

DIGNITY
IN WORK
FOR ALL



In-Country Recruitment of Foreign Migrant Workers and Risks of Forced Labour and Human Trafficking in Thailand





March 2024

This study by Dignity in Work for All (formerly known as Verité Southeast Asia or VSEA) was supported by the Australian Government funded ASEAN-Australia Counter Trafficking program (ASEAN-ACT). The views expressed in this study are those of the authors' alone and are not necessarily the views of the Australian Government

FOREWORD

In-country recruitment has been a long-standing practice in Thailand, but the unregulated nature of this recruitment pathway poses significant risks of forced labour and human trafficking to migrant workers living and working in the kingdom. While more attention has been paid on the risks faced by workers going through the formal and regulated recruitment channels, studies that look specifically into the in-country recruitment route remain scant, even as it became the only mode of recruitment during Covid-related border closures.

In this post-pandemic context, the challenges experienced by in-country recruited workers in Thailand are not isolated to that region; similar issues are faced by migrants in the Southeast Asian region and beyond. This research report thus helps shed light on the issues and vulnerabilities of migrant workers often overlooked by legal frameworks on labour migration, leaving them highly vulnerable to exploitation, deception, and extortion. Insights from this research can help stakeholders gain a deeper understanding of in-country recruitment patterns that put workers at risk of forced labour and human trafficking, and employers at risk of legal and customer standards nonconformance.

Across all this, the role of government and business actors cannot be understated. This research report serves as a call to action for policymakers, employers, and civil society partners to increase interest in driving improvements in policies and practices, and to support ongoing advocacy initiatives aimed at protecting the rights of migrant workers and ensuring dignity in work for all.

Our nearly 20-year-old organization has recently changed its name to Dignity In Work For All. We now carry our mission in our name. We are proud to share this report, so evocative of that mission, as the first to be published under our new name. May the new knowledge that we offer in this report lead, as we hope all our work does, towards achieving dignity in work for all.

Marie Apostol
Executive Director
Dignity In Work for All



CONTENTS



01

Executive
Summary

09

Introduction

15

Methodology &
Approach

21

Review of Legal &
Regulatory Framework

53

Conclusion &
Recommendations

ABBREVIATIONS

ASEAN-ACT

| ASEAN-Australia Counter Trafficking

COVID-19

| Coronavirus disease 2019

CSOs

| Civil Society Organizations

DIWA

| Dignity In Work for All

DOE

| Department of Employment

FL

| Forced Labour

HRDF

| Human Rights and Development Foundation

ICLS

| International Conference of Labour Statisticians

ILO

| International Labour Organization

IOM

| International Order of Migration

IRIS

| International Recruitment Integrity System

MoL

| Ministry of Labour

MOU

| Memorandum of Understanding

NGOs

| Non-Government Organizations

OHCHR

| Office of the United Nations High Commissioner for Human Rights

OTL

| On The Level

STF

| Seafood Taskforce

TFHI

| The Fair Hiring Initiative

THB

| Thai Baht

TIP

| Trafficking in Persons

UNTOC

| United Nations Convention against Transnational Organized Crime

USD

| United States Dollar

VSEA

| Verité Southeast Asia



Executive Summary

OVERVIEW

This study “In-country Recruitment of Foreign Migrant Workers and Risks of Forced Labour and Human Trafficking in Thailand,” was conducted by Dignity in Work for All (formerly known as Verité Southeast Asia or VSEA) in 2021, with the support of the Australian Government through the ASEAN-Australia Counter Trafficking Program (ASEAN-ACT). The study considers the following key questions: What are the various modes of in-country recruitment? Who are the key actors involved, and what roles do they play? Where in the process do risks of forced labour (FL) or trafficking in persons (TIP) arise? What are the risk drivers? Which categories of workers are most vulnerable to these risks? How can these risks be managed? Are there opportunities for systems improvement and policy reform?

Various modes of regulated and unregulated migrant worker¹ recruitment activities have operated in Thailand for many years. These in-country recruitment transactions happen alongside the official recruitment process governed by the Memorandum of Understanding (MOU) that Thailand has with neighboring countries.

While in-country recruitment of migrant workers is not new, the border closures, which formed part of Thailand’s Covid-19 Pandemic response, created heightened demand for recruiters and brokers. During and in the aftermath of the pandemic, thousands of migrant workers found themselves with expired work permits at risk of falling out of regular status, while workers who were already undocumented in Thailand faced greater vulnerabilities to labour abuse and exploitation. Meanwhile, significant numbers of workers in neighboring countries who were already approved and processed for deployment to Thailand were unable to regularly enter the country and commence employment, leaving major sectors reliant on migrant labour in dire need of workers. Against this background, in-country (as opposed to cross-border) recruitment as well as informalization and casualization of the labour force in Thailand surged.

The pandemic amplified the drivers of in-country recruitment and hiring practices, with many employers in various sectors pivoting to this mode of

recruitment to fill vacancies; and migrant workers desperate to earn a living also needing the services of brokers and referral systems to link them to employers, or help them secure documentation that would allow them to stay and work in Thailand during the pandemic. The surge in in-country recruitment activities also meant an increase in largely unregulated labour brokerage activities, and informal recruitment, job placement, and hiring of workers, despite measures installed by the government to facilitate worker registration and oversee the placement and employment of migrant workers who were in the country during the pandemic.

While risks of cross-border labour migration are well-documented, those associated with in-country and informal recruitment of migrant workers are less understood. This exploratory study is premised on the notion that the pandemic and comparable crises or shocks which disrupt labour management systems and efforts to curb forced labour and trafficking, further heighten the risk of already vulnerable worker populations such as those using in-country recruitment mechanisms to further exploitation. Such situations preclude them from accessing essential protections and support otherwise available to local workers or formally recruited migrant workers in Thailand. This study also supposes that regulatory frameworks and industry mechanisms and business practices present opportunities to address risks and issues associated with various modes of migrant worker recruitment, including in-country recruitment; and CSOs and workers themselves play a significant role in ensuring that policies and programs do not exclude workers hired outside of the prevailing recruitment framework.

There is therefore a need to understand the various in-country recruitment practices, why they thrive, and how they heighten the risk of forced labour (FL) and trafficking of migrant workers. This is important in order to determine whether existing policies and risk management measures relevant to in-country recruitment of migrant workers in Thailand adequately address such risks, and to identify what policy solutions and measures need to be in place to ensure in-country recruitment practices align with responsible recruitment frameworks and guidelines.

KEY FINDINGS

The following are identified by the study as among the key drivers of in-country recruitment, and the informal and unregulated labour brokerage system in Thailand:

- ***Gaps in the regulatory and compliance framework.*** Thailand's regulatory response to the pandemic and to the situation pertaining to the rise in undocumented workers was mainly through a series of Cabinet Resolutions, and the complex and costly process of regularization. This drove more workers and employers to seek the services of unregulated brokers, and to turn to informal recruitment and hiring practices altogether. Moreover, industry codes of conduct applied to supplier-facilities (e.g., seafood, electronics and food manufacturing, apparel, and others) rarely cover the specific risks and vulnerabilities of irregular workers, and in-country recruitment models. Employers in sectors which relied on migrant workers has not developed clear guidance on how to navigate the worker shortage, border closures, and complexity of in-country recruitment processes.
- ***Job cuts, lack of employment options due to Covid-19.*** Workers, both documented and undocumented, who lost jobs at the beginning of the Covid-19 pandemic said they resorted to using informal in-country recruitment channels to look for any kind of paid work even under precarious conditions and working arrangements for lack of choice or options available to them. Many workers who sought to return to their home countries also faced severe challenges in crossing borders and moving around freely.
- ***Literacy and language barriers.*** The majority of workers interviewed were illiterate and/or did not speak the national language in Thailand, and often relied on labour brokers to find a jobs, change employers, process documents, and navigate the registration process which they uniformly said is complicated and inaccessible.
- ***Complexity and inefficiency of formal in-country registration and recruitment channels.*** Most business owners and employers interviewed cited that the short timeframe, complexity, and inefficiencies of the online registration process to legally hire workers on their own were some of the main reasons for turning to brokers and informal processes to secure workers during the pandemic. Small-medium business owners cited complex paperwork and confusing regulations regarding the registration of undocumented workers as reasons for turning to informal channels. They said that even prior to the pandemic, the MOU channel was never used as it was deemed to be too costly for small to medium enterprises.

The following are examples of **practices and experiences related to in-country recruitment that are inconsistent with responsible recruitment principles²** that were surfaced by this study:

Responsible Recruitment Principles	In-country Recruitment Practices
Prohibition of recruitment fees to jobseekers	Bulk of recruitment-related fees – including those associated with the legal registration process – were borne by the jobseekers and workers
Complete and accurate information about workers' rights, recruitment, and employment conditions	No mechanisms to ensure that workers received accurate information about their employment conditions, rights, and entitlements, even under the regulated registration and recruitment process
Voluntary and transparent employment contracts	Most workers did not get a copy of their employment contract, and there are no provisions within the Cabinet Resolutions to ensure that workers are provided accurate and legal contracts
Recruitment free from deception or coercion	Many workers, regardless of whether they went through the government-approved scheme or used informal brokerage systems, experienced deception during the recruitment process, and some ended up in jobs and conditions different from what was promised or agreed upon
Freedom of movement, including no retention of identity documents	Both documented and undocumented workers experienced more stringent restrictions to freedom of movement
Freedom to terminate employment	Workers who used the formal registration and recruitment process, with fees and costs either advanced by employers or paid through debts and deductions, had no freedom to terminate employment
Access to remedy and grievance mechanisms	<p>No formal channels established for receiving reports and grievance from workers as part of the formal registration process during the pandemic</p> <p>Access to remedy and grievance mechanisms was limited for all workers, but more so for undocumented workers</p>

	No one among those interviewed used government channels to report issues; most reached out to families, friends, faith-based groups, and NGOs
--	---

Range of fees and expenses reported by workers

Type of Expense	Published rate by government		Amount paid	
	THB	USD ¹	THB	USD ²
Transportation				
Cross-border			10,000 - 24,600	285 - 700
In-country			450 - 3,000	13 - 85
Fees paid to broker				
Job referral			500 - 22,000	14 - 63
Documents processing (first time application)			2,800 - 20,000	80 - 569
Documents processing (extension/renewal)			14,000 - 15,000	398 - 427
Employer change			4,000 - 5,000	114 - 142
Service fee			1,000 - 7,000	28 - 199

¹ Exchange rate: THB 1.00 = USD 0.02845.

