to travel without restrictions and to use public transport. This is particularly important to avoid tragedies such as the suffocation of migrants in the container in Ranong and also to lessen the need for brokers and the power of traffickers.

Revoke Unionization Restrictions

Migrant workers should be able to fully exercise their right to collective bargaining and to participate actively in unions. The Labour Relations Act should be reformed to respond to the current labour situation in Thailand. When migrants are not yet able to form or join existing unions, the government should recognize migrant workers associations and include them in policy level discussions.

Recognise Migrant Families

Dependents of migrant workers should have access to social services such as education and health services. Dependents should be able to register and participate fully in the social life of the community.

Lift Social Security Restrictions

Instead of one-off payment of health insurance, migrant workers and their employers in all sectors/occupation should be mandated to join National Social Security Scheme which includes

free health care, unemployment benefit, maternity benefit and child allowances, as well as having access to Workmen's Compensation Funds which covers compensation for OHS injuries. It also foresees a time when ASEAN may implement a portable social security system.

Promote Reproductive Rights

Migrant health volunteers who have provided services in collaboration with the Department of Public Health and NGOs and CBOs should be given recognition for their contribution to the public health of the country and should be able to attend trainings and be promoted and be employed as migrant health workers. In addition to the general health workers, a cadre of migrant women reproductive specialists should be supported.

Pregnant migrant women should not face discrimination in the workplace or accommodation.

Make Universal Access Genuinely Universal

All migrants regardless of legal status should be able to access health care.

HIV positive migrants should be included in all universal access schemes to ARVs and pregnant HIV positive migrant women should be able to access the latest available treatments.

Advance Integration Policies

Local authorities should be encouraged to promote integration policies, ensure that migrant communities have equal access to services and education and are included in local events.

Migrant communities should also be able to host their own significant events. Cross cultural events should be promoted in the community and schools.

<p>Cross border migrants in Thailand cross the border to find work and livelihood and in some cases refuge and safety. They are currently forced to contribute to the economic advancement of Thailand without being invited to contribute to the cultural and social enrichment of the country.</p>
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They are forced to pay an annual health insurance fee but not allowed to pay a monthly social security contribution which would provide a social safety net to themselves and their families.

They are forced to travel clandestinely in high risk situations, to work in situations which are sub-standard. They are not allowed to travel freely and flexibly to fill labour shortages and to freely associate to ensure that working standards in Thailand do not deteriorate. They are forced to be temporary and insecure when their lives are permanent and they require security. Thailand has initiated responses to undocumented migration for over two decades. As we enter a new decade, a new response which respects the rights of the migrants and which believes in the integration of communities of neighbours countries is eagerly awaited by all concerned.

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