



Migrant workers in the agricultural sector:

Working conditions, risks of forced labour and access to justice



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Disclaimer:

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The translation for this executive summary is not a direct word-for-word transcription. The purpose of this translation from Thai to English is to share good practices and promote knowledge-sharing amongst ASEAN Member States. Please refer to the original study published in Thai on the HRDF website.

Executive Summary

This study examines the risks and vulnerabilities faced by migrant workers in Thailand's agricultural sector, with a focus on their susceptibility to becoming victims of forced labour. Through qualitative research, it examines working conditions of migrant workers, and their access to protection in Northern Thailand. Case studies of migrant workers who have sought assistance from the Human Rights and Development Foundation (HRDF) were also to inform the research¹. The concept of 'legal consciousness' is used to analyse migrant workers' access to justice, and provide recommendations to improve law and policy for the prevention and protection of migrant who are susceptible to forced labour in Thailand². This is despite migrant workers being an essential driving force for the national economy.

The research finds migrant workers in the agriculture sector experience poor living and working conditions. It also finds that legal provisions and enforcement mechanisms do not sufficiently protect migrant workers. This results in migrant workers and their families being vulnerable to abuse and exploitation. Migrant workers are at risk of being deceived about their pay and conditions, dangerous working conditions, long working hours, isolation, restrictions on freedom of movement, direct and indirect violence, and irregular wage payments.

The research examined Thai law and policies that relate to migrant worker protection in the agriculture sector. A key finding is that Article 6/1 of the Anti-Human Trafficking Act, B.E. 2551 (2008) and additional revisions regarding forced labour are not being enforced to ensure the identification and protection of workers who experience labour exploitation. The narrow interpretation of the law is a key barrier, and therefore does not ensure the protection of workers' rights. The [International Labour Organisation \(ILO\) indicators of forced labour](#) are also not applied.

The research finds there are multiple factors that impact vulnerability to forced labour:

1. The **law** defines seasonal agricultural workers separately from those eligible for protection of rights and benefits according to minimum standards of labour protection. As a result, migrant workers in the agricultural sector do not receive wages according to minimum rate, and are not entitled to receive overtime wages, paid leave, or appropriate working hours, etc. These result in poorer working conditions that place workers at risk of forced labour.
2. The **bureaucracy** and documentation system to control and manage workers is difficult to access, and therefore ultimately ineffective. It allows brokers to facilitate the abuse and exploitation of workers by employers and for government

¹ HRDF is a non-government organization in Thailand working on the protection of the rights of migrant workers. HRDF provides legal support to cases of exploitation and abuse, as well as capacity development to related stakeholders. HRDF conducts outreach to migrant communities in Chiang Mai and Mae Sot.

² Legal consciousness refers to what people do as well as say, reflecting the understandings and meanings of law circulating in social relations:

<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100058744>

officials and other stakeholders to benefit. It also reflects the lower status of migrant workers compared to Thai citizens, which leads to entrenched inequality.

3. Due to the power dynamics between workers and their employers, workers do not have the power to negotiate. Furthermore, in the agricultural sector workers are not well connected with each other and, as a result, lack access to assistance mechanisms through workers networks. This means that if a worker is experiencing poor working conditions, the issue is unlikely to be resolved and more likely to lead to a situation of forced labour.
4. Migrant workers, particularly those fleeing conditions in Myanmar, have little choice regarding their occupation and employment opportunities. They cannot seek income freely nor negotiate for better pay and standards. Large numbers of workers have no choice but to accept adverse conditions of employment that in some cases are akin to forced labour.
5. Migrant workers regularly experience stigmatisation and discrimination due to the significant cultural differences between workers, their employers, and Thai authorities. Cultural narratives portray Myanmar migrants as often bringing crime and taking jobs from Thais, and sometimes referencing historical grievances and conflict between the two countries. They are often used to discriminate against migrant workers, and determine what they should or should not do. These are used to give legitimacy to and normalize abusive and exploitative conditions for migrant workers which violate their rights.

This study found that almost all migrant workers interviewed declined to use legal mechanisms or government complaint/grievance channels to seek remedies or damages, if they knew of them. This is primarily due to fear that the legal system does not provide sufficient and effective protection for workers in the agricultural sector, and a lack of awareness of their rights. Mediation processes in general do not sufficiently promote protection of rights and benefits of the workers, and relevant guidelines and legal provisions are ambiguous.

