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The Impacts of Wrongful Dismissal on Myanmar Documented Migrant Workers in Mae Sot, Thailand

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Abstract

This study explores the legal grounds of wrongful dismissal and the significant impacts of the wrongful dismissal of Myanmar documented migrant workers from specific factories in Mae Sot, Thailand. The documentation analysis was applied to relevant national laws and regulations, and a qualitative approach was employed to collect and analyze research questions and respondent interviews. The researcher conducted semi-structured in-depth interviews with 21 key informants, including Myanmar migrant workers wrongfully dismissed from Factories, the members of the Workers' Associations, Non-Governmental Organizations, and Civil Society Organizations. Why should we protect the migrant workers' rights against wrongful dismissal as a human right? It highlights their vulnerabilities, such as loss of income and poverty, lack of legal documents, difficulty finding new employment, and return to the status of undocumented position when they couldn't renew their documents such as a Pink Card or Certificate of Identity (CI) with a work permit on a definite period, and legal inconsistency with the two provisions of the Social Security Act of 1990 and the Foreigners Working Management Emergency Decree of 2018 in unemployment benefits. This study found that it is crucial for migrant workers to be better protected by government procedures and advocate for policy changes to support their rights. The government should consider advancing the regular migration process for migrant workers and address the challenges they face, including the vulnerable position in Myanmar that needs to be supported, and the lives of migrant workers with more effective implementation and humane treatment.

Keywords: *wrongful dismissal, unemployment, poverty, legal documents, issues, protection, labour rights.*

Introduction

Thailand is a prominent center for migration, functioning as a country of origin, destination, and transit (IOM, 2024). It registered around 2.3 million migrant workers in 2023, mainly from Cambodia, Laos, Myanmar, and Vietnam. Unofficial estimates place Thailand's migrant labor population at over 5 million (IOM, 2023). More than 9 million working-age international migrants reside in ASEAN countries, predominantly consisting of intra-ASEAN migrants (ASEAN Migration Outlook, 2022). Following the Cabinet Resolution of 3 October 2023, Thailand has 813,869 migrant workers, 676,515 (83.1%) from Myanmar. Thailand's Ministry of Labour's Department of Employment reported 3,415,744 migrant workers in March 2024. The Thai economy benefits from 5% of the workforce or 1.8 million migrant laborers who work in agriculture, construction, manufacturing, and domestic services. Overall, migrants contribute \$53 million to the Thai economy annually (Martin, P. 2007). Many migrant workers enter Thailand irregularly due to porous borders, the intricate, time-consuming, and costly MOU process, and the restricted efficacy of the border employment scheme (ILO, 2024). Thailand's irregular migration includes illegal immigration, habitation, and employment. Historically, the predominant type of cross-border travel has been irregular, with migrant workers traversing the Thai border without official documentation. The predominant category of legal and irregular migrants comprises economic migrants (OHCHR, 2022). Thus, these migrants are divided into three groups: displaced, stateless, undocumented, and migrant laborers. Of the 4-5 million migrants working in Thailand, 1-2.5 million are irregular (IOM, 2024).

In 1988, the military seized power in Myanmar, prompting many politicians to flee to neighboring countries to escape arrest. The country's economic hardships and political

instability led to widespread unemployment and financial insecurity, causing many individuals to migrate to neighboring nations. Thailand, one of Asia's most open economies, has been a key destination for migrants, contributing to significant international migration (Huguet, J. W & Punpuing, S. (2005). The situation in Myanmar has worsened since the military coup in February 2021, further exacerbating human insecurity and prompting increased migration both internally and externally (IOM,2023), through irregular channels, lacking valid passports, visas, or work permits (Thongjen, C. (2015). Myanmar migrant workers primarily engaged in low-wage occupations such as fishing, agriculture, construction, manufacturing, domestic labor, and various services (ILO, 2024). They leave the country through different methods, with the bulk entering Mae Sot illegally. This has led to a substantial rise in migration; nonetheless, the circumstances for migrants in Thailand are severe, and they face increasing challenges.

Based on comprehensive interviews with migrant workers in Mae Sot, Thailand, this study, finds that most migrant workers entered through illegal channels due to facing hardships in their living conditions. As undocumented individuals, they attempted to obtain residency, a work permit known as a Pink Card, and a Certificate of Identity (CI), legally issued by the Thai Government, through brokers at high costs within a stipulated timeframe. They are typically hired through a formal employment process involving the procurement of work permits and visas. However, they face significant challenges regarding their own and their family's survival, particularly in terms of food and shelter, when employers abruptly end their employment without prior notice as an impactive of wrongful dismissal or termination. The huge difficulty for Myanmar migrant workers is renewing their work permits or visas, which may lead to, their return to a state of illegal immigrants because a foreign worker cannot live without his national employer, which is potential for deportation (The Immigration Act of Thailand, B.E 2522 (1979)). The lack of legal documentation is the most crucial issue facing migrant workers; their earnings are largely spent on identification documents, and they hardly struggle to cover these costs yearly.

Wrongful dismissal refers to a termination of employment, a breach of the employment contract, without providing notice or notice of pay, and this occurs when an employer violates an employee's rights. In Thailand, the Labour Protection Act of 1998 and the Civil Commercial Code of 1985 outline the legal provisions relating to the grounds for wrongful dismissal and how to terminate employees. These laws provide the right to dismissal or termination with prior notice. One of the legal grounds for wrongful dismissal is based on the termination of the agreement without statutory cause or violations of work regulations and without giving prior notice or severance pay under the Labour Protection Act of 1998 (Section 17). Hence, an employer cannot dismiss or terminate an employee without statutory grounds, and an employee is entitled to notice of termination from work. Although Thai Labour laws regulate how to terminate employees, most employers neglect the statutory provisions and dismiss migrant workers from their work without giving any reason.

The research focuses on the negative impacts of dismissing migrant workers from factories, having effective protection for those who suffered fundamental labour rights violations, and the legal forms of wrongful dismissal, and reveals the main impact of the wrongful dismissal of Myanmar documented migrant workers from specific factories in Mae Sot, Thailand. It emphasizes the subsequent experiences of further entrenchment of migrant workers' wrongful dismissal and their vulnerabilities such as loss of income and exacerbation of poverty, lack of legal document issues including the difficulties in obtaining an official document, difficulty in finding new employment that impacted the right to work for the

unemployed because of the wrongful dismissal, it is important to consider the challenges and vulnerabilities that these individuals face and lack of legal consistency with the two provisions of the Social Security Act of 1990 and the Foreigners Working Management Emergency Decree of 2018 in such a case of unemployment benefits. Regarding the loss of income and poverty, the migrant workers did not have a safety net for their future lives, and they faced hardships and struggled for their survival.

Research Objectives

The research aims to investigate the grounds for dismissal and the impact of wrongful dismissal or termination of documented migrant workers under national legislation. It also seeks to raise awareness of the violation of migrant workers' labour rights concerning the hardships accompanied by wrongful dismissal. Additionally, to assist Thai State regulators, and officers in inspections by providing legal assistance and advocacy services. There is a crucial need for greater protection of migrant workers through government mechanisms, ensuring these workers have equitable remedies and advocating for government policy reforms to promote migrant workers' rights. By doing so, better protection for the rights of all workers is provided as human rights and access to justice is supported, affirming that all workers shall have equality in their legal status, which is prescribed by labor protection legislation.

Research Methodology

The research used a qualitative approach, which included a review of relevant laws and regulations. This process provided the collection and analysis of research questions and interviews with respondents. The researcher conducted semi-structured, in-depth interviews with 21 key informants, consisting of 17 wrongfully dismissed migrant workers from the factories. Among these 17 workers, 5 were male and 12 were female. The remaining 4 informants were responsible individuals from the Workers' Association, non-governmental organizations, and civil society organizations in the field of migrant workers. The interviews initiated a pilot study involving a dismissed worker from the factory. Through that study, the labour representative of migrant workers from the factory was further selected and interviewed. Subsequently, the workers' representative chose additional workers who indicated to the interviewees that they should participate in the interviews.