² Exchange rate: THB 1.00 = USD 0.02845.

Work Permit				
Application fee	100	3	1,000 - 1,500	28 - 43
Work permit	1,800 (2 years)	51 (2 years)	3,700 - 10,000	105 - 285
Renewal			300 - 7,000	9 - 199
Health exam	500 - 550 each	14 - 16 each	500	14
Covid-19 test	3,000 each	85 each		
Covid-19 vaccine	Free	Free	1,000 - 2,000	28 - 57
Health insurance OR Social security	500 (3 months) / 3,200 (2 years)	14 (3 months) / 91 (2 years)	350 - 400 (per month)	10 - 11 (per month)
	5% of worker's wages	5% of worker's wages	250 (per month)	7 (per month)
Visa	2,000 (2 years)	57 (2 years)	7,000 - 9,000	199 - 256
Seaman's Book	100	3		
Registration of Personal Record (Pink Card)	80	2.3	200	6
Police card / Stay permit	-		300 - 500 (per month)	9 - 14
TOTAL (estimate)	10,780	307	47,100 - 127,000	1,340 - 3,613

Other issues reported by workers and CSOs/worker-support groups:

- Brokered repatriation and return to countries of origin at the worker's cost, and without employer support;

- Termination without notice and with wages withheld, and non-provision of mandatory benefits;
- Cases of migrant workers being abandoned by their brokers, often in remote setting, while trying to return to their home countries;
- Risks to CSOs supporting undocumented migrants of being prosecuted.

The public health and economic crisis brought on by Covid-19, in combination with weak oversight and lack of workplace inspections, also led to young workers and minors being engaged for work in some sectors without protective restrictions in place; e.g., lower number of hours, assignment to non-hazardous work and under close supervision by an adult, and other restrictions such as those detailed in the Thailand Labour Protection Act (Sections 44-52). Further research is recommended to understand better the severity of the issue, and its drivers.

All in all, the Covid-19 Pandemic situation which amplified the drivers of in-country – and often unregulated – recruitment and hiring practices, exposed serious gaps and weaknesses in Thailand’s policy framework and systems for foreign worker and labour management, as well as various industries’ risk-management and social compliance mechanisms. As such, the vulnerability to forced labour and trafficking of thousands of migrants who went through in-country recruitment were likewise heightened.

Summary Recommendations

- **Consider in-country recruitment as part of longer-term labour migration management.** This exploratory study highlights the significance and characteristics of in-country recruitment in Thailand, which may be considered as part of the overall labour management system and policy framework in Thailand. Regulating in-country recruitment effectively, as part of longer-term labour migration management will support Thailand’s counter-trafficking and forced labour prevention programs, especially as they apply to migrant workers.
- **Apply existing responsible recruitment standards to in-country recruitment.** Responsible recruitment standards, some of which are already referenced in existing MOUs guiding formal recruitment processes, should apply to other modes of migrant worker recruitment, including in-country recruitment. These standards pertain to limits on fees-charging, documents-handling, access to information, contract terms and conditions, and

responsibility and accountability of recruitment agency and employer, which are absent in the ad-hoc registration and recruitment process established during the pandemic. The cost implications, efficiency and effectiveness, as well as accessibility of existing registration, job-matching, and employer-transfer processes that form part of the government's in-country recruitment model would also benefit from a thorough systems review, if an increase in the uptake of these processes is the aim. Finally, appropriate communication channels, technical support, and grievance mechanisms should be established to ensure migrant workers are able to access relevant information, make informed decisions, report concerns, and receive appropriate support, especially in the pandemic and analogous situations.

- **Develop clear guidelines and support for employers.** Employers of migrant workers are in the best position to ensure that their hiring practices do not heighten workers' vulnerability to exploitation and abuse; and that working conditions are fair and safe, and wages are sufficient for workers to earn a decent living. The private sector, industry associations, and businesses should be provided ample support as well by the government, so they can hire workers through processes that are reasonable, practical, and ethical. Given the viability of in-country recruitment channels, clear guidelines should be provided for employers, to ensure workers are not disadvantaged and abused. Industry associations and businesses should reference in-country recruitment in their compliance standards, and risk management and monitoring measures.
- **Pursue long-term policy solutions.** DIWA echoes the recommendation of many Thailand-based CSOs for the government to pursue long-term policy solutions to the issues faced by migrant workers in Thailand, which the pandemic and unregulated and informal in-country recruitment processes exacerbated. CSOs have long played an important role in filling the gaps left by limited policy frameworks and programs for migrant workers in Thailand. They and the workers they are in direct contact with are in the best position to provide insights to the ways that in-country recruitment can be improved, and workers' grievance and access to remediation and support can be addressed.



Introduction

Overview and Patterns of In-Country Recruitment of Foreign Migrant Workers in Thailand

Thailand's economy relies heavily on migrant labour. The country has an estimated four million migrant workers coming from neighboring nations such as Cambodia, Laos PDR, Myanmar, and Vietnam, working across the construction, fisheries, agriculture, manufacturing, hospitality and service sectors, including household service.³ The border closures, which formed part of

Thailand's Covid-19 pandemic response, resulted in thousands of migrant workers with expired work permits and at risk of deportation. While migrant workers in Thailand who were already undocumented became even more vulnerable to labour abuse and exploitation during the pandemic. Meanwhile, workers in neighboring countries who were already approved processed for deployment to Thailand were unable to enter the country and commence employment, leaving major sectors reliant on migrant labour in urgent need of workers. Many businesses and employers pivoted to in-country recruitment of migrant workers. Workers desperate to earn a living also turned to informal brokers and referral systems to get jobs. This resulted in an increase in labour brokerage activities within Thailand, and unregulated recruitment and job placement of migrant workers, despite measures installed by the government to facilitate worker-registration and employment of migrants in Thailand during the pandemic.

For many years, migrant worker recruitment and employment regulations as well as business-level safeguards in Thailand have largely been focused on cross-border migration. Risks associated with local or in-country recruitment of migrant workers have largely been overlooked and clear guidance is lacking on the prevention, mitigation, and remediation of adverse impacts of the poorly-regulated in-country recruitment channel for migrant workers.

At the onset of the Covid-19 Pandemic, the Royal Thai Government enacted a series of emergency decrees aimed at providing the necessary channels for migrant workers affected by Thailand's border closures to maintain a legal status and remain in the country and keep their jobs. These initiatives, intended as stop gap measures, allowed migrant workers to extend their visas and permits up to July 2023. Despite such government efforts, however, various NGO and media reports⁴ indicate that the smuggling of migrant workers into or out of Thailand also continued, with a few reports⁵ stating that certain police and other officials were involved, and for which some of them have been criminally charged.

Dignity in Work for All's⁶ prior research and work with the private sector in Thailand indicates that employers have been hiring migrant workers residing in-country for many years to supplement recruiting, workers from overseas. The locally-recruited migrant workers, also routinely referred to as "irregular migrants," are typically charged fees and expenses for various transactions and services, such as processing of passports, work permits, medical exams, and in some instances, police protection. Many workers have also reported being required to pay for "employer transfer processing," even though this practice, which was introduced by the government to allow migrant workers to transfer employers and extend their stay in Thailand, was discontinued in mid-2018. In order to finance the cost of recruitment, many workers take loans sometimes from brokers themselves, or are subjected to salary deductions by their employers, leaving them in debt and unable to leave or terminate their employment easily. It has also been observed by DIWA in previous audits/assessments and during this research that some labour intermediaries resorted to using "shell companies" or "renting out" employers – getting someone to fraudulently indicate they are employing the worker even if no work or employment exists – to facilitate the processing of registration and work permits so that the worker can stay in Thailand. Many employers, for their part, rely on brokers and recruitment intermediaries to handle their worker-recruitment needs, or have an open-door policy for receiving walk-in applicants, without adequate due diligence procedures and anti-forced labour and -human trafficking measures in place.

In combination, the absence of clear regulations, involvement of unauthorized and unregulated intermediaries and "shell companies," weak due diligence by employers, among other factors, place in-country recruited migrant workers at risk of forced labour and trafficking. During the COVID-19 pandemic, the border-closures, movement restrictions, heightened surveillance, high costs of

goods and services, and limited access to protections and support further exposed these workers to even greater risks of exploitation and abuse.

Overview of the Covid-19 situation in Thailand

The Covid-19 Pandemic disproportionately affected vulnerable groups, including migrant workers, women and children, and indigenous peoples / ethnic minorities and refugees, who bear the brunt of the social and economic repercussions of the global health emergency. In Thailand, as elsewhere, the sweeping and unprecedented nature of the coronavirus outbreak has immediate and long-term impact on labour migration and related forced labour and human trafficking risks.



Thailand's first wave (January-July 2020) saw a significant increase in cases following the first detected case on January 13, 2020. Consequently, the Thai government declared a state of emergency and ordered the immediate closure of its borders, effectively halting the movement of migrant workers into or out of Thailand. The second wave (December 2020-March 2021) originated in Samut Sakhon and reportedly affected as many as 14,000 Myanmar workers, leading to a province-wide lockdown.⁷ The third wave (April 2021-January 2022), driven by the highly transmissible Delta variant, spread throughout construction camps in Bangkok as well as factories, markets, and fishing boats in Mae Sot, Kanchanaburi, and Phuket.⁸ Infections spiked to 22,000 positive cases a day,⁹ resulting in stricter surveillance and contact tracing, further nighttime curfew, as well as putting a strain on the country's healthcare system and leading to discriminatory policies towards migrant workers.¹⁰

In total, Thailand reported over 4.7 million confirmed Covid-19 cases and over 33,000 deaths between January 2020 and December 2022.¹¹ Throughout the country's pandemic surges, concerns about the impact on migrant workers were raised, as access to Covid-19 vaccines remained challenging due to language

barriers and lack of information. Workers with expired visas faced safety and security concerns, as they were unable to renew their papers during lockdowns. Despite the re-opening of the economy, stakeholders noted the continued vulnerability of migrant workers to exploitation and abuse. As of December 2022, Thailand continues to enforce measures to control the spread of Covid-19, including restrictions on large gatherings and the mandatory use of face masks in public spaces.