The concept of 'legal consciousness' was used in analysing interviews with the migrant workers, and determining their perceptions about the Thai legal system. Migrant workers generally perceived the legal system as: intimidating and not safe for migrant workers to access; not worth the time it takes to invest in a justice process; and not reliable or predictable.

The following policy recommendations are offered for consideration in developing governance of migrant workers and improving procedures for protection of migrant workers' rights.

(1) Legal provision on forced labour should be separated from human trafficking law

The offence of forced labour is criminalised in Thailand under the law on prevention and suppression of human trafficking. This placement of forced labour results in a narrow interpretation of this phenomenon. It limits the protection of workers who experience different types of forced labour and criminal justice agencies need to be convinced they can prove a case in court beyond a reasonable doubt, instead of deciding based on the rights and welfare of workers. This limits the possibility for protection of workers from forced labour in practice.

Consideration may therefore be given to reviewing and reforming the legal and policy framework on forced labour, with a primary focus on the protection and welfare of workers. The mandate of the labour courts is to establish and protect the working and living conditions of workers and to act when any violations of rights and entitlements occur.

(2) Review and revise labour laws to include protection for all types of workers

Consideration may be given to reviewing the labour protection law in policy and practice, to enforce protection of rights and benefits of all workers including in the agricultural sector. The research finds that the employment of workers in the agricultural sector requires a fluid and flexible approach, resulting in limited protection under the Labour Protection Act. The ministerial regulations on labour protection in agriculture may be reviewed concurrently to provide protection for essential workers under the Labour Protection Act to cover all workers, irrespective of nationality and legal status.

A review of the law may specify the roles and responsibilities of different stakeholders -from relevant government officials to employers - in providing protective equipment, stipulating standards of accommodation and working conditions. It may consider the safety, sanitation and security of all workers, capacity and human resource needs, and collaboration between government and civil society in the provision of assistance and protection to workers.

(3) Improve governance of migrant workers to meet the needs of all stakeholders

Violations of labour rights and forced labour are partly a result of vulnerabilities related to the legal status of many migrant workers in Thailand. Formal migration through regular channels should be reformed to reduce the cost, time and complexity of the process. This would both create an incentive for workers to come through formal channels in accordance with government objectives, and reduce vulnerability and risks to forced labour.

With regard to employment in agriculture, it may be beneficial for both migrant workers and their employers for migrants to have the possibility to have more than one employer, which is currently not possible through official processes. Agricultural labour is seasonal in nature and employers do not need workers full-time throughout the year. Due to the regulations for recruiting migrant workers, this often results in both employers and workers needing to find ways around the law.

Reform of migrant worker governance may consider regulations that allow migrant workers greater flexibility to move between jobs. For example, migrant workers may be permitted to work in a province, rather than being tied to a specific employer. In addition, the registration processes for migrant workers may be opened on a continual basis, rather than intermittently through the current temporary registration periods. When workers' documents are confiscated or lost under the current system, they are often discouraged from using grievance channels, due to the risk of deportation.

(4) Remedies and justice outcomes for victims of forced labour should meet the needs of victims

The current protection mechanisms and remedies for victims of forced labour do not meet the needs of the victims. Migrant workers are often afraid that entering legal processes could separate them from families and they will be repatriated to the country of origin, or punished for not having a work permit. The incentives and disincentives for workers to report forced labour needs to be better understood, and relevant government agencies, from immigration and labour may ensure that potential victims of human trafficking or forced labour know they have the right to receive permissions to work and continue to live in the Kingdom of Thailand as equally as other groups of migrant workers, should they wish to.

The principle of non-punishment for migrant workers should be ensured. While there are provisions in article 41 of Anti Human Trafficking Act, B.E. 2551 (2008), such as entering country illegally and work without permissions, this should be expanded to cover non-punishment for other acts that a victim of forced labour may be forced to commit.

(5) Promote integration of migrant workers

The right to organise and collective bargaining, and freedom of association, are fundamental rights at work, codified under ILO Conventions No. 87 and No. 98. They have an important impact on reducing vulnerability to, and incidence of, forced labour. Ratification of these conventions would help address the imbalance in power relations between employees and employers, in which migrant workers are at a disadvantage.

Alongside ratification of these conventions, promotion of migrants' integration and supporting migrant workers' networks will help migrant workers' protection of their own rights. Government agencies with roles related to protection of migrant workers may collaborate with labour organisations to promote through policies and practices, complaint channels calling for rights, justice procedures and other basic rights.