The purposive and snowball sampling methods were used to gather information on individuals' attitudes and government policies. The data collection period was from November 2023 to January 2024.¹ Data collection was ceased when no new significant data or exploration emerged from the investigation. The thematic analysis method was applied to the qualitative data, which was listened to and transcribed carefully to ascertain the information from interview audio files. The data were then examined to identify common themes across many pieces of information. Commonalities from the responses were selected, categorized, and analyzed. It mainly emphasizes the Myanmar migrant workers' vulnerabilities such as loss of income and exacerbation of poverty, issues related to the lack of legal documents, challenges in obtaining official documentation, difficulties in finding new employment, and lack of legal

¹ Regarding the Institutional Review Board and Certificate of Analysis, the researcher employed the Mahidol model of submission criteria and submitted a comprehensive research proposal to the YCU-Research Ethics Review Committee in Myanmar to obtain approval for the research ethics review on 26 October 2023. The proposal encompasses the research objectives, methodology, participant recruitment techniques, informed consent procedures, and potential risks and benefits. The researcher also provided the requisite documents along with the application form. The YCU evaluated the components of the proposal to verify the participants' information, potential dangers, and ethical standards, completed the requirements and obtained the Certificate of Research Ethics Review Process from the YCU Research Institute to do research in the field.

consistency with the two provisions of the Social Security Act of 1990 and the Foreigners Working Management Emergency Decree of 2018, concerning unemployment benefits.

The research used two sets of questionnaires for two groups; one was for interviewing Myanmar migrant workers, and the other was for interviewing the Thai Non-governmental organizations group. The first group of key informants included Myanmar workers in both the formal and informal sectors who entered Thailand through illegal channels, also they had more than five years of experience in their field and were terminated from employment. The second group included the relevant responsible persons of the Workers' Association, Civil Society Organization, and Non-governmental Organization (NGO) that have trust among migrant worker communities in Mae Sot, namely Yaung Chi Oo Workers' Association (YCOWA), Human Rights and Development Foundation (HRDF), MAP Foundation, and Arakan Workers Association (AWO). Those persons have many experiences of managing in their organizations relating to the rights of migrant workers. There were 21 respondents, 17 in the first group and 4 in the second group, in a conducted interview. Among them, 17 respondents were primarily interviewed face-to-face, and 4 respondents were interviewed over the phone. The worker respondents' profiles included: 12 women, 9 men, and the kind of factories they worked at, woolen factories. The sizes of the factories were Factory A, Factory B, and Factory C in Tak Province, and the products of Factory C were exported abroad, especially to Germany. In the research, most of the respondents were fired and dismissed from Factory C in 2020.

Findings

According to the in-depth interviews, migrant workers who worked for the woolen textile factory in Mae Sot revealed that they were forced to stop working because of the sudden closure of Factory C without giving prior notice and knowledge, four days after the factory closure on 4 April 2020. Although the owner of the factory paid their wages, they did not get any compensation without providing advance notice, and they became unemployed. Some workers, 195, complained to the Migrant Workers Organization 1 and filed a lawsuit through it. They are suffering and facing unavoidable problems in terms of living, food, and health care issues for themselves and their families in surviving (U Kyaw, Male Myanmar, Factory C, Workers' representative, 47: 10/12/ 2023). In the ordinary life of workers, they have to send their monthly wages and salaries to their families in Myanmar and pay off debts, some elderly parents, and children are dependent on them, so those who regularly send money face difficulties. In addition, while they were working, they had a place to live and the factory provided meals, but because the factory was closed and they were terminated their work, they faced unavoidable problems in terms of living and food, when the factories were terminated from their work without giving advance notice as a consequence of wrongful dismissal or termination. These problems are concerned with human rights violations of labour rights due to basic human rights, including the right to life with dignity, the lack of healthcare service, and the education of the family members caused by a domino effect.

The migrant workers informed the researcher that certain employers created an agreement form that the workers were required to complete and sign. After three months of employment in that factory, they attained legal worker status and received regular and overtime wages (Ma Sein, Female Myanmar, Factory B & C, 40: 9/12/2023). The law governing wrongful dismissal is primarily found in the Labour Protection Act of 1998. When an agreement shall be presumed as an employment contract that is enforceable by law and the employer does not have the right to terminate employment except the valid grounds for termination as stipulated in Section 119 of the Labour Protection Act, and Section 583 of the Civil and Commercial Code, also, the employer is not obligated to provide a dismissal notice

including the reason and date of termination in advance and an employer may terminate an employee without notice or payment instead of notice.

According to Section 119 of the Labour Protection Act, 1998, an employer may not pay severance to an employee when employment is terminated upon any of the conditions: (1) performing his or her duties dishonestly or intentionally committing a criminal offence against the employer; (2) willfully causing damage to the employer; (3) committing negligent acts causing serious damage to the employer; (4) violating work rule, regulation or order of the employer which is lawful just, and after written warning having been given by the employer, except for a serious case with no requirement for the employer to give warning; (5) absenting himself/herself from duty without justifiable reason for three consecutive working days; (6) being sentenced to imprisonment by a final court judgment. This Section provides that an employer must not terminate an employee's employment without just cause, terminate an employer, the employer may be liable does so, to pay compensation to the employee. If an employee believes that they have been wrongfully dismissed, they may file a complaint with the Labour Court within 1 year from the date of termination.

Additionally, Section 17 of the Labour Protection Act, 1998, states that when the completion of the period specified in the contract of employment, no requirement for advance notice. But the period is not specified in the contract, an employer or employee may terminate by giving advance notice. If an employer fails to do so, an employee will be liable to claim compensation under Section 17(1) of the said Act, instead of the advance notice. According to the law, after the probation period, an employee has the right to claim his labour rights regardless of the presence or absence of a document. Under Section 118 of the Act, an employer shall pay severance to an employee who is terminated without the statutory cause. The Severance payments that an employer is required to pay statutory severance to the employee upon termination. The amount of statutory severance to which an employee becomes entitled is calculated according to the employee's length of service.² Though the employees shall be entitled to receive the severance pay, payment instead of notice for wrongful dismissal, as mentioned, they did not receive it.

In Thailand, the Labour Protection Act of 1998 regulates how to terminate employees, nonetheless, many factory employers disregard these legal provisions and dismiss migrant workers from their work without justification. It may be presumed that the Labour Protection Act in principle, is in accord with the international human rights standards. Thus, Section 583 of the Civil and Commercial Code, and Section 119 of the Labour Protection Act guarantee employees from unjust dismissal from their employment.

The research investigated the migrant workers from Myanmar who are employed in certain factories named Factory A, Factory B, and Factory C in Mae Sot, Thailand. Most of the workers were worked and wrongfully dismissed from Factory C and had over five years of experience in work. When they joined their employment, they filled out the form and signed it, including the rules relating to work which were described in the Thai language. Hence, they

² Section 118 of the Labour Protection Act (NO.2) B.E. 2541 (1998) provides for Years of Service Severance Pay. The Labour Protection Act (No. 7) B.E. 2562 (2019) (The Amendment Act) raised the number of the wage of terminating an employee with the service of length as follows:

120 days but less than 1 year, 30 days of the latest wages;
 1 year but less than 3 years, 90 days of the latest wages;
 3 years but less than 6 years, 180 days of the latest wages;
 6 years but less than 10 years, 240 days of the latest wages;
 10 years but less than twenty years, 300 days of the latest wages;
 20 years or more, 400 days.

are unfamiliar with the terms and conditions of the contract. When they terminated the work, the majority possessed a Certificate of Identity (CI) and Passport, as legal documentation for temporary residence and employment. However, when these documents expired, most were unable to a new one because of financial difficulties. Migrants remittance part of their salaries to their families back home yearly, without having a financial safety net. Additionally, the excessive cost of the official registration process is higher than the cost stipulated by the Thai government for applying for a new one that goes through different brokers when they are unemployed and, lack income.

Thailand's migrant policy largely focuses on registering migrants with requisite papers, including a work visa. A periodic policy that arises resembles a registration amnesty, allowing all undocumented migrants to enter the system without penalties. This registration is unavailable throughout the year and is typically advertised around one month in advance. The government allows a restricted period for migrants to register, often ranging from 60 to 90 days, thus requiring numerous deadline extensions. After the conclusion of registration, enforcement proceedings generally ensue, encompassing arrest, detention, and deportation (The CCC Report, 2014).

Loss of Income and Exacerbation of Poverty

Research by the United Nations Development Programme (UNDP) reveals that 650 million of 6.1 billion people across 110 countries live in monetary poverty, defined as subsisting on \$2.15 per day (UNDP, 2023). In 2020, Thailand's average income poverty threshold was 2,762 Baht per capita per month. The official poverty thresholds in Thailand are determined at the household level. Food poverty levels are established based on households' caloric and protein requirements, which vary according to age and gender composition. They are modified for regional and urban-rural price disparities (World Bank, 2023).