In 2022, the ILO reported that the 2021 Global Estimates of people living in modern slavery had reached 50 million, which is 10 million more than when the last estimates were issued in 2017. Of the current estimates, 28 million or almost 60% were in conditions of forced labour. The ILO further stated that:

Compounding crises – the COVID-19 pandemic, armed conflicts, and climate change – in recent years have led to unprecedented disruption to employment and education, increases in extreme poverty and forced and unsafe migration, and an upsurge in reports of gender-based violence, together serving to heighten the risk of all forms of modern slavery. As is usually the case, it is those who are already in situations of greatest vulnerability – including the poor and socially excluded, workers in the informal economy, irregular or otherwise unprotected migrant workers, and people subject to discrimination – who are most affected.¹²

The results of this study, focused on in-country recruitment of migrant workers during the pandemic in Thailand, validate the above observations. The study also further stresses the importance of understanding the characteristics of in-country recruitment and how it exacerbates the risks of migrant workers to forced labour and trafficking. This is critical to determining whether existing regulatory and risk-management measures adequately address such risks, and what mechanisms need to be in place, so that in-country recruitment practices are aligned with standards of responsible recruitment.

Methodology and Approach

This study is part of a policy reform project for government and business stakeholders in Thailand in relation to the in-country recruitment of migrant workers during the pandemic – its learnings can be applied to other crises and shocks. The aim of this study is to contribute empirical information, targeted recommendations, and additional resource materials to current efforts to understand and address risks faced by migrant workers in the context of the Covid-19 pandemic. It aims to identify options and directions for policy reform and recruitment due diligence by employers and businesses. The project leverages DIWA’s existing relationships with industry groups, local civil society organizations (CSOs) and networks, and government stakeholders to document and analyze challenges faced by workers and employers.



The research is guided by the following key questions:

1. In what ways has the pandemic increased migrant workers’ vulnerability to forced labour and trafficking in Thailand?
2. What are the current modes and means used to recruit and hire migrant workers who are already in Thailand?
 - a. What are the drivers of in-country recruitment of migrant workers?
 - b. What are the conditions that confront migrant workers who were “stranded,” and recruited in-country during the pandemic?
 - c. How has the in-country recruitment of migrant workers changed during the pandemic?
3. How effective have the existing and newly developed policies been in regulating the in-country recruitment of migrant workers and in

managing the risks of forced labour and trafficking to workers, during the pandemic?

To answer the above research questions, DIWA conducted an exploratory study of risks of forced labour and trafficking faced by migrant workers recruited in-country in Thailand, in the context of the Covid-19 pandemic. Leveraging DIWA's previous and ongoing work in the country, and recognizing the complexity of risks already faced, especially by irregular and undocumented migrants, DIWA used qualitative research methods to determine the various modes of recruitment and labour broker practices applied to in-country recruited migrant workers in Thailand, and to understand how these heightened workers' vulnerability to forced labour and trafficking. The study documented the recruitment experiences of migrant workers, and established a demographic profile of this category of workers, noting specific vulnerabilities of women, LGBTQ, and young workers; and other potentially disadvantaged individuals, such as indigenous peoples / ethnic minorities, refugees, stateless populations, and asylum seekers.

Data gathering took place between July 2021 and December 2022 and involved the following concurrent phases: in-depth desk research, comprehensive legal review, field (and remote) data gathering and key informant interviews. As part of the desk research, the research team surveyed relevant reports and articles published by the government, media and news outlets, international organizations, community-based organizations, and CSOs in relation to the Covid-19 pandemic in Thailand, the government's response to the pandemic, and its impacts on migrant workers. The team also reviewed relevant legal and regulatory frameworks related to the management of migrant workers, policies and legislation on anti-forced labour and anti-human trafficking in Thailand, and international standards and conventions on human rights and labour rights to which Thailand is a signatory. This legal review, alongside inputs from interviews conducted with government representatives and other experts, served to map out the government's management of in-country recruitment of migrant workers and identify good practices as well as any gaps.

From July to August 2021, the research team conducted preliminary interviews with migrant workers, representatives from business and their recruitment intermediaries (including labour brokers/recruitment agents), and various CSOs enquire about how workers who remained in Thailand during the Covid-19 outbreak were recruited, which actors were involved, and the ways in which migrant workers' working and living conditions were affected by the pandemic. Based on inputs from these preliminary consultations, the research team conducted targeted and in-

depth interviews from September 2021 to October 2022 with migrant workers, employers and labour brokers/ recruitment agents, CSOs, and independent experts in select provinces in Thailand, as well as interviews and consultations with representatives from government offices at both the national and provincial levels.

Building upon DIWA’s work, business processes and employer practices were likewise reviewed to gain understanding of the extent to which these practices are consistent with government regulations and internationally-accepted ethical recruitment standards. Follow-up interviews were conducted with relevant stakeholders in order to validate, clarify, or obtain additional information and insights into the issue. In total, the research team consulted over 190 migrant workers, representatives of worker groups and organizations, and representatives from government, business, labour agency, academia, and civil society across 14 provinces in Thailand.

Stakeholder Group	# of interviews conducted
Workers	131
Government	8
Business/Private sector	21
Civil society	25
Others (academe, independent experts)	6
TOTAL	191

The majority of these consultations were conducted remotely, and the restrictions on travel and in-person activities because of the pandemic posed a major challenge to this project. While DIWA has a team in Thailand, the risk of exposure to the coronavirus of both team members and key informants was consistently considered during the course of the research. These risks were managed through DIWA’s adoption of remote assessment and research ethics protocols which the organization established in early 2020 in response to the pandemic. Nonetheless, in 2022, upon the easing of travel restrictions and the gradual return of in-person activities, the research team was able to conduct follow-up interviews with provincial government offices in August 2022, as well as an in-person visit to a government shelter that housed victims of forced labour and human trafficking to conduct face-to-face interviews with the migrant workers in October 2022. Moreover, in January 2023, DIWA also conducted a hybrid (online

and in-person) validation session with key informants from government, business, and civil society who were interviewed during the data gathering stage, to present the study findings, receive feedback, and identify gaps in the research. Inputs from this validation session have been consolidated and integrated into the current version of this report. An additional interview with a representative of a global consumer goods manufacturer sourcing from a manufacturing supplier facility from Thailand was conducted after the validation session in January 2023 – and input was incorporated into the final report.

Information from various sources was analyzed against ILO definitions of forced labour (Forced Labour Convention, 1930, No. 29), trafficking in persons¹³, and fair recruitment principles¹⁴ to provide a clearer picture of the situation and develop policy and actionable recommendations for government, business, and relevant stakeholders to address identified risks and indicators of forced labour and trafficking; and to increase the safety of in-country recruitment.

Recommendations of the study are addressed to both government and business actors who are involved in the management and recruitment of migrant workers residing in Thailand. DIWA considers these actors as vital partners in introducing changes or improvements to existing in-country recruitment channels. Determining the gaps and challenges of existing structures and formulating targeted recommendations for both actors will consequently benefit the migrant workers themselves, ensuring that they are recruited under conditions that do not pose risks of forced labour or human trafficking, and that they can access resources, support, and protections available to workers recruited under formal, cross-border recruitment and hiring regimes.

Apart from developing the report and recommendations, worker narratives, case studies, and other learning materials will be derived from the research and used to build an open-source resource kit on understanding and addressing risks of forced labour and trafficking among in-country recruited migrant workers. This resource kit, alongside the report, will be presented in appropriate fora to drive interest and encourage improvements in policies and practices, and support ongoing advocacy initiatives aimed at protecting the rights of migrant workers.

Research Framework

In order to understand the risks faced by in-country recruited migrant workers, and determine whether necessary regulatory and system controls are in place to address such risks, DIWA's analysis was framed against globally accepted definitions and standards of responsible recruitment, as well as indicators of forced labour and trafficking. Relevant Thai regulations were also referenced. This was done to better illustrate the links between workers' recruitment experiences and relative risks of experiencing conditions of forced labour; and to recommend appropriate policy and practice changes, towards addressing specific forced labour risks, and increasing protection of migrant workers' recruited in-country.

Responsible recruitment principles used in this research framework are based on the ILO's Private Employment Agencies Convention (No. 181)¹⁵ and the ILO's General Principles and Operational Guidelines for Fair Recruitment.¹⁶ The Dhaka Principles for Migration with Dignity;¹⁷ the UN Guiding Principles on Business and Human Rights;¹⁸ certification frameworks such as the International Recruitment Integrity System (IRIS);¹⁹ and The Fair Hiring Initiative's (TFHI) On the Level (OTL) Core Principles and Standards of Ethical Recruitment standards are also used.²⁰

Core elements of the responsible recruitment framework included for consideration in this study were:

- Prohibition of recruitment fees to jobseekers
- Complete and accurate information about workers' rights, recruitment, and employment conditions
- Voluntary and transparent employment contracts
- Recruitment free from deception or coercion
- Freedom of movement, including no retention of identity documents
- Freedom to terminate employment
- Access to remedy and grievance mechanisms

Information gathered from various sources regarding workers' recruitment and employment experiences was analyzed to identify possible indicators of forced labour. References to forced labour and risk indicators used throughout the report are in accordance with the ILO Forced Labour Convention, 1930 (No. 29), wherein forced or compulsory labour is defined as "all work or service which is exacted from

any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”²¹ To evaluate the risk of forced labour and the underlying practices and drivers that contribute to that risk, DIWA relied on the Guidelines Concerning Measurement of Forced Labour, published in 2018 by the International Labour Organization and the International Conference of Labour Statisticians (ICLS). The ICLS Guidelines, in conjunction with earlier guidance on indicators provided by the ILO, identify the specific indicators which can contribute to conditions of involuntary work and threat or menace of penalty, the two primary components of forced labour.²²

Study Limitations

This research is largely qualitative in nature and grounded in the context of the Covid-19 Pandemic in Thailand. It is important to note that the sample of migrant workers interviewed is not meant to be statistically representative of the estimated 2.3 million migrant workers in Thailand during the pandemic, thus no claims are made regarding nationwide, or sector- and industry-wide, prevalence of labour abuse or exploitation. Migrant workers interviewed, whose inputs primarily inform the key findings of the research, are not meant to be a statistical representation of the estimated 2.3 million migrant workers in Thailand during the pandemic, as reported to the research team for this study.²³ However, triangulation of these findings with relevant literature and interviews with local experts and key respondents suggests that the experiences of workers interviewed were not isolated or unusual. Additional in-depth research would be required to document the prevalence of the labour abuses found here in a more precise and conclusive manner.

The research team used nonprobability sampling, including convenience and snowball sampling, and open-ended interview techniques during interviews with migrant workers and other stakeholders. The report findings note precise numbers where phenomena were common among the respondent pool. In some cases, particular phenomena were not necessarily common across all migrant workers interviewed, largely due to the rapidly evolving situation in Thailand during the pandemic; nevertheless, these experiences have been included in the report as they are illustrative of specific situations or are associated with specific characteristics of migrant workers, such as being recruited through sometimes very opaque processes and conditions, or in certain locations during a particular period of the Covid-19 Pandemic.

Review of Legal and Regulatory Frameworks

Thailand has ratified a number of key international standards on forced labour and trafficking in persons (TIP), and standards related to migrant workers' employment and protection. There are also established national laws and regulations on migrant workers recruitment and hiring, and several business-level safeguards and industry codes are in place. However, these are largely focused on managing cross-border recruitment and migration. Management of risks associated with in-country recruitment of migrant workers – which became more pronounced during the Covid-19 pandemic – have been largely overlooked.

International Laws and Guidance

Thailand has ratified two of the key international standards on forced labour²⁴: the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols Thereto²⁵; and the ILO Forced Labour Convention, 1930 (No. 29) and its Protocol of 2014²⁶.

Thailand signed the UNTOC on 13 December 2000 and the Protocol on 18 December 2001. Thailand deposited the two instruments on 17 October 2013. In accordance with Article 38 of the Convention and Article 17 of the Protocol, the Convention and the Protocol entered into force for Thailand on 16 November 2013. By ratifying the Protocol, Thailand made a commitment to adopt legislative and other necessary measures to establish the conduct of trafficking in persons, when committed intentionally, as criminal offenses; to protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings related to such trafficking confidential; to provide for the physical, psychological and social recovery of victims of trafficking in persons; and to facilitate the return of victims of trafficking in persons to their country of origin. Upon ratification, Thailand became the 158th party to the Protocol, which entered into force on 25 December 2003.

Thailand ratified the ILO Forced Labour Convention on 26 February 1969. Thailand deposited the instrument of ratification of the Protocol of 2014 on 4 June 2018. Thailand was the 24th country worldwide and the first in Southeast Asia to ratify the instrument.

On the recruitment and employment side, Thailand has ratified a number of international labour standards related to employment policy and promotion, such as the Employment Service Convention, 1948 (No. 88), among others.²⁷

However, Thailand has not ratified the following international labour standards that relate to the protection of migrant workers: Migration for Employment Convention (Revised), 1949 (No. 97); and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). On the one hand, the Migration for Employment Convention (Revised) stipulates that each Party State must ensure adequate services to assist migrants for employment. It must take appropriate steps to provide accurate information and combat misleading propaganda in relation to emigration and immigration. It must take measures to facilitate the departure, travel, and reception of migrants for employment. Moreover, it must ensure that the services provided to migrants for employment by its public employment agencies are free of charge. On the other hand, the purpose of the Migrant Workers (Supplementary Provisions) Convention is twofold: it is intended to combat migration in abusive conditions and to promote equality of opportunity and treatment of migrant workers.

Thailand's Migration and Employment Policy Context

Section 4 of Chapter I of the Constitution of the Kingdom of Thailand (B.E.2560)²⁸ ensures the protection of human dignity, rights, liberties and equality of all people. Section 27 of Chapter III²⁹ ensures equality under the law and no discrimination based on origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view. Section 74 of Chapter V, on Duties of the State, also contains a provision on state's duty to promote the abilities of people to engage in work, to protect labour, to ensure occupational safe and healthy working environments; to ensure workers receive income, welfare, social security and other benefits which are suitable for living and savings to support them after their working age; and to provide a system of labour relations.

In terms of legislations and regulations, Thailand has enacted implementing legislation to ensure effective compliance and cooperation under the UNTOC and its supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, namely: the Act for the Prevention and Suppression against Participation in Transnational Organized Criminal Groups, B.E. 2556 (2013), and the Anti-Trafficking in Persons Act, B.E. 2551 (2008).

In the implementation of the Protocol of 2014 to the Forced Labour Convention, Thailand amended the Anti-Trafficking in Persons Act of 2008 by adding forced labour or service as an offense in Section 6(1). Under Section 37, the Welfare Protection Center for Victims of Trafficking in Person can request permission for victims of human trafficking and forced labour who crossed the border irregularly to stay in Thailand, while the victims who have valid work permits and visas can choose to stay inside or outside the government-run shelters.

Thailand's primary legislation to manage migrant labour is the Management Emergency Decree, B.E. 2560 (2017), as amended by the Foreigners' Working Management Emergency Decree (No.2), B.E. 2561 (2018). The Act has provisions on recruitment agencies and service fees (Sections 26–45), employer change (Sections 51–53), and repatriation (Sections 50, 52, 53, 54, 55, 56, and 58). It appears that the law only applies to cross-border recruitment and leaves gaps for regulating in-country recruitment with respect to the recruitment process, recruitment agencies, employer changes, and repatriation.

In terms of regulations, one of the most important is the regulation on recruitment fees and costs announced by the Ministry of Labour (MoL) on 30 June 2021. The announcement details what items should be shouldered by employers, limits to how much agencies can charge, and what employees can cover.

According to the regulation, the following should be borne by the employer:

1. Expenses which are legally stipulated to be the employer's responsibility, or expenses which the Employer has indicated to pay in the service contract;
2. Documents processing expenses, such documents preparation fee, document certification expenses, and document translation fee;
3. Transportation, food, and accommodation expenses related to bringing in migrant workers for employment.

The regulation also states that job placement agencies shall collect or receive service fees not exceeding 25 percent of the first monthly salary or the first 30 days of the migrant worker's employment. Service fee rates that are collected or received from Employer per paragraph 1 shall be set proportionally to the number of workers brought in, as follows:

- Service Fee: 25% Not exceeding 12 persons
- Service Fee: 20% 13-45 persons
- Service Fee: 15% 46- 90 persons
- Service Fee: 10% 91 persons or more

Meanwhile, the fees and costs that can be shouldered by employees are:

1. Expenses incurred in sending countries
2. Expenses which are legally stipulated to be the Worker's responsibility, such as medical check-up.

In terms of workplace protections, the law makes no distinction on how workers are recruited –cross-border and in-country recruited workers are both protected for the duration of their employment under the Labour Protection Act (B.E. 2541) and the Social Security Act (B.E. 2533), respectively. However, while the Labour Relations Act, B.E. 2518 (1975), allows migrant workers to become members of or participate in trade union activities, it does not allow migrant workers to form their own unions, or become board members or officers of registered trade or labour unions, limiting migrant workers' ability to advocate for better conditions on their own.

Pandemic-related Cabinet Resolutions

During the onset of the Covid-19 Pandemic, the Thai government took policy actions to attempt to stem the rising number of irregular migrant workers and also to address worker shortage in Thailand during the crisis. Industries and sectors such as agriculture and construction which typically employ large populations of migrant workers were especially impacted.³⁰ In agriculture, for example, seasonal migrant workers from neighboring countries who typically cross the border to Thailand for employment were unable to enter because of the border closures.³¹ A similar challenge also became apparent in the construction sector, where work continued even during the lockdown periods, but the official channel for receiving migrant workers remained suspended.³² Meanwhile, businesses in tourism, service, and export-dependent manufacturing sectors experienced reduced demand, operational limitations, and closures, resulting in a surplus of workers with little other employment prospects.³³ Between 2020 and 2021, Thailand's unemployment rate increased from 1% to 2.25%.³⁴

In order to respond to these issues, the Thai government published a series of Cabinet Declarations (between August 2020 and July 2022), and revived a scheme for irregular migrant workers from Myanmar, Cambodia, and Laos PDR to register online or through various processing centers in Thailand, and to allow employers to recruit foreign workers from the registry.

Prior to the pandemic, migrant workers who entered Thailand regularly could obtain a work permit under Section 59 of the Foreigners' Working Management Emergency Decree, B.E. 2560 (2017), amended by the Foreigners' Working Management Emergency Decree (No.2), B.E. 2561 (2018). However, with the onset of the pandemic, the border closures, and the subsequent suspension of the MOU process in March 2020, the government devised other pathways to allow migrant workers to work in Thailand. Thus, various Cabinet Resolutions intended to serve as guidance for different categories of migrant workers were issued, as follows:

1. Migrant workers who had an irregular status at the time of the issuance of the resolution	
Cabinet Resolution on 29 December 2020	The cabinet resolution allowing migrant workers from Cambodia, Laos, and Myanmar who have an irregular status under the COVID-19 pandemic situation to be employed, under certain conditions. Under this cabinet resolution,

employers who hired migrant workers had to submit the list of workers via the online system between 15 January and 13 February 2021, and follow the related steps, including:

- Perform a health check by 16 April 2021;
- Process the work permit by 16 June 2021;
- Register personal records and process the pink card by 12 November 2021;
- Process seaman books for fishing workers.

Workers who were registered under this system were then allowed to work in the country legally until 13 February 2023. Moreover, under this same cabinet resolution, migrant workers from Cambodia, Laos, and Myanmar who were unemployed but who had identification documents had to likewise register themselves online following the Department of Employment (DOE) process, and the DOE sent their information to the Department of Interior. The period for this process was 15 January 2020 to 13 February 2021, and workers were likewise required to follow specific procedures:

- Perform a health check by 16 April 2021;
- Ensure personal records were registered, and the pink card processed by 16 June 2021.

Employers who were keen to hire migrant workers who had registered through this process had to apply for permission to work on behalf of workers through the online system by 13 September 2021. Employers had to submit the worker list online and pay for work permits also by 13 September 2021, before submitting the work permit request online, in order to obtain the pink card for employees by 13 November 2021.

If the registered migrant worker had no employer by August 13, 2021, then their permission to work in Thailand expired.

Due to the outbreak during the pandemic, the Thai government released the following cabinet resolutions to extend the processing timeframe:

- ***Cabinet Resolution on 07 April 2021*** extends the COVID-19 testing process and identity data collection until 16 June 2021. Workers could register for their personal records until 31 March 2022.