In this study, regarding the loss of income and poverty, the migrant workers did not have a safety net for their future lives, and they faced hardships and struggled for their survival. Before the closure of the factories the migrant workers received wage payments per day between 100 and 200 Baht (US\$ 3-6) which violated their rights by wage exploitation and below the minimum daily wage of 332 Baht under the National Wage Committee's notification on Minimum Wage Rate in Tak Province, 2020.³ The minimum daily pay ranges from 313 Baht to 336 Baht, and it varies in different provinces. Consequently, when they are abruptly terminated from their employment, they lack a financial safety net for their future, and they face hardships and struggle for their survival.

The lack of income leads to big hardships for unemployed migrant workers, especially in the food and shelter of families being deprived of their employment. It is certain that the first encounter with financial difficulties they face elevated living costs in the country, hindering their ability to save money and repay their debt because most workers come to Thailand, by borrowing money with interest from their community. Furthermore, since their families rely on their remittance funds, this makes them stressed in unemployment conditions. Most of the migrant workers are major breadwinners of the family, hence the family members' basic needs, as well as health and education, depend on their income. Once they become unemployed, it puts the whole family in a hardship situation.

In this regard, the interview data revealed as follows:

³ The National Wage Committee's notification on the Minimum Wage Rate (No. 10) of Thailand's Ministry of Labour was declared and effected on January 1, B.E. 2563 (2020).

“Upon an individual's termination from employment, its impact on the entire family unit is dependent on him. Facing challenges such as insufficient funds to give birth or an inability to afford rent, leading some workers to attempt suicide or pushing them to pursue a detrimental profession (Ko Moe Lwin, Male Myanmar, MWA 2, 14/1/2024).

Ma U is 50 years old and has 23 years of work experience. She said, *“My family comprises my parents, husband, and children. One of my children is in grade 10, another is in university, and the youngest is over one year old. Upon my husband and I becoming unemployed, we endured significant hardship as our lives were irrevocably altered. Given my age, I intend to apply for a job at another factory”* (Ma U, Female Myanmar, Factory c, 50: 7/1/2024).

In addition, Ma San has encountered many difficulties in her family life. She stated the following:

“My spouse died following his dismissal from the factory, and I have two children. Since the infant's birth, he has had treatment for poor pulmonary health, with each treatment exceeding 10,000 Baht in cost. I encountered numerous difficulties and solicited loans from others. The children also discontinued their education due to an inability to persist. The school's enrollment fee is 200 Baht every month, totaling 2000 Baht for the academic year. Additional charges include tuition and transportation expenses for the school bus. The elder child became a bricklayer after dropping out of school” (Ma San, Female Myanmar, Factory C, 45: 19/1/2024).

U Kyaw, a representative of workers who is forty-seven years old and has 20 years of experience, he dismissed from work. said, *“When I was working, I could support my family in Myanmar at least 150,000/200,000 kyats (1200-1600 Bath) monthly. Since I am employed, I couldn't even afford the monthly rent and utility expenses of 1900 Baht for myself. Hence, I lived by austerity to save money in a shared room with three or four workers even during the COVID pandemic. Since there is no extra money, I can't incur great expenses if I have health issues because I was unable to obtain a medical card for a yearly checkup”* (U Kyaw, Male Myanmar, Factory C, 47: 10/12/2023).

Another vulnerable worker is Ma Sein, who struggled with a big hardship because of wrongful dismissal. She is 40 years old, has about 23 years of work experience, and has worked in Thailand since 2001. According to her, she worked in various factories because these factories dismissed the workers and stopped the operation of the factories. In Factory C, where she was the last to work and dismissed from that work, she had seven years of experience and she informed that *“The factory closure was announced abruptly, without any advance notice, after April 2020. When I gave birth to a child, I was no longer permitted to reside in the factory courtyard. I had to find accommodation outside and rent a room. Moreover, the daily allowance was no longer provided. Without this financial support, and with no living expenses paid after the birth, I had to manage my expenses and find ways to support myself. After losing my job, life has become incredibly challenging. We're struggling to put food on the table. Given my age, finding another job is nearly impossible. I'm trying to remain patient, but the difficulties persist day by day, making life increasingly challenging.”*

Ma Khin is fifty years old, has 17 years of work experience, and held a passport while she was working at the factory. She said about her hardships:

“I have been working in this factory for many years. There are many workers like me, and at my age, it is not easy to get a new job. If I get it, I will do that; other people don't want it. Also, the daily wage is extremely low, just over 100 Baht (\$ 3). I have suffered much damage

and loss of rights because it is no longer the factory where I worked, according to my skills. It became difficult because of the situation of having to live and food, and so I borrowed money. When I became unemployed, my family in Myanmar was affected because I couldn't send money to them (Ma Khin, Female Myanmar, Factory C, 50: 8/12/2023)."

In this regard, according to her information, she was dismissed twice. The first one was hired in 2004, and she was dismissed after 3 years of work experience in 2007; she couldn't complain about that case, and then she obtained a new job in the same year. Therefore, she can continue to renew her documents to work and live legally. If the worker was dismissed from work when she was young, she can have a chance to join a new employment because the factory owner wants to employ young workers rather than the old. However, when she got older and was dismissed from work as a second, its impact was huge, and she couldn't easily get a job, and then her passport was invalid. Consequently, her living situation is faced with hardships to settle her basic needs.

The impact encompasses delayed medical procedures, inability to buy needed medications, and diminished access to healthcare services. When migrant workers are abruptly terminated from their employment, they lack a financial safety net, thereby resulting in insufficient money for medical expenditures, drugs, or care for family members, exacerbating health issues for the entire family.

In the study, Ma Sein's elderly father went to the hospital frequently, and she borrowed money for her father's medical expenses. Later, she told the responsible person at the hospital that she couldn't find the money for medical expenses anymore, apologized, and had to pay 1,000 Baht per month for those expenses. Currently, her father is still in the hospital. It is known that she had documents such as CI and PJ before she stopped working, but she couldn't afford to apply for renewal when the documents expired. She is living with a police card now, working randomly, and suffering from stress (Ma Sein, Female Myanmar, Factory C, 44: 9/12/2023).

Furthermore, the migrant worker, U Zaw, who is fifty-two years old and has over 20 years of experience, had high blood pressure before the factory stopped working. He said:

"I held a passport that covers a visa, work permit, and blood test card. I have hypertension and was hospitalized at Mae Sot Hospital for two days. Subsequently, I was required to attend a medical appointment three times bi-monthly, followed by five visits every four months, and I was prescribed medication. Due to possessing a blood test card, I was exempt from medical expenses. However, upon the relocation of Factory A, where I was employed, I was discharged from my position. The blood-tested card still had time remaining, granting the holder the opportunity to access the hospital and receive medication without incurring medical charges. Upon the expiration of my visa, I was unable to visit the hospital and thus did not incur medical expenses, as our sole income was derived from my wife" (U Zaw, Male Myanmar, Factory C, 52: 16/12/2023).

The domino effect of insufficient income can increase stress and mental health issues within families. Without the support that migrant workers' remittances provide can endanger the health, safety, and overall well-being of the entire family. The crucial role remittances play in supporting vulnerable family members facing health challenges.

The respondent, Ma Lwin, and two sisters came to Thailand to support her family, and she had over six years of work experience. She said *"While I was still working, my father's health was poor and his lungs were not good at all, since before the factory was closed, we bought oxygen and other medicines for him, and he had to be taken care of by someone, so one of my elder sisters who became unemployed take care, my father, as much as she could but my*

father was passed away in the last four month. I had to prioritize my father, so I couldn't take care of my elderly mother suffering from sleepless nights, and I only had the idea of taking some multivitamins for my mother. I also couldn't take care of my health. When I terminated my work without giving notice and receiving compensation, I had to seek money by borrowing money for my father's medical treatment, so I became in debt. I have a daughter who is eight years old and studying in the first grade. I am facing a lot of difficulties, such as the rent for living, the school admission fees, monthly fees, and the ferry fares, because there is no one to send and take my daughter to school" (Ma Lwin, Female Myanmar, Factory C, 41: 8/1/2024). One of her elder sisters, who holds a passport visa, had an expiration date when her work was dismissed. The legal document is dead because she can't continue after running out. She lives with a police card and works as a maid for 200 Baht per day wage.

The law mandates that employees undergo health examinations and submit the physician's certificate alongside their other documentation when applying for work permits. These health examinations are crucial for monitoring worker health and facilitating access to medical care and associated benefits. The principal mechanisms of migrant health insurance comprise: (i) the Social Security System (SSS) encompassing migrant workers in the formal sector; and (ii) the Health Insurance Card Scheme (HICS) catering to migrant workers from Cambodia, Laos, Myanmar, and Vietnam in the informal sector. The SSS, which covers migrant workers in the formal sector, and the Health Insurance Card Scheme (HICS), which covers migrant workers from Cambodia, Lao, Myanmar, and Vietnam in the informal sector, are two important mechanisms of migrant health insurance. The Social Security Acts of 1990, amended in 1994 and 1999, as well as the Workmen's Compensation Act of 1994, established the SSS. Regardless of their country, migrant workers in the formal sector are insured by the SSS. Employers, the government, and migrant workers all make tripartite contributions to the payroll tax, which is mandatory. Employers must contribute 5% of migrant workers' salary to the SSS fund, while the government must contribute 2.75%. Medical care, unemployment benefits, stipends, retirement funds, occupational injury compensation, and delivery compensation for mothers are all covered by the access (SSS Kunpeuk, W., Julchoo, S., Phaiyarom, M., Sinam, P., Pudpong, N., Loganathan, T. & Yi, H., 2022).

Despite Thai nationals and migrants contributing to the social security system having equal rights to social health protection, it is estimated that a considerable number of undocumented migrant workers lack coverage under the MHIS due to issues of affordability and insufficient information and transparency. Consequently, health protection for unauthorized migrants poses a barrier, as only migrant workers possessing legitimate work permits receive comprehensive coverage (ILO, 2021).

The impact factor of healthcare is also as important as legal documents, but the wrongfully dismissed migrant workers' lack of healthcare benefits is not mentioned in detail in this study. Many jobs have a chance of health insurance to help workers pay for medical care when they are sick or need to see a doctor. It covers things like doctor visits, medicine, and hospital stays. It can also save them a lot of money. The health insurance gives the workers peace of mind, and they can get medical help without worrying about the cost.

Lack of Documents and Legal Issues

Regarding the documents, intending to promote regular pathways for migrant workers, Thailand has concluded a bilateral Memorandum of Understanding (MoU) on labor cooperation with neighboring countries which are the major sources of migrant workers in Thailand (IOM, 2024).

In 2002 and 2003, the Thai Government signed an MOU on employment cooperation with the neighbouring governments including Myanmar and established a channel for regular labor migration to Thailand (ILO, 2024). Under the MOUs, Thai employers have to be verified on their need for migrants by Thai authorities. Sending country governments to recruit and select migrants to fill these jobs and issue them passports so they can receive entry visas at the appropriate Thai embassy or consulate. Migrants travel to Thailand and report to their Thai employers, receive work permits and are entitled to the same wages as Thai workers. Migrants are to depart when their work permits expire, receiving 15 percent of earnings that were withheld in their countries of origin (Martin, P. 2007). However, until recently, only a small proportion of migrants have entered Thailand under the MOUs due to the complicated, lengthy, and expensive procedures involved (ILO, January-March 2024).

The Royal Ordinance stipulates that the MoU process is the sole official avenue for migrant workers in 'elementary' occupations to enter Thailand. Section 64 of the Royal Ordinance provides an exception, the border employment legislation, permitting firms to recruit migrants in border regions on three-month visas (ILO, January-March 2024). This Section provides that if a foreigner who is a national of a country enters the Kingdom with a border pass or other pass in the prescribed manner by the Director-General, he or she may be permitted by the Registrar to work in the Kingdom temporarily during the period or season and in a specified area.⁴

In Thailand, the majority of regularization schemes are dedicated to migrant workers from Myanmar, Cambodia, Laos, and Vietnam, whose work permits have already expired or are about to expire during specific periods, or who do not have any legal documents or entered Thailand illegally⁵. Migrant workers are permitted to register with the Ministry of Labour and get or extend their work licenses for a duration of up to 2 years without the necessity of returning to their home countries, deviating from standard procedure. Upon registration, their dependents, including children, receive Non-Thai ID cards, facilitating their access to various essential services, such as healthcare and education (OHCHR, 2022). Labor and employment legislation, including the Labour Protection Act of 1998 and the Royal Decree on the Management of Foreign Workers Employment of 2017 and its revisions, governs the employment of migrant workers in Thailand. To work legally, these individuals must adhere to Thailand's regulatory framework, which necessitates possessing essential documentation. Included in this category are the Work Permit and the Non-Thai Citizen Card, commonly referred to as the "Pink Card" (IOM, 2024).

The Work Permit⁶, a tangible card or booklet, is an essential document granting foreigners the right to work in Thailand. The Non-Thai Citizen Card (Pink Card), distinctive in its color, provides certain migrant populations, especially those previously undocumented, with temporary legal status and employment rights. While other documents like temporary passports or visas are crucial, they are not typically issued as cards, but as paper documents or stamps inside passports (IOM, 2024).

Another document is the Certificate of Identity (CI), which aims to identify all migrants in Thailand and register them in their workplaces. The CI will replace the purpose of the current Pink Card as permission to stay in Thailand and render it eligible for the blue book work permit.

⁴ Section 64, The Emergency Decree on Administration and Management of Working of Foreigners BE 2560 repealed and substituted under Section 30 of the Foreigners' Working Management Emergency Decree (No.2), B.E. 2561 (2018).

⁵ Cabinet Resolutions on 20 August 2019, 4 August 2020, 29 December 2020, 13 July 2021, 28 September 2021, 5 July 2022.

⁶ Section 5, the Working of Aliens Act, B.E. 2521(1978), Published in the Government Gazette Vol. 95, Part 73, Special Issue, dated 21 July B.E.2521(1978). "Work" means engaging in work by exerting energy or using knowledge whether or not in consideration of wages or another benefit, and "Permit" means a work permit.

All migrants in Thailand are required to obtain a CI or apply for a Burmese Passport. The CI is intended for migrants lacking a Burmese ID card and household registration document at hand. The CI enables migrants to travel unrestrictedly to acquire essential documents and apply for a Burmese Passport.⁷

The Migrant Working Group (MWG) Report indicates that 93% of migrant workers were unable to independently complete the registration process. Consequently, they were compelled to depend on their employers, brokers, and recruitment agencies for registration. Seventy-nine percent of migrant workers were subjected to excessive charges during the registration process, paying above 10,000 Baht (303 USD) instead of the government-mandated 8,480-8,680 Baht (257-263 USD) (Kerdmongkol, A. (2023).

The respondents informed the researcher that they used to hold pink cards, Certificates of Identity (CI), and Passports before they were wrongfully dismissed from their work. However, they couldn't afford to get a new one or renew it due to the high cost when they terminated their work. In 2023, according to the interviewed information, the approximate cost for the Pink Card process through brokers is 13,000-18,000 Baht (360-500 USD) allowed to work for one year in Thailand and for the CI process is 6,500-9,000 Baht (180-260 USD) that migrants are only allowed to work in Thailand by registering for a two-year visa that can be renewed once for another two years.

Evidence from the IOM reveals disparities between the official cost of 2,530 Baht for obtaining necessary documentation for regularization, as established by the Royal Thai Government (RTG), and the actual cost faced and incurred by migrants, which can reach up to 30,000 Baht (IOM, 2024). Expensive fees for these cards not only contribute to the migrant workers' financial hardship, but also have a big impact on their daily lives, and the well-being of their families. Hence, the problem of migrant workers' rights is still increasing, and their rights are not effectively protected.

The crucial problem is that migrant workers have to renew their identification documents every year, and this is the most challenging problem faced by migrant workers and their families, as it relates to the government. According to MWG, many migrant workers failed to apply for work permits, as mandated by cabinet resolutions, due to factors that include erroneous information in the document submission for work permit renewal, insufficient knowledge regarding work permit processing among both employers and migrant workers, unfamiliarity with the computerized application system, and the convoluted and burdensome registration process (The Migrant Working Group (MWG), 2023). As of 16 February 2023, according to the Foreign Workers Administration Office (DoE), the number of migrant workers not renewing work permits (thus becoming undocumented) is 52025,647.

The MoU System is one of the three ways to come to Thailand. According to the MoU between the two countries, the worker hired by the employer must work until the end of the prescribed contract. Another way to enter Thailand is through illegal channels. Undocumented persons come in and have to get residence and work permits, called Pink cards, Certificates of Identity (CI), and Passports, which are legally issued by the Thai government, through agencies or brokers within a certain period. It is known that the process of making documents has become more difficult due to the rules and regulations set by the Thai government. For instance, if a worker has a CI certificate, when he cannot renew his work permit while he is terminated, his status changes from legal to illegal. Section 17 of the Immigration Act of 1979 concerns the exemption relating to the registrations that define Thailand's migrant workers policy. Section 54 of the Immigration Act, 1979, provides that any alien entering or staying in the

⁷ FED. (2017, January 27). Myanmar and Thailand implemented CI "Certificate of Identity"; another attempt to identify Burmese migrants. Retrieved from fedgrassroots.org:<https://fedgrassroots.org/myanmar-and-thailand-implement-ci-certificate-of-identity-another-attempt-to-identify-burmese-migrants/>

Kingdom without permission, or with permission that is expired or revoked, may be repatriated from the Kingdom by the competent official. Accordingly, obtaining legal documents is the most important issue facing migrant workers. The earnings of the workers are mostly the cost of identification documents, and they hardly struggle for that every year.

The migrant workers who are dismissed or terminated from their work face unavoidable problems in terms of living, food, and shelter, and face a lawsuit. In addition to worrying about their daily lives, they must regularly renew their legal documents within a certain time which can vary from year to year. According to the ministerial notification implemented under the Cabinet Resolution, the period for applying and renewing is from December 16 to December 30, 2024.⁸ Due to the language barrier when applying for it, they must rely on brokers. In Thailand, there are several kinds of brokers such as MOUs, registered brokerage companies with the Department of Employment under the Ministry of Labour that provide service in the documentation process to bring workers for overseas employment, registered individual brokers, and companies with the Department of Employment allowed for service in registration of documentation process in the country, and unregistered individuals who use corrupt or in cooperate with government officials during the documentation process. As of March 2023, 272 companies are licensed to bring foreign workers to employers in the country under the Department of Employment.

The issues of extreme poverty and lack of legal status are interrelated. One significant concern is because of poverty, the migrant workers are unable to proceed with their legal documentation and afford their health insurance. Most of the workers could not afford the cost because the actual cost is more expensive than the cost specified by the law. Then their documents become invalid. So, they return to a state of illegal status, and they can't get new employment, so they work randomly for their livelihood without having a choice according to their skills and experiences relevant to the job.

Most workers couldn't apply or renew for official documentation. They formerly possessed Certificate of Identification (CI) and Passport for Job (PJ) credentials.⁹ They can no longer proceed with this; hence, they hold and live with a Police Card.¹⁰ "We are too old to engage in employment. Factory owners prefer to only employ youthful individuals. If you require a document for the new employment, you must proceed with the registration process accordingly. However, many workers expired their documents, resulting in the cessation of their validity" (U Kyaw, Male Myanmar, Factory C, 47: 10/12/2023).

⁸ The Department of Employment, Implementation of Ministerial Notifications dated 15 October B.E. 2567 (2024) under the Cabinet Resolution of 24 September B.E. 2567 (2024).

⁹ According to the Foundation for Educational Development (FED, 2017), the Certificate of Identity (CI), aims to identify all migrants in Thailand and register them in their workplaces. The CI will replace the purpose of the current Pink Card as permission to stay in Thailand and render it eligible for the blue book work permit. All migrants in Thailand are required to obtain a CI or apply for a Burmese Passport. The CI is intended for migrants lacking a Burmese ID card and household registration document at hand. A CI enables migrants to travel unrestrictedly to acquire essential documents and apply for a Burmese Passport. PJ means a Passport of Jobs that allows one to move throughout Thailand. It must be held together with a work permit.

¹⁰ A police card is one of the important cards for migrants. It is not a physical card or official but a contact number of the police or a person closely related to the police. Most of the undocumented migrants have a police or agent contact; they call the "police card." Also, it does not have a fixed number, so it may vary and depend on the situation from time to time. It is not an official card permitted by the government authority. When migrants face a check by police, they need to show an official document. If they couldn't do that they showed the number and called it, and they were released in such a situation. It is for a person only and not a vehicle license, and without the "police card," all migrant workers are a risk of being arrested. However, where there was a nationwide crackdown on migrant workers who lack proper identification or documentation and inspection of Immigration in Thailand, the police card cannot be guaranteed at all, and they are all arrested and potentially deported.

The workers of Factory C, Ma Phyu, held a passport, and Ma Sander held a Certificate of Identity. While they were working at Factory C, they said the official identification hardships were the following;

“My document expired after the Factory was stopped in 2020. I have been living as an undocumented person, and it has been about 3 years. When the documents expire, I can’t renew and incur for it because of the expensive amount of cost. Some workers who didn’t want to lose their documents borrowed money from other people and connected with brokers to continue to validate them. Right now, I’m unemployed and have trouble living and food, so I have borrowed money with interest that pays 100 for 1000 Baht” (Ma Phyu, Female Myanmar, Factory C, 32: 9/12/2023).

“I possess a Certificate of Identity (CI) during my employment at the workplace. Following the factory's closure, I was unable to afford the renewal of official documents due to exorbitant costs and my lack of employment. The expenses incurred when applying for a Non-Thai Citizen Card (Pink Card) with a work permit are excessive. I am uncertain of the precise cost of the government-prescribed Pink Card; nonetheless, I applied through a broker, and the charge is approximately 8000-10000 Baht. I could not complete it; consequently, the document will expire, rendering me undocumented” (Ma Sandar, Female Myanmar, Factory C, 33: 9/12/2023).

If a worker is working together with an employer or if the worker is no longer working, then the employer will inform to that fact to the employment office of the Department of Labor under the Foreigners Working Management on Emergency Decree. Therefore, if a worker is hired or the worker comes from another place to work for the employer, he will inform that to the Department of Labour. When the workers are terminated or change employers, they must receive a letter of resignation from their employer. The letter will be in the hands of the worker, and these days he will seek a new employer and employment. In such a case, most employers do not give the letter of entering into employment and resignation from employment to the employee, but the employers keep it in their possession. If the worker is unable to seek any employer within the specified period by law or policy statement and when it is passed, then, the resignation letter is invalid as well and the worker becomes unemployed because he does not have sufficient time to find new employment, they have to work in other random jobs in an illegal position.

Regarding the change of employer, Section 51 of the Foreigners’ Working Management Emergency Decree, 2017, allowed foreigners entering Thailand through the MoU system to be entitled to change employers. According to this Section, for a foreigner who works with an employee under Section 43 or 46 who resigns before the expiration of the employment contract, he or she cannot work for another employer except otherwise proves to the Registrar that the resignation is the employer’s fault or has paid the damages to the previous employer. In such a case, the Registrar shall issue a new work permit or specify the back of the work permit to illustrate the right to change the employer. Furthermore, Section 52 mandates that foreigners who have the right to change employers under Section 51 shall work for a new employer within thirty days from the previous employer’s registration date (The Foreigners’ Working Management Emergency Decree (No. 2)).

Ma Khin had 17 years of work experience and held a Passport while working in the factory. She informed the researcher as follows:

“The workers couldn’t change their employer’s name within 15 days of being terminated from their work, they couldn’t renew their legal residence and work permit

documents, and apply for a new one when the document has expired. I hold a police card that costs 300 Baht per month and hasn't yet obtained a pink card because of the language barrier; those who make the legal documents through brokers cost more than 10000 Baht for a pink card. While working in the factory, I had been living and working legally with a passport. I got it through the factory manager, and it was not too difficult for me because I paid them out of my wages” (Ma Khin, Female Myanmar, Factory C, 50: 8/12/2023).

Certain workers incurred exorbitant costs to brokers for registration or renewal documents and to obtain employment with a new employer because the law requires that foreign workers cannot live and work without their national employer. In applying for a pink card, the cost is more expensive than the cost prescribed by the government in practice, and only for a pink card, the approximate cost is 13,000-18000 Baht (USD 360-500). It can also vary based on specific circumstances. If they want to proceed with this, they will try to get through brokers due to the language barrier and insufficient technological proficiency in the online application.

Foreign workers, whether they come or not through the MoU system, are concerned with the notifications issued by the Department of Employment. The notifications from the Department of Employment frequently change from time to time. In 2024, the Department of Employment announced the extension of the period for changing employers that under Sections 52 and 55 of the Royal Ordinance on the Foreign Working Management of Emergency Decree B.E. 2560 and its amendments, foreign nationals permitted to work in Thailand under the MOU are allowed a 30-day period to change a new employer. However, the Ministerial Notification issued under the Cabinet has extended this period to 60 days from the date of termination of employment with the previous employer. The extension will remain effective until 13 February B.E. 2572 (2029)¹¹. Consequently, under the present circumstances, a foreign worker must begin to work with a new employer within sixty days following the resignation from their previous employment.

The study reveals problems concerning the timely documentation of migrant labour. As a result, the migrant workers will certainly be unable to apply for and secure their official credentials within the timeframe set by the cabinet resolution. In Thailand, there are many Myanmar migrant people residing in Mae Sot, Thailand, without official documents. The Thai government has opened a specified period for the registration process to obtain a temporary residence and work permit yearly, and the maximum period is within a month. In 2024, the specific period for the new registration process is 15 days, starting from 16 to 30 December. However, every undocumented migrant cannot apply for the process mainly because of poverty and unemployment. As a result, they can be arrested at any time, charged with the Immigration Act, and sent back to Myanmar after being detained in prisons. Undocumented workers exist in constant fear and insecurity, refraining from venturing outside their residences. Upholding the official document, they will be able to live and work freely in line with Thai law and be life-saving for numerous workers.

Difficulty in finding new employment

One of the important issues is that when workers are terminated, it is difficult to find new employment, which can further affect their livelihood. Myanmar migrant workers have lost their rights due to illegal work being dismissed or terminated, and most factories will not accept them without having legal documents because it is barred by law. The workers were

¹¹ The Department of Employment, Implementation of Ministerial Notifications dated 15 October B.E. 2567 (2024).

terminated from the workplace without prior notice and compensation. In such a situation, they have to find new employment.

In Thailand, legislation limits migrant workers' employment opportunities, prohibiting them from engaging in several occupations, including 27 specific sectors such as passenger transportation, traditional Thai massage, hair salons, brokerage, and money transfer services. If an individual lacks a work permit and is discovered engaging in unauthorized employment, they are subject to a fine ranging from 5,000 to 50,000 Baht, repatriation to their place of origin, deportation, and a two-year prohibition on obtaining work permits in Thailand. According to Section 54 of the Immigration Act of 1979, foreigners lacking legal documentation, such as a Pink Card, Certificate of Identity (CI), or Visa, will face penalties and deportation. Migrant workers (foreign nationals) who were in an undocumented position until securing employment with an employer within sixty days of being inspected by Thai police, subsequently paid a fine due to the absence of documentation while traveling in the region during this timeframe. Consequently, certain workers procured documents by obtaining loans with interest from others.

According to the spokesperson of the Workers' Association in Mae Sot, "While the workers were working, the employer withheld documents the reason is that he provided them these documents and the workers didn't know where the employer left the documents when they stopped working because the employer didn't negotiate nor take any responsibility so they didn't hear about it" (U Thu Ya, Male Myanmar, MWA 1, 17/1/2024).

When the Factory owner or employers used to keep the documents of workers, they have no evidence, face trouble to move, and have difficulty finding new employment. Ko Paing held a Certificate of Identity (CI), was employed, and was wrongfully dismissed twice from the two factories without giving prior notice of termination of employment. He said his hardships:

"When we applied for the documents, the factory owner didn't serve himself; he brought a broker, so we paid 12,000 Baht as requested by the broker. We held a copy of our document, and the owner kept the original evidence of being in the factory courtyard, where it is safe to live. Once the factory has been dismissed, we have no identity and don't dare to go out because of insecurity" (Ko Paing, Male Myanmar, Factory C, 29: 24/12/2023).

In the study, many of the dismissed workers were elderly individuals, some of whom had over 20 years of work experience, and some even had over 10 years of experience, which can lead to difficulties in securing new employment. They will no longer be able to work in the types of workplaces, they are familiar with, based on their skills.

Ko Moe Lwin, one of the Migrant Workers Associations, shared his experience;

"Among the unlawfully terminated employees were the elderly, who faced challenges in securing new jobs due to factories' reluctance to hire them. If they are unable to renew their documents, they are limited to receiving unemployment benefits for six months. Securing employment is challenging for the elderly" (Ko Moe Lwin, Male Myanmar, the spokesperson, MWA 2, 14/1/2024).

In addition, the lack of official documents restricts them to anywhere for undocumented workers. If there is a case, it will be difficult to travel to the place where the court is situated.

As stated by the female workers' representative, Ma Aye, is 41 years old and possesses a passport:

“Regarding the legal documents, we had to find a new employer and continue the validity within the prescribed fifteen days after terminating from work, otherwise these documents would be invalid. When we find a new employer, we have to pay the money first, renew our work permit, and get a blood test. Most of the workers couldn't continue to do this because they didn't have to earn money. As for me, I have to go to the labor office as a worker's representative, so I must have the document whether I have money or not”. Also, she said “As the workers of the factory were stopped from working, I have to act as one of the worker's representatives to get compensation, so it takes a long time and hard to work in another factory” (Ma Aye, Female Myanmar, Factory B & C, 41: 23/12/2023).

Ma Aye added these words, *“As for me, I have to go to the labor office as a worker's representative, so I must have the document whether I have money or not”. Also, she said, “As the workers of the factory were stopped from working, I have to act as one of the worker's representatives to get compensation, so it takes a long time and hard to work in another factory we, workers' representatives are often blacklisted by employers, making it difficult to get new jobs”.*

Ko Moe Lwin, the spokesperson of MWA 2 asserted upon the aforesaid point that:

“A labor leader is seldom blacklisted; the circumstances differ from those of an ordinary worker. In Mae Sot, this evolved into a cultural phenomenon. If an employee raises a complaint to the employer over any issue at the workplace, the employee will be blacklisted and then terminated, since the employer will disseminate their information. This is a crime, and if we get that information, we can sue the factory owner. However, because it is hard to know, we'll establish a factory to find out” (Ko Moe Lwin, Male Myanmar, the spokesperson, MWA 2, 14/1/2024).

Another reason is that when an employer stops a worker from working, they must receive a resignation letter. They have to find a new employer within thirty days of receiving that letter before the announcement of the extension of the period for changing employer notification issued by the Department of Employment under the Cabinet Resolution on 24 September 2024. Some of the workers couldn't find new employment by the specified date, so their resignation letter was invalid and the document held by them became invalid. Therefore, when workers are dismissed without compensation, it is not easy to find and delay to join another employment. For instance, workers dismissed or terminated due to a normal economic downturn can get new employment somewhere. But, if the leaders and workers who were unwillingly stopped from work by employers for submitting workers' rights claims, it would be more difficult to find a new one. Since the entrepreneurs have blacklisted them, and they have connected to prevent these workers from accepting jobs. The assumption is that unemployed workers should find an alternative job, and the notice period should be longer than the prescribed period.

4.4 Lack of unemployment benefit

In Thailand, under Section 34 of the Social Security Act, 1990, an employer who employs employees being insured persons under Section 33 shall submit the statement specifying the names of the insured person, rate of wages, and other information, following the form prescribed by the Secretary-General, to the Office within thirty days as from the date on

which the employees become insured persons. Upon termination of employment, an employer is required to notify the Social Security Office of the termination, and in the case of foreign workers, the employer has an additional duty to return the employee's work permit to the Department of Labour Protection and Welfare (Saroj Jongsaritwang & Sui Lin Teoh R & T Asia (Thailand) Limited (2018).

The word “unemployment” is defined in section 5 of the Social Security Act of 1990 as an insured person ceasing to work resulting from the cessation of legal relations between an employer and an employee under a hire of service contract. According to this Act, the government, an employer, and an insured person, under section 33, shall pay contributions to the Fund at the rate prescribed in the Ministerial Regulations for payment of benefits relating to child benefits, old age benefits, and unemployment benefits, but the contributions thereof shall not exceed the rate of contributions appended to this Act (s.46, para 2) that prescribes unemployment benefits at the rate of not more than 5 percent from tripartite contributions.

Qualifying stipulations are provided in Section 78 of this Act, and accordingly, an employee who is an insured person shall be entitled to unemployment benefits provided that the employee has paid contributions for not less than six months within fifteen months before becoming unemployed and meets the stipulated conditions. Hence, to be entitled to unemployment benefits, one must have made contributions within 6 months within 15 months before unemployment. All employees are required to contribute to a social security fund an amount equal to 5% of their wages, up to a maximum contribution of 750 Baht per month.

Migrant workers face challenges of lacking adequate legal protections or social security benefits and are vulnerable to abrupt employment loss and financial distress. The spokesperson of the Migrant Workers' Association mentioned the following;

“Migrant workers are eligible for unemployment compensation for a duration of 3 to 6 months. Upon a worker's termination of employment while receiving unemployment benefits, it is necessary to obtain a letter of resignation from the employer. Upon receiving the letter, the worker may notify the Labour Search Office of his unemployment and thereafter obtain a confirmation letter from the office on the designated date allowed to him. Typically, they experienced durations of up to 3 months and infrequently attained 6 months” (Ko Moe Lwin, Male Myanmar, the spokesperson, MWA 2, 14/1/2024).

The argument is that the factory worker is required to pay social security contributions under the Social Security Act of 1990, and if a worker is terminated from work, will receive the contributions when he is unemployed. However, there is inconstant with the two provisions, on the one hand, unemployed workers are given six months of benefits by the Social Security Act. Section 38 of this Act provides that an insured person under Section 33, shall cease to be an insured person upon the cessation of being an employee and he or she shall be entitled to a further period of six months from the date his or her employment is terminated or for a period prescribed in the Royal Decree which shall not be longer than twelve months from the date his or her employment is terminated.

On the other hand, the Foreigners' Working Management Emergency Decree stipulates that a foreign worker cannot legally reside without their employer. It allows for a thirty-day notification period to change employers; however, the current policy has extended this timeframe from thirty days to sixty days, as mandated by the Thai Cabinet's resolution No. 24 concerning migrant workers' affairs on September 24, 2024. Consequently, workers who cease employment will receive unemployment benefits for two months instead of six. Although the previous provision granted unemployment benefits for six months, the new policy limits these benefits and does not provide full rights. If a worker finds and changes employers within sixty days, they will be eligible for two months of benefits and forfeit the remainder. Conversely, if

they secure the full six-month benefit without finding a new employer, they will lose the opportunity for new legal employment.

In Thailand, the Social Security Act of 1990 protects both citizens and foreign workers, including migrants legally employed in the country, by providing unemployment benefits based on the eligibility requirements of the Act. However, Myanmar migrant workers do not fully enjoy the unemployment benefits outlined in the Social Security Act because they are governed by the Foreigner Working Management of the Emergency Decree of 2017. Accordingly, these migrant workers must hold a work permit along with a Pink Card, CI, or Passport Visa to temporarily reside and work legally for a national employer in the country. When they are wrongfully dismissed from work and their documents expire, they must apply for or renew one and join a new employer. To complete the requirements of this process, they incur excessive costs within a limited time frame of thirty days before the notification is declared by the Department of Employment under the Cabinet Resolution on 24 September 2024. Consequently, they face challenges in accessing essential resources, and the significant disparities between Thai workers and migrant workers namely money, time, and requirements create difficulties for unemployed migrant workers.

The restriction with inconsistencies between the two provisions can lead to a negative impact on inequality benefits and further exacerbate the already vulnerable position of the unemployed people who do not have income and can't renew their documents easily when these expire. These two laws should be consistent with each other. The workers must enjoy the benefits of their rights because their contributions are under the security system while they are working. They should enjoy the unemployment benefits provided by the Social Security Act of 1990, and not be hindered by the provisions of the Foreign Working Management of Emergency Decree of 2017. Then, they can try to renew their documents, find new employment more easily, support their families back home, and live with adequate social protection.

4.5 Alternative survival means for migrant workers

In Mae Sot, Thailand, there was a wrongfully dismissed case of over a hundred migrant workers at a factory without any fault on the part of the workers. However, there was no prior notice or filing entitled to compensation in August 2020. According to Ko Si Thu,

“The rights and losses depended on the directions and assistance of supporting organizations. There were six cases of wrongful dismissal. We won two cases, and the remaining four cases are still facing the court because the workers didn't have records and couldn't produce evidence concerning their date of joining in their employment, wages, working hours, leave, and holidays that exceeded the statutory requirements. If the workers cannot produce evidence in court, they must be judged favouring the employers according to the evidence produced by them. Their entitlement can vary and be lost because the labor law provides severance pay for the worker's length of service” (Ko Si Thu, Male Myanmar, the spokesperson, NGO 1, 16/1/2024).

Based on the interview data, when labor-related issues occur, requisite legal counsel, advisory services, complaint follow-ups, and litigation support are offered in collaboration with the Lawyer Council of Thailand, Non-Governmental Organizations (NGOs), and Civil Society Organizations (CSOs) that advocate for the rights of migrant workers in Mae Sot, including the Yaung Chi Oo Workers Association, Arakan Workers Organization, Map Foundation, Human Rights and Development Foundation (HRDF), Labour Law Clinic (LLC), Foundation for Education and Development (FED), among others. These organizations are established to offer legal counsel and guidance, engage in collective action for the safeguarding of Myanmar migrant workers' rights and compensation via the Thai legal system, and advance labor rights education, vocational training, healthcare, and social services. Offering provisional

accommodation to unemployed people in Mae Sot. However, due to the group's financial constraints, they can only provide temporary support for dismissed and unemployed migrant workers.

International Standards

At the international level, various international standards pertain to employment and the right to work. The standards and rights are contained in international instruments, namely, the Universal Declaration of Human Rights (UDHR) of 1948, the International Labour Organization's Termination of Employment Convention of 1982, and the International Covenant on Economic, Social, and Cultural Rights of 1966.

Article 23(1) of the Universal Declaration of Human Rights (UDHR), 1948 provides that “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment”. The UDHR states that this right also includes protection against non-employment and is confirmed by the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 6(1) of the ICESCR, 1966, adopted the responsibilities under the Charter of the United Nations regarding the human rights that “the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”. In addition, Article 2(2) confirms the right to work regarded as universal and so every state party shall exercise without discrimination of any kind as to race, color, sex, language, religion, political, national, birth, or other status. Accordingly, all persons, including women, migrants, displaced persons, refugees, etc. Everyone has the right to work, protect and live by work, and remedy by international standards regardless of their legal status, whether regular, registered, or irregular.

As regards the justification for termination, the employment of a worker shall not be terminated unless there is a valid reason for such determination, and a worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless guilty of serious misconduct (International Labour Organization, 1982, Article 4 & 11). Accordingly, the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment, or service. In addition, the ILO, Termination of Employment Recommendation, 1963 (No.119) is concerned with termination of employment at the initiative of the employer and embodies the principle that the termination of employment by the employer should not be arbitrary but should be exercised only for sufficient cause. Employment termination shall occur only for a valid reason related to the worker’s capacity or conduct based on the operational requirement of the organization or service (International Labour Organization, 1963, Article 2).

The United Nations Guiding Principles (UNGPs) encompass the “Guiding Principles on Business and Human Rights”, implementing the United Nations Protect, Respect, and Remedy Framework. These Guiding Principles are grounded in recognition of: (a) States’ existing obligations to respect, protect, and fulfill human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached. These Principles apply to all States and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership, and structure. These should be understood as a coherent whole and read, individually and collectively, in terms of their objective of enhancing standards and practices concerning business and human rights to achieve tangible results for affected individuals and communities. In addition, these should be

implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.

The UNGPs stipulate that the State is obligated to safeguard individuals within its territory and/or jurisdiction from human rights violations, while the private sector must uphold the principles of human rights. Simultaneously, both the state and the corporate sectors must offer redress to the victims of human rights abuses perpetrated by enterprises. The UN Working Group on Business and Human Rights recommended that each country develop a National Action Plan on Business and Human Rights (NAP) based on the UN Guiding Principles (UNGPs). This NAP should be tailored to the national context to ensure its enforceability and address local issues effectively (United Nations Development Programme (UNDP), 2022).

“Thailand recognizes the importance of foreign workers as an important mechanism for driving the growth of the country’s economy, no less than Thai workers” (Phruekpattanak, D. 2024). The Cabinet of Thailand has appointed the Rights and Liberties Protection Department of the Ministry of Justice as the primary institution responsible for formulating the National Action Plan and advancing its implementation. The NAP affirms the commitment of the government to the respect and promotion of human rights principles that provide a framework for government agencies, state enterprises, and businesses to promote, protect, and safeguard human rights. This aims to mitigate risks associated with human rights violations stemming from business practices effectively and efficiently, working relationships and networks with and between various sectors are strengthened because the NAP prioritizes participatory negotiation processes, especially with the victims of human rights abuse (UNDP, 2022).

Therefore, for the employment and safeguarding of migrant workers, numerous essential international norms are embodied in various treaties and related instruments developed initially by the International Labour Organisation (ILO) and subsequently by the United Nations (UN). These provide protection regardless of the legal status of migrant workers, whether legal or illegal, registered or unregistered, regular or irregular. It is important to promote the safety of all individuals based on non-discrimination, regardless of their origins and status.

Recommendation

In Thailand, the protection of labour rights against wrongful dismissal or unjust is the responsibility of the government, the employer, and the worker. In the recommendation section of the report on the impact of wrongful dismissal of Myanmar migrant workers, especially the government needs to ensure actionable measures with the collaboration of non-government organizations:

1. The Thai government should ensure that safeguarding labor rights against unjust or wrongful termination is the obligation of the government, employers, and employees. Although established by the Convention, International labor standards are delineated by member states; the government's responsibility extends beyond the enactment of pertinent legal regulations to implementing these laws. It has a procedural duty to investigate and penalize all individuals accountable for the repercussions resulting from violations of workers' rights.
2. Regarding the documentation process, the government introduced a regularization process based on the registration of migrant workers and their employers, with guarantees for their basic rights, and this needs to be better supported in terms of implementation and humane treatment of all workers.

3. The government should improve the regular migration process, address the challenges that migrants face, and ensure adherence to the United Nations Guiding Principles on business and human rights. It should enhance the implementation of migrant policy and procedure, and investigate the registered agencies, unregistered agencies, and individual brokers, because they demand high costs for the registration process under the regularization system, and exploit migrants.
4. The government should establish a monitoring mechanism that does not concern the brokers' involvement in business interests, or investigation, because most of the workers cannot afford that high cost, and their documents are dead and invalid when the date expires. By doing so, the workers will be able to find new employment together with the employer conveniently. Additionally, government officials need to investigate the workplaces without informing, not only the complainants about the employers who employed the workers, whether in compliance with the labor laws or not, but also any other workplaces in the different regions.
5. The Foreigners Working Management Emergency Decree B.E. 2560 (2017) should be consistent with the time allowed to enjoy the unemployment benefit under the Social Security Act B.E. 2533 (1990) and propose to include some provision concerns with the appropriate measures to the cabinet such as the rules relating to employers that they will have to issue the letter of resignation as far as possible when they are not employed the workers from their employment, to prescribe the restrictions for brokers to receive the maximum fixed costs incur for Pink Card, CI, and Pass Port in applying for registration or renewing, and to enforce with effective penalty for infringement whether registered or unregistered agencies or brokers.
6. The migrant workers from Myanmar often get benefits under the Social Security Act for three months, with access to benefits beyond six months being rare, if accessible at all. As a result, they lack financial resources and may face considerable difficulties in affording the registration for official documents when necessary for application or renewal. Thai nationals must present their national identification only to seek work. Migrant workers, as foreigners, are required to have work permits in addition to a pink card or certificate of identity and/or a visa with a passport. The regularization process for migrant workers to obtain formal papers for temporary residence and employment is intricate and lengthy, necessitating approval from the Thai government.
7. The government should advance the implementation of the rights of migrant workers who are human beings, protect against wrongful or unfair dismissal, legally work, safely live, and travel movement with human dignity, and families to support based on the right to equal enjoyment of one's rights is fundamental to human rights law.
8. To reform laws and policies that do not align with international standards, particularly regarding freedom of association and collective bargaining; so that the relevant Thai Government Organizations, Workers' Associations, Civil Society Organizations, and Trade Unions can be managed in line with the international standards without discrimination whether legal or illegal, registered or unregistered, and regular or irregular. To advocate and treat all migrant workers with humanity and dignity.
9. The government should establish grievance channels to seek to safeguard the rights of migrant workers, avert future labor rights infringements, enforce equitable labor practices, guarantee appropriate official documentation for all migrant workers, advocate for policy changes to safeguard the rights of migrant workers and consider the circumstances of vulnerable migrant workers, their families, and their home countries in the preventive measures.
10. As for employers, it is important for the community that all employers must have knowledge concerning business and human rights in conducting their business and be trained

if necessary. Employers should avoid violating the human rights of employees by restricting their freedom by storing and withholding their identities for the sole benefit of them, and it is a violation of the human rights of the workers.

11. Employers should respect and provide workers' rights as human rights by national legislation and international standards. They should always take responsibility and address labour issues promptly, without damaging employees, particularly by wrongfully dismissing them from their work without fault, as stipulated by labour laws.

12. On the part of migrant workers must obey the disciplines imposed justly by factory owners and should have an awareness of their rights and duties to keep a record of their daily working activity so as not to lose their employment rights.

To resolve the challenges encountered by Myanmar migrant workers, it is essential to amend certain Thailand's labor law provisions and regulations, establish a mechanism for reporting and investigating wrongful dismissal or termination of documented Myanmar migrant workers, and ensure that the offenders are held accountable. It is presumed that the provisions in the labor law intend to maintain a just and fair working environment for all parties involved, promoting a safe and productive workforce. As such, employers and employees need to be aware of their rights and responsibilities under the law to maintain a positive and harmonious working relationship because rights and duties are like a coin that is back to back and not parted.

Conclusion

In this study, there were wrongfully dismissed cases of over a hundred migrant workers at a factory without default on the part of the workers, giving any prior notice and compensation in Mae Sot. When they got their entitlement, they faced the Labour Court, and the litigation process lasted 3 or 4 years. Some cases still face the court because the workers didn't have records and couldn't produce evidence concerning their date of joining their employment, wages, working hours, leave, and holidays. If they cannot produce evidence in court, the case will fail, or their entitlement can vary because the labor law provides severance pay according to the worker's length of service.

According to my interview with Dada, the hardships of the workers are because the factory was closed and dismissed without giving prior notice and compensation. The first point is to file a legal complaint, they need advice from labor organizations that can help them and give them the right to information and consult them. Another is the barrier of language; the legal process must be carried out according to the laws of Thailand, so it must be carried out in the Thai language and through Thai lawyers. The situation of the case is not finished at the Labour Protection Office, but it has to go to the Labour Court and then they get compensation, and depending on the procedure of a case, it usually takes three or four years. In April 2020, Factory C dismissed 195 workers when it closed and complained to the Labour office through the collaboration of Migrant Workers Associations and NGOs. As of April 2021, these workers were still waiting for legally owed compensation. The Thai Department of Labour Protection and Welfare ordered Factory C to pay unpaid wages and terminal compensation to the workers, but it failed to comply. After 3 years of the wrongfully dismissed from work, the workers received THB 22 lakhs as compensation to 195 migrant workers for the first time in October 2023. Each worker received a compensation amount from THB 5000 to 17000 according to their length of service, and the proportion of the first compensation was merely 6.1 % of the whole compensation for workers' entitlement. It is pending and to continue the process of the case.

In Thailand, the labor laws provide and protect the grounds for dismissal and rights relating to the work of all workers, whether national or foreign, but the problems are faced mainly in the implementation of labor law and its effectiveness. According to the law, if a worker has been dismissed or terminated, the worker can complain to the Labour Protection Department. In reality, even if a worker goes, when the complete information is not prepared, the Department refers to other external Workers Associations and Non-Governmental Organizations because of the lack of staff in the government department. The Department accepts the case only when the testimony documents are submitted and processed through those organizations.

The Labour Protection Act of 1998 covers all workers, whether national or foreign. It protects the rights of all migrant workers, even if they are in an illegal status, which is in line with international human rights treaties. However, the laws mainly impacting migrant workers are the Immigration Act, 1979 rather than the Foreigners' Working Management Emergency Decree, 2018. Regarding foreigners' employment, the Foreigners' Working Management Emergency Decree promulgated the rules for a work permit that require foreigners working in Thailand and these rules are enforced with the policies as notifications which often vary from time to time by the Ministry of Labour including the Department of Employment, Department of Labour Protection and Welfare. At present, the period for changing employees has been increased from thirty days in the past to sixty days by the Thai Cabinet relating to migrant workers' affairs resolution No.24 on the date of 24 September 2024.

Under the Immigration Act of Thailand 1979, foreigners without having any legal document such as a Pink Card, Certificate of Identity (CI), or a Pass Port Visa, will be liable to punishment and deportation. As migrant workers (foreigners) who are dismissed or terminated from employment, and their official documents have expired, they are in an illegal status. They were checked by Thai police and paid a fine because there was no document to verify when they traveled in the region during that period. As a result, some workers applied for documents by borrowing money with interest from others. If a worker does not have a work permit or is found to be working in a restricted kind of work, the worker must pay a fine, be sent to his or her hometown, and be banned from working for two years in Thailand.

Migrant workers are human beings, are not commodities, and are to be regarded as individuals, possessing their own lives and families to support. They are not only valued for their skills but also, they deserve to be treated with dignity. The workers rely on their wages, having employment or a job is not just about earning money that fulfills basic needs, because work is essential for the survival of individuals and a big part of human life, they are also about growing and providing opportunities to learn new skills and grow professionally. If an employer stops merely the factory or dismisses the workers, there are huge consequences and negative impacts on the workers and their families. They struggle to afford necessities like food and shelter, so they survive without having permanent employment.

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