	<ul style="list-style-type: none"> ▪ Cabinet Resolution on 08 June 2021 extends the processes of COVID-19 testing, issuing health insurance, and applying for work permits until 13 September 2021.
<p>Cabinet Resolution on 28 September 2021</p>	<p>From 01 to 30 November 2021, the Thai government had the authority to inspect establishments such as construction sites and factories. During the inspection, if a migrant worker was detected to be working without permission, the officer would collect their data, while the employer filled out the application form for permission to work on behalf of foreign workers. The employer was required to follow this process:</p> <ul style="list-style-type: none"> ▪ Process Work Permit requests within three days; ▪ Buy health insurance or register for social security; ▪ Conduct health exam by 31 March 2022; and ▪ Process visa by 01 August 2022. <p>In cases where the worker’s passport was invalid, they needed to get a new passport and visa by 01 August 2022. If workers fulfill the requirements, they were allowed to work in Thailand until 13 February 2023.</p>
<p>Cabinet resolution on 05 July 2022</p>	<p>This resolution allowed migrant workers from Cambodia, Laos, Myanmar, and Vietnam who had entered irregularly and were willing to be employed to temporarily stay and work in Thailand until 13 February 2023. Moreover, if they were able to complete the following process by 13 February 2023, they were allowed to stay and work in the Thailand until 13 February 2025.</p> <ul style="list-style-type: none"> ▪ 01–15 August 2022: Employers register their information via an online system or licensed recruitment agencies under the Foreigners’ Working Management Emergency Decree, B.E. 2560 (2017); ▪ 16 August – 15 October 2022: Process payments for workers’ work permits and requests for workers’ work permits; ▪ 16 August – 13 February 2022: <ol style="list-style-type: none"> 1) Submit the health insurance document; 2) Obtain a work permit;

	<ul style="list-style-type: none"> 3) Submit to biometric testing; 4) Undergo a health check; 5) Submit all required documents; and 6) Register personal records.
--	---

2. Migrant workers with invalid status: The workers under this category were those who had valid documentation prior to the pandemic, but who lost their legal status during the pandemic.

Cabinet Resolution on 04 August 2020	<p>The four types of migrant workers covered under this cabinet resolution are:</p> <ul style="list-style-type: none"> ▪ MOU workers who finished their four (4) years of employment; ▪ Migrant workers who went through national verification process and their work permit expired during 30 September 2019 – 30 June 2020 and did not undergo the process of the cabinet resolution on 20 August 2019; ▪ MOU workers who fell out of the system, such as those who were not able to find a new employer within the time limit; ▪ Seasonal workers³⁵ who finished their terms of employment. <p>Migrant workers were required to do the following:</p> <ul style="list-style-type: none"> ▪ 17 August 2020 – 31 October 2020: Request for work permit; ▪ Before 31 January 2021: Undergo health check; ▪ Before 31 January 2021: Obtain visa; and ▪ 01 February 2021 – 31 March 2021: Obtain pink cards. <p>Migrant workers who completed this process were allowed to work in Thailand until 31 March 2022.</p>
---	---

Cabinet Resolution on 13 July 2021	<p>This covered migrant workers – besides those who came under the Cabinet Resolution on 29 December 2020 – who have invalid status by law, but who are qualified to seek documentation under the Cabinet Resolution on 20 August 2019, 04 August 2020, and 10 November 2021; and have invalid status from 01 January 2021 to 03 August 2021. They had to undergo the following processes:</p>
---	--

- Request a work permit by November 30, 2021; and
- Perform a health exam and purchase health insurance by 27 July 2022.

If their passport was no longer valid, they were required to obtain a new passport and valid visa before 01 August 2022. Workers who met the requirements were then allowed to work in Thailand until 13 February 2023.

Other workers covered by this resolution are the following:

- MOU workers who entered Thailand through the MOU channel and finished two years of employment during the pandemic, specifically between 01 January 2021 and 03 August 2021, who were allowed to stay for another six (6) months for health checks and visa extensions.
- MOU workers who finished their four (4) years of employment during the pandemic, specifically between 01 November 2020 to 31 December 2021, who were allowed to stay in Thailand until 01 August 2022 and to extend their visa not exceeding 2 years.

Almost a year after this Cabinet Resolution, another resolution was issued on 05 July 2022 allowing migrant workers covered under the Cabinet Resolutions on 29 December 2020, 13 July 2021, and 28 September 2021 who still had valid status to stay and work in Thailand until 13 February 2025.

The processing and document fees and costs related to the various deadlines and processes detailed in the different issuances between 2020 and 2022 are summarized as follows:

Fees and costs table based on the Cabinet Resolutions

Type of expense	Amount		Relevant office/unit
	THB	USD ³	
Application fee	100	3	Ministry of Labour, Department of Employment
Work permit	1,800 (2 years)	51 (2 years)	
Health exam for six prohibited diseases	500 - 550 each	14 - 16 each	Ministry of Health
Covid-19 test	3,000 per test	85 per test	
Health insurance OR Social security	500 (3 months) / 3,200 (2 years) 5% of worker's salary	14 (3 months) / 91 (2 years) 55 of worker's salary	
Visa	2,000 (2 years)	57 (2 years)	
<i>*Seaman's Book</i>	<i>100</i>	<i>3</i>	<i>Ministry of Agriculture and Cooperatives</i>
Registration of Personal Record/ Pink card	80	2	Ministry of Interior
TOTAL	10,680 - 10,780	304 - 307	

Source: Department of Employment

For those workers who did not have an active employer, it was only once they were registered and matched with an employer that they could secure a work permit, and that permit needed to be renewed on an annual basis.

Regulatory gaps

The Thailand Constitution (B.E. 2560) provides under Section 4 that “human dignity, rights, liberties, and equality of the people shall be protected”. Section 27

³ Exchange rate: THB 1.00 = USD 0.02845.

provides that “all persons are equal before the law, and shall have rights and liberties and be protected equally under the law” and that “unjust discrimination against a person on the grounds of differences in origin, race... or any other grounds, shall not be permitted”. And Section 74 provides that the “State shall protect labour to ensure safety and vocational hygiene, and receive income, welfare, social security, and other benefits which are suitable for their living”.

The provisions above do not specifically mention migrant workers, nor do they explicitly and clearly distinguish between citizens and non-citizens. However, a 2021 Ombudsman decision³⁶ surfaced a discussion on the distinction between ‘race’ and ‘nationality’ in Thailand in relation to whether or not a social welfare scheme, which was implemented during the pandemic to address living costs and mitigate impact on persons insured under social security laws, could be accessed by migrant workers. Pursuant to a Cabinet Resolution, the scheme was developed to apply only to individuals who had Thai nationality. The decision held that providing the cash relief to those with Thai nationality does not constitute unfair discrimination nor infringe on human rights guaranteed under the Constitution.

A prominent CSO noted that:

 ... the Ombudsman’s opinions do not hinge on international standards and international human rights conventions to which Thailand is a state and is obliged to act in its compliance, particularly during the time when the Covid-19 pandemic has taken its toll on all citizens under the jurisdiction of Thailand. The implementation of policies through response should aim at preventing and controlling the spread of the diseases that affect all citizens. Therefore, any responses to offer care, remedy, and rehabilitation from the impacts by the state have to be offered based on an equal basis.³⁷

As for the Foreigners’ Working Management Emergency Decree, it appears that this law is only applicable to cross-border recruitment, and the so-called MOU process. This leaves gaps in the law for regulating in-country recruitment with respect to the recruitment process, recruitment agencies, employer changes, and repatriation of migrant workers.

The regulation on recruitment fees and costs announced by the MoL on 30 June 2021 provided some measure of protection for jobseekers using the formal channels and relieved workers of some of the costs incurred in Thailand. Verité

research has shown, however, that the bulk of expenses passed on to workers are charged in the country of origin.³⁸ Moreover, the regulation is silent on costs and expenses related to in-country recruitment of migrant workers in Thailand.

With respect to the regularization scheme implemented by Thailand between 2020-2022 through a series of Cabinet Resolutions, while there was clear effort to encompass various categories conditions of irregularity and informality, the resolutions appeared to be intended for lowering the number of undocumented migrant workers and increasing uptake of the registration process, without incorporating protective measures in the recruitment, placement, or employer-transfer processes.

Registered migrant workers in Thailand are carefully tracked, however, there is no official data on the population of irregular migrants working and living in Thailand. In a news article released in late July of 2022, the MoL cited more than 200,000 as the number of migrant workers living and working in Thailand irregularly.³⁹ Non-government organizations (NGOs) and the International Order of Migration (IOM) cite much higher figures. According to IOM:

Of the 4 - 5 million migrants estimated to be living and working in Thailand, about 1 - 2.5 million are thought to hold irregular status. High costs, long waiting times and bureaucratic red tape discourage many from entering to work in Thailand through legal routes. The lack of effective law enforcement has also contributed to several pressing issues such as poor working conditions, exploitation, human smuggling and trafficking, and transnational crime (IOM, 2022).

Another report states that among Myanmar nationals alone, there are three million with an irregular status living and working in Thailand.⁴⁰ Despite registration campaigns of the government, a million Myanmar nationals remain unregistered to date (2022), according to Thai NGO, Human Rights and Development Foundation.⁴¹

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR),⁴² 2.15 million migrant workers had been registered or documented through the regularization schemes implemented during the pandemic by the end of 2022. The same report also cites that a key implementation challenge associated with these schemes was addressing the low level of awareness of workers and their employers regarding the specific process and requirements for identity verification, a problem especially for those workers who have no existing documentation.

Another gap with the regularization schemes pertained to fees. Several costs for items such as ID photo, transportation to the processing office, service fees to brokers who facilitate registration, and others, are not regulated or included in schedule. It is worth noting that the current legal minimum wage in Thailand is THB 315 (USD 9) per day, or THB 7,560 to 8,190 (USD 215 to 233) per month (for 24-26 days of paid work).⁴³

Given the established schedule of fees and costs, plus unregulated charges related to the registration and recruitment process, average costs are pegged by DIWA and CSOs consulted to be conservatively at THB 20,000 (USD 569), which is more than twice the monthly salary received by a minimum wage worker in Thailand.

The Cabinet Resolutions were also silent on who should shoulder the full cost of registration (and recruitment), or how government would make sure that workers are not charged excessive fees. There were no provisions on how recruitment actors would be regulated, and how jobseekers and workers who go through the regularization/registration process could report malpractice.

Business Practices and Responsible Recruitment Mechanisms

As reported by the ILO,⁴⁴ the instability, uncertainty, and challenges posed by the pandemic and similar situations of crisis highlight the importance of implementing labour standards and safeguards, such as those provided for by the following ILO Conventions and Guidelines: (1) ILO Employment Service Convention, 1948 (No. 88) and ILO Private Employment Agencies Convention, 1997 (No. 181); (2) General Principles and Operational Guidelines on Fair Recruitment. These, according to the ILO, are important to “ensure that the recruitment process of workers, especially migrant workers, is organized in a way that respects the rights of those involved, promotes equality of treatment, addresses the needs of communities of origin and destination, and takes into account the legitimate needs.”

These recruitment-related standards are reflected already in most industry association codes of conduct and supply chain compliance standards of consumer goods brands and buyers sourcing from Thailand. They are usually enumerated under the provisions on prevention of forced labour and trafficking. Some codes even contain specific guidelines on responsible recruitment, following the ILO’s General Principles and Operational Guidelines on Fair Recruitment.

The Seafood Taskforce (STF), an industry association headquartered in Thailand, has its own Code of Conduct and Auditable Standards, which specifically states that, “Workers enter into employment freely...There is no requirement of deposits or any other security payments, posting of bonds, or collateral guaranteed



at the time of employment or at any time during the course of employment... The Seafood Task Force prohibits any recruitment and hiring- related fees, other than legally permitted fees, to be paid directly to employers, agents or labour brokers.” Moreover, the Seafood Task Force’s Guidance on Responsibility for Recruitment Related Costs specifically enumerates recruitment-related costs and expenses that cannot be charged to workers. These items are largely consistent with the ILO’s Fair Recruitment Guidelines.

These standards and guidelines are mandatory for members of the STF, which are mainly seafood processing and fishing companies. Similar standards would be required of manufacturing facilities supplying to global brands and buyers. Notably, even in companies’ and associations’ voluntary codes, there are no explicit standards that take stock of the presence of irregular or undocumented workers, and recruitment models referenced are only those governed by formal, legal frameworks. The standards of the Roundtable on Sustainable Palm Oil (RSPO) make a subtle reference to family members who contribute work to the plantation, but is otherwise also silent on how irregular, undocumented migrants should be treated.

Other employers in other sectors that are not linked to global supply chains or industry organizations or associations would be guided by solely by legal regulations, which have their own gaps and inconsistencies as well, as previous sections already noted.

Findings on the Immigration Status and Demographic profile of worker-respondents

A total of 131 migrant workers were interviewed for this study and all of them, regardless of documentation status, experienced some form of in-country recruitment process, with only 12% going through the formal MOU recruitment channel prior to the pandemic, and the remaining 88%, entering Thailand irregularly. For the latter, this meant going through various (non-MOU) means, including through illegal border crossing – and in some cases, smuggling and trafficking — and then being placed in jobs once in Thailand through in-country recruitment channels.

This indicates that in-country recruited migrant workers also tend to be irregular migrants to begin with, already possessing unique vulnerabilities owing to their immigration status, which are compounded by demographic factors such as age, gender, literacy, economic status, and others. This could also point to a potential correlation between in-country recruitment processes and specific vulnerabilities to trafficking and forced labour of irregular or undocumented migrant workers.

As cited in the previous section, during the pandemic, there were essentially two categories of undocumented migrants in Thailand: (1) those who came to Thailand through the formal process, but had since overstayed their visas or had not renewed passports owing to pandemic-related closures and slowing down of operations; and (2) those who came through irregular channels – on their own or through intermediaries, including human smugglers and traffickers – and remained in the country as undocumented migrants, working in Thailand under informal employment arrangements.

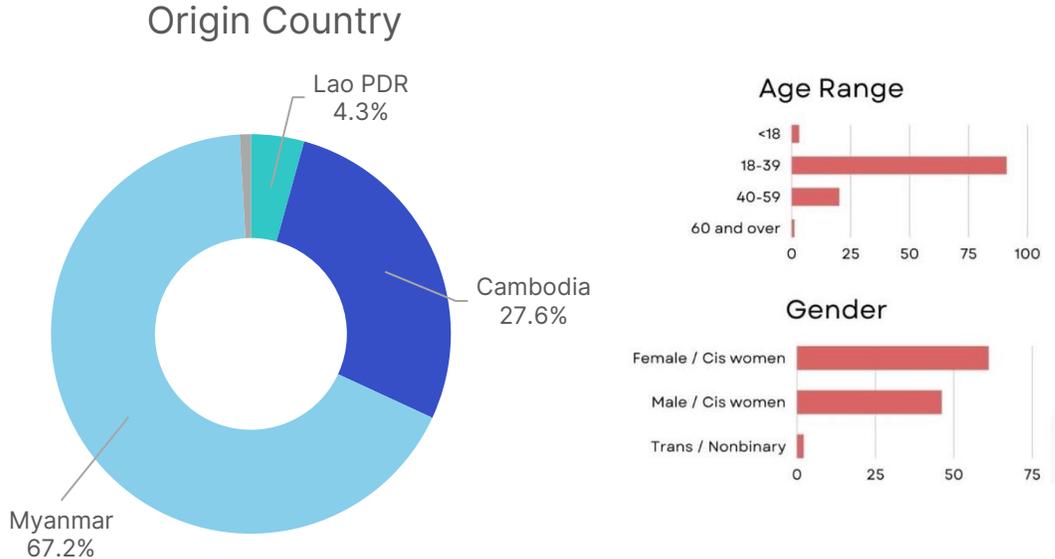


A number of respondents interviewed for this study reported entering Thailand irregularly through their own means, and choosing not to go through formal recruitment channels in favor of using informal personal contacts, owing to the costs and restrictions, and bureaucratic complexities involved in formal MOU recruitment channels. These workers still ended up incurring expenses or eventually being subjected by employers to monthly deductions to cover for recruitment costs.

Some workers interviewed reported that they deliberately chose not to register or be documented so they could have more mobility, albeit limited options in terms of types of jobs they could be employed in.

The migrant workers interviewed for this study, primarily came from three of Thailand's neighboring countries: Cambodia, Laos, and Myanmar. Myanmar nationals took up the biggest percentage among those interviewed (72%), followed by Cambodian workers (23%), and lastly by Laotians (3%). The research team also interviewed indigenous persons and refugees (2%), both of whom are considered

as stateless persons by the Thai government. These worker-respondents were based in 14 provinces across Thailand,⁴⁵ and comprised of cisgender women (50%), cisgender men (48%), and trans/non-binary persons (2%). In terms of age groups, 79% of workers interviewed were 18-39 years; 16% were 40-59 years; and 2% were 60 years and over. The team also interviewed minors, or those below 18 years (3%).



Interviews were conducted between July 2021 and October 2022, and 63% of workers said that they were documented at the time of interview, with a valid passport/visa and work permit, while 37% of workers said they were undocumented, either with expired papers or no documentation at all. Nonetheless, among all worker-respondents, 88% reported that they crossed the border to Thailand without proper documents and had fallen at some point out of regular status.

About 63% of all worker-respondents were employed on a full-time or regular basis at the time of interview, while 24% were engaged in part-time, seasonal, or daily jobs; nearly all of them reported not having employment contracts or agreements. The remaining 13% of workers reported being unemployed or seeking employment at the time of interview, though all of them had previously been

employed in Thailand and/or had gone through the in-country recruitment process. The worker-respondents were employed in construction, seafood, domestic work, retail and service (in small- and medium-sized enterprises), manufacturing, garments, agriculture and poultry, education, health, hospitality, tourism, and logistics. Workers who were doing short-term or multiple daily jobs reported working across different sectors and industries, wherever work was available.

Drivers of in-country recruitment, and informal and unregulated broker system

Prior to the Covid-19 pandemic, the official recruitment channel for migrant workers to enter and work in Thailand was through the MOU system. Thailand has signed bilateral MOUs with Cambodia, Laos, Myanmar, and Vietnam – the countries where the majority of Thailand’s migrant labour force come from. However, informants interviewed for this research consistently cited issues in the MOU recruitment channel that hindered workers and employers from accessing the system and making use of it to recruit and hire migrant workers. Informants across stakeholder groups cited the MOU system’s time-consuming and complicated process and high costs as factors that make it challenging for both workers and employers to utilize. All these in combination further drive up the demand for an alternative recruitment channel.

DIWA found that, even prior to the pandemic, in-country recruitment was already an active and viable option being used by both migrant workers and employers in Thailand. The Covid-19 Pandemic response of Thailand further increased uptake for this mode of recruitment, which in its current iteration, has become largely informal and unregulated, as the government regularization processes mostly focused on the registration, regularization, and extension of documentation of Thailand-based migrant workers.

In the wake of the Covid-19 pandemic, business owners and employers cited the border closures, worker shortage, and lack of options but to hire migrant workers in-country as main reasons for using in-country recruitment channels. They also cited the short timeframe, complexity of the process, and inefficiencies of the online registration process to legally hire migrant workers as reasons for turning to brokers for assistance, or for skipping the legal registration process altogether. On the other hand, the majority of worker-respondents cited language barrier across all recruitment and hiring processes in Thailand as a key reason why they often rely on brokers to find them jobs, change their employers, process documents, and

navigate the registration process which they uniformly said is complicated and inaccessible.

Based on worker interviews, workers who lost jobs at the beginning of the Covid-19 pandemic said that they resorted to using informal in-country recruitment channels to look for any kind of work even with precarious conditions and working arrangements.

According to a well-established human rights NGO in Thailand, about one million migrant workers were unable to register in recently-concluded registration cycles. One expert from a renowned think tank in Thailand also said that some undocumented workers would continue to choose not to be registered because of the cost and their inability to understand and navigate the process on their own. Some small-scale businesses may also choose to employ undocumented workers to keep costs down and keep their business afloat.⁴⁶ These observations were validated by DIWA's interviews with workers and employers.

A business owner who needed additional workers to counter high turnover during the pandemic hired migrant workers in-country via personal networks, job sites, employee referrals, and from among walk-in applicants. They cited complex paperwork, confusing regulations regarding registration of undocumented workers as reasons for turning to informal channels. They said that even prior to the pandemic, the MOU channel was never used as it was deemed to be too costly for a small company like theirs.

One company that did not use agents or third parties in hiring migrant workers in-country, went through the government registration process and online portals. The company representative interviewed reported difficulties in processing the registration and employment of bigger groups of workers on their own, but said they had to go through with the government-required process as they were constrained by company policies from using non-formal channels.

In-country recruitment modes and mechanisms

There were essentially three types of in-country recruitment channels operating in Thailand during the pandemic: (1) Formal – with the suspension of the MOU, formal processes were guided by the Cabinet Resolutions, detailing the legal

registration and documentation process, as well as job-matching, recruitment, and hiring processes; presuming the non-involvement of brokers and intermediaries; (2) Informal – operating purely outside of the legal process, with the heavy involvement of unregulated brokers and agents, as well as personal contacts; and (3) Combination of formal and informal modes – wherein workers and employers use the formal government registration and documentation process, but with the facilitation of unregulated and informal brokers and intermediaries.

Exceptional cases of migrant workers recruitment and hiring through direct transactions between workers and employers without the involvement of either government processes, authorities, or brokers were also reported by a few respondents. In this case, workers were undocumented, and both parties agreed to not subscribe to the government registration and documentation scheme.

The types and range of services provided by brokers and labour intermediaries to both workers and employers corresponded to the mode of in-country recruitment used. However, almost all respondents uniformly reported the presence and involvement of brokers throughout the entire recruitment and hiring process, regardless of the recruitment channel used, including in the steps required by the formal government regularization schemes.

Many migrant workers interviewed also described engaging brokers or agents (sometimes referred to as “carriers”) for cross-border transportation before and during the pandemic. All but 14 of the 131 migrant workers interviewed reported crossing the border to Thailand through irregular means, either by using tourist, student, or temporary visas, or by entering the country without any form of documentation.

More than half of the worker-respondents had been living and working in Thailand for at least three to five years prior to the pandemic, and some for as long as 10-20 years or more. A small number of workers said that they entered Thailand with their families when they were children and over the years managed to secure some form of documentation which presumably allows them stay in the country legally and look for more stable employment. Meanwhile, workers who entered Thailand during the pandemic when the borders were still officially closed had no choice but to rely on brokers to manage higher transport costs and increased risks to their safety and security. For all of these workers, broker-mediated cross-border transportation was seen as the norm.

One Myanmar worker shared that they lost their job in 2020 because of the pandemic and decided to go back home to Myanmar. Then, after the military coup in 2021, they returned to Thailand through the help of a broker, to whom they paid about THB 18,000 (USD 512) for transport costs alone. The worker cited increased security in the border areas, as well as closures of some of the borders, as the reason why they needed to avail the services of a broker to re-enter Thailand. According to the worker, the trip from their village to Thailand took a total of 13 days because they were travelling illegally, during which they also had to spend on food fees themselves. The worker said that there was no guarantee that their trip was going to be smooth or safe, but that the costs remained high regardless.

Another worker who entered Thailand irregularly in June 2022 shared that they paid over THB 24,000 (USD 683) to a broker to facilitate their transportation from their hometown in Myanmar to Bangkok:



I came to Thailand with the help of the broker from my hometown. It took two days from our village, and the broker provided me some food on the way. While traveling I had to walk sometimes and at other times I had to take a car. There was not much difficulty on the way. It cost 15 lakhs (MMK 1,500,000 / est. THB 24,600 (USD 700)) and only for the transportation. That did not include finding the job. I found work only after I arrived in Thailand, through another broker referred to me by my friend.” (Migrant worker)

Note: Exchange rate: THB 1.00 = USD 0.02845.

Both workers and employers interviewed for the research also reported engaging labour brokers primarily for their referral services. These brokers connected workers looking for jobs with employers who were hiring during the pandemic, and vice versa. According to these respondents, intermediaries were often, but not always, attached to licensed recruitment agencies, and provided job referral and job placement services to migrant workers already in Thailand, typically for low-skilled or semi-skilled work such as in farms, plantations, or factories, and for employers looking to meet demand and counter high turnover rates. About a

quarter of the workers interviewed said that they engaged a broker directly, paying anywhere between THB 1,500-9,500 (USD 43-270) for job referrals, exclusive of brokers' service fees.

One of the respondents shared that brokers may charge fees from both workers and employers, so that each would have to pay about THB 5,000-7,000 (USD 142-199) per individual assisted by the broker. Both workers and employers also noted that, due to the high costs of engaging "professional" brokers, it became even more common during the pandemic to rely on the use of personal contacts and informal intermediaries in recruiting workers in-country. Among the pool of worker-respondents, about 75% said that they found jobs through personal networks, word-of-mouth, or walk-in applications. For workers, seeking employment via their personal networks and without having to rely on brokers helped them save time and lower expenses. On the employers' side, informants shared that companies preferred not to advertise new jobs during the lockdowns and instead relied on the referrals from their current pool of employees.

Informants also talked about brokers who provided full service and managed all the steps related to the processing of workers' documents, which included the registration and application for the regularization of irregular migrants in Thailand; renewal of a worker's passport, visa, and work permit, in cases where these expired and were not renewed on time because of the lockdowns; employer transfer for workers who changed employment during the pandemic; and even "renting out" employers⁴⁷ for workers' applications.

Among the processes related to in-country recruitment, informants across stakeholder groups consistently cited the processing of workers' documents as the most complicated, inaccessible, time-consuming, and expensive, especially for workers as they end up shouldering all the costs. Workers reported being charged by brokers anywhere between THB 3,000-12,000 (USD 85-341) for a single document, and as much as THB 48,000 (USD 1,366) for the entire process, including brokers' service or professional fees. In many cases, workers were not completely aware of the breakdown of fees, what services they paid for exactly, or what specific steps were involved in the processing of their documents.

According to one worker who paid a substantial amount to a broker for the full range of services:

“ I don't know how to do the process on my own. I just paid the money to the broker. I don't know the rest. ”

An employer, meanwhile, said,

“ Without brokers, the processing of documents for workers is very slow. ”

Many of the worker-respondents said that they would still have to enlist the services of brokers as long as they are in Thailand, because they do not speak the language and cannot accomplish government-required processes related to documentation and registration on their own. Without proper documents, workers said that it was much more difficult to find stable employment during the pandemic, as employers were stricter in requiring workers to have valid and updated papers before they could apply for jobs. This was also validated by the employers and business actors interviewed for this research, who said that it became common practice during the pandemic to require in-country migrant workers to sort out their documentation first before applying for jobs in their company. A few employers, however, knowingly hired workers who did not have the right papers at the time.

In general, respondents said that the intermediaries who processed workers' documents could be both formal and informal brokers, attached to labour agencies or working individually, providing other services such as transportation and/or job referrals, and contracted by the employers or contacted independently by the workers.



Employers said they sometimes contract a labour agency to manage the documents processing for their company, and shared that their process of choosing which agency to engage was essentially via referrals from business associates or by conducting an online search. Some shared that they would typically select the labour agency that offered the lowest rates. In one case, an employer shared that they would provide their workers a list of recruitment agencies and from which list workers can decide with whom to process their papers, but noted that they had no contracts with the brokers on the list. Workers were also allowed to work with brokers or agents from their own networks if they wished to.

One global brand representative interviewed for this study, and whose company sources products from various manufacturing factories in Thailand, mentioned that one of the difficulties they faced in Thailand was determining who should be accountable for fees and expenses charged to workers by various brokers at different points in the process leading to the workers' employment. They said the lack of clear guidance on who should cover which expenses, especially when these charges are related to the regularization process during the pandemic or during amnesty periods, and when workers were not linked to any employer yet, proved to be a particular challenge among industry players keen to implement ethical recruitment in their supply chains.

Recruitment fees, debts and deductions

All workers reported covering the bulk if not the total cost of recruitment, worker registration, and documents processing, either upfront or through salary deductions, regardless of whether they used formal or informal in-country recruitment channels. None of these workers received refunds once they were employed. On the contrary, workers reported getting monthly salary deductions ranging from THB 250 to THB 1,000 (USD 7 to 28) for a few months up to more than a year, depending on how much the employer advanced, or until the workers' pay off their recruitment-related debt. A few employers interviewed confirmed the practice of imposing salary deduction on their employees to recover recruitment costs they initially covered.

For those workers who found jobs through personal networks or word-of-mouth and therefore did not have to pay for job referral fees, they still had to process their documents for which they reported spending about THB 6,000-15,000 (USD 171-427). There were some cases in which workers hired brokers only for documents processing, but still paid up to THB 20,000 (USD 569). On the other hand, workers who did not use the government registration process—and therefore opted out of regularization to remain as irregular/undocumented migrants—reported using the services of brokers in order to find employment. These workers reported paying brokers amounts ranging from THB 8,000 to 22,000 (USD 228 to 626).

One worker reported paying a broker THB 15,700 (USD 447) for document processing, registration, medical check-up, as well as “police fees.” Some worker-respondents also shared that they had to pay the brokers regardless of whether they get the job or not. In this sense, just acquiring information about vacancy or availability of jobs already cost workers. When asked how they coped, one worker said: “Pay whatever amount the brokers ask for.” (See also “Range of fees and expenses reported by workers” on page 8.)

Various workers reported having to take out loans from relatives or friends, with interest rates between 2-10%, or to pawn possessions such as motorcycle or house/land title, in order to finance the cost of recruitment and living expenses in Thailand. The majority of workers reported being currently in debt, ranging from THB 5,000 (USD 142) to as much as THB 70,000 (USD 1,992), owing to increase in commodity prices and living costs during the pandemic, while wages were lower and jobs much more difficult to find.

Workers employed in construction said they also got deductions for housing, accommodations, and meals provided to them by their employers. Meanwhile, workers engaged in various daily jobs mentioned that they may be deducted up to THB 400-500 (USD 11-14) if they came in to work late.

The high variance in the amounts reported by workers is indicative of the lack of control mechanisms and asymmetrical information (between workers and brokers) when it came to in-country recruitment related procedures, costs, and expenses.

The absence of government fees-control mechanisms and oversight of in-country recruitment and hiring practices, in combination with the complexity of the registration process and the workers' compromised and vulnerable status as foreign and undocumented workers, meant that workers had no means to say no to charges and deductions imposed on them, and they ultimately bore the bulk of often bloated cost of in-country recruitment.

Employment contracts and deceptive recruitment

The majority of workers interviewed reported having no employment contracts or agreements, even for those employed on a "full-time" or "regular" basis. In most cases, workers learned about the job through short and informal verbal discussions with either their broker or their employer, typically covering topics limited to the worker's tasks, salary, working hours, and overtime rate. A few workers reported that they were not given any information about the job, either in writing or verbally. According to a fishery worker, "Since we already have experience working in the field, there is no orientation about the job anymore. We just learn the job while working."

Interviews with workers and NGOs also indicate instances of deception from brokers during recruitment, usually in terms of job description, working hours, and location of work. Worker-respondents employed in construction shared that their brokers informed them that they will work in a construction site in Bangkok, although in reality the workplace was outside of the city. Another worker was promised a monthly salary of THB 9,000 (USD 256) per month as a babysitter, but when she began her employment, her employer asked her to do more tasks around the house than what had been agreed upon and she got paid only THB 5,000 (USD 142) for it. Brokers also make promises to workers of speedy turnaround time to

accomplish processes that typically take a much longer timeframe during the recruitment stage.

One worker shared that they went to the agent's office to register for a job, upon the agent's instructions.

“ I do not need to go to the factory anymore. I was told that I will surely get the job at the factory. I just have to wait about one or two days...”

This is the worker who reported paying THB 15,700 (USD 447) to the broker for document processing, registration, medical check-up, as well as “police fees.” At the time of the interview, the worker was not yet employed.

Many of the workers who reported having an employment contract said that the document they signed was in a language that they did not understand, but that the terms and conditions of the job were discussed with them by their broker or employer. Some of these workers said that they have a copy of their employment contract, but majority did not.

While some workers reported that their general working conditions were in line with what was discussed prior to employment, working hours were often longer than expected, or rates for hours were different than what was offered before the pandemic. Workers in small- and medium-sized enterprises in the retail and service industry and in domestic work, for instance, reported working every day for 10-12 hours, with no days off, and reported that these details about the work were not shared to them during recruitment.

INCREASED SURVEILLANCE, RESTRICTED MOVEMENT, EXTORTION

Migrant workers interviewed reported a noticeable increase in security checks during the pandemic, and both documented and undocumented workers said that they found it more difficult to leave their community easily, for fear of being accosted by the police and having to pay THB 500-1,000 (USD 14-28) or more. In some cases, workers reported needing to leave town to purchase medicine or food, and consequently being arrested and having to pay the fine. Both workers and employers interviewed also reported arrests made by the police even of workers with valid documents.

Worker-respondents who were based in the border provinces said that they had to carry a 'police card' or 'stay permit' that is renewable every month for THB 300-500 (USD 9-14). The police card is a form of pass that migrants can present to the police as proof that they are allowed to stay in Thailand. However, the police card only allows migrants to stay within their district and not beyond it, and it is also a card that is not considered as a valid documentation by the Thai government.

Respondents also criticized the "bubble and seal" measure imposed by the Thai government on certain workplaces with a predominantly migrant worker population. One employer interviewed said that all the management staff and workers were locked within their factory for 14 days, on top of a two-week mandatory hospital quarantine. Their facility had to be closed for the duration of their lockdown.

Some workers reported forgoing their legal status and choosing to leave their district and move elsewhere, even as this made them vulnerable, in order to find better jobs and earn a better income for their families.

Some CSOs reported that in fishing vessels, workers were required to stay onboard their vessels for the duration of their contract, which used to be 12 months pre-pandemic, but was extended to 16 months during the pandemic. Employers also typically withhold workers' documents (passport, ATM) while on board.

DISCRIMINATION, DIFFICULTY IN ACCESSING HEALTH SERVICES, AND OTHER HEALTH AND SAFETY ISSUES

Undocumented workers interviewed said that even before the pandemic the majority of the formal jobs with stable incomes were available only for documented workers. Undocumented workers found work in informal service-oriented jobs, which were limited during the pandemic; consequently, many migrant workers were unemployed and unable to earn an income for months.

Migrant workers reported that vaccination status was an important consideration for employers when hiring, and that being vaccinated against Covid-19 made it easier to gain employment. However, for many migrant workers, access to vaccines was a challenge, adding to their difficulties in getting employed. Employers interviewed also confirmed their vaccine requirement in recruiting and hiring in-country migrant workers.

Various NGOs reported that migrant workers generally lacked awareness of pandemic-related information and had limited access to health services. They shared cases of brokers trying to charge THB 2,000 (USD 57) per head for Covid-19 vaccine shots for migrant workers, even though vaccines were free of charge. Many of the workers interviewed also reported not being provided with PPE, training, and medical care in their places of work.

THREATS AND OTHER FORMS OF PENALTY

Some NGOs and workers reported of employers abusing the undocumented status of workers by threatening deportation or denouncing them to the authorities. Some workers also reported experiencing verbal abuse from their employers if they were late to work, made a mistake, or did not work fast enough. NGOs also shared that migrant workers, particularly those in fishing, experienced worse physical abuses during the pandemic. There were also documented cases of “fishers lost at sea,” whereby workers in fishing vessels during the pandemic went missing and were reported by NGOs as having experienced abuse, debt bondage, discrimination, and difficulty leaving their workplaces. It was reported that some workers were driven to jump into the sea as a “last resort.”

CHILD LABOUR

According to NGOs interviewed, children of migrant workers aged 11-13 were found to work in restaurants and in construction sites at night in order to avoid the authorities. These minors reportedly worked for as much as 12 hours per day, and in hazardous working conditions such as a freezer room, or work requiring them to stand for long hours. Respondents also reported cases of youths aged 12-15 working in agriculture and engaging in domestic work to help their parents. Underage respondents interviewed by DiWA reported working in jobs alongside adults, with no protective restrictions in place. The research team found that, based on interviews, closure of learning centers and schools, and decreased family incomes drive youth and children to work. For Myanmar workers, the political and peace and order situation in their country also drove entire families to seek earning opportunities in Thailand.

Conclusions and Recommendations

This study has sought to map out the different recruitment practices in Thailand during the pandemic, and to determine whether existing policies and risk-management measures relevant to in-country, as opposed to cross-border, recruitment of migrant workers were sufficient to address risks and issues associated with this mode of recruitment. It considered the following core elements of the responsible recruitment framework, in assessing the recruitment experiences of migrant workers:

- Prohibition of recruitment fees to jobseekers
- Complete and accurate information about workers' rights, recruitment, and employment conditions
- Voluntary and transparent employment contracts
- Recruitment free from deception or coercion
- Freedom of movement, including no retention of identity documents
- Freedom to terminate employment
- Access to remedy and grievance mechanisms.

It is now well documented how Thailand's Covid-19 Pandemic response resulted to the unintended outcome of thousands of migrant workers falling out of status, and those workers who were already undocumented even prior to the pandemic ending up in even more vulnerable situations. Moreover, workers in neighbouring countries keen to gain employment during the pandemic continued to use irregular routes to enter the country. Many businesses and employers – across the construction, service, retail, manufacturing, agricultural and fisheries sectors – found themselves unable to formally hire workers essential for the continuation or recovery of their businesses. Both employers and workers turned to informal brokers and referral systems, in spite of and to deal with official processes installed by the government to facilitate worker-registration and employment of migrant workers who were in Thailand during the pandemic.

As part of its labour management plan during the pandemic, the Thai government, through the MoL, issued a series of Cabinet Resolutions providing requirements for the registration, exceptions and conditions of employment, of migrant workers from Cambodia, Laos PDR, and Myanmar. It also encouraged undocumented migrants to be registered to the system so they can be recruited and hired formally by Thai employers, through the registry and through Provincial Employment Offices, sometimes referred to as border-employment processing center, in nine provinces in Thailand.

The registration and documentation scheme allowed the government to manage migrant workers to a certain extent, and provided opportunities for more workers to gain legitimate employment in order to access labour protections and social services available under Thai labour law. It scheme was also intended to help potential employers and business owners who already have approved quotas from the government, to register existing employees whose papers had expired or were about to expire, to hire new workers from the registry, or to be matched with migrant workers at the border employment processing centers directly.

The online registration of irregular migrant workers and border-employment processing is not a new approach, as this measure has been applied by Thailand before to address surges in number of irregular migrants and in response to pressure from various stakeholders. The Thai public is familiar with the scheme, but this scheme has also been critiqued by NGOs in the past for failing to ensure that migrant worker protections, including during the recruitment process, are enforced.

However, DIWA found that the ad-hoc nature of the resolutions issued by the government during the pandemic did not address the root causes and drivers of the forced labour risks and issues associated with the various in-country recruitment channels used by largely irregular migrants in Thailand. The entire process, as workers and employers reported, was costly, complex, and time-consuming, creating opportunities for unauthorized intermediaries to be involved, and in some cases discouraging workers and potential employers from subscribing to the scheme altogether.

The total amount in the published schedule of fees and costs related to the process is higher than the monthly minimum wage workers can expect to be paid and does not take into consideration auxiliary costs (transportation, ID photo, facilitation by brokers). The use of a single portal managed by one government agency also makes the scheme vulnerable to lags in service and turnaround time.

The number and location of processing centers limit workers' and employers' ability to transact directly with the government agency, without need for brokers and intermediaries. These regulations, and the current government approach, place the cost burden on workers who were not been able to work or earn regularly during the pandemic, and there are no means for the government to ensure employers do not transfer costs including the Work Permit application to the workers.

As such, there was a slow uptake of the government's registration and recruitment process developed specifically during the pandemic. Many migrant workers remained undocumented and unregistered, thus also remaining highly vulnerable to a range of exploitation and abuse including forced labour and trafficking.

Without legal documentation and status, workers were unable to avail of labour protections, legal minimum wage guarantees, and many social services. They risked incurring penalties and fines from the authorities. They were highly vulnerable to exploitation and deception by brokers and employers, and exposure to extortion by local police and authorities, even while operating in the informal sector. Even those workers who succeeded in getting documented and employed legally were subjected to unregulated fees-charging and salary deductions, and some had to take on loans that made it difficult for them to leave their jobs without incurring some form of penalty.

The study points to the following practices and recruitment experiences that are not aligned with responsible recruitment principles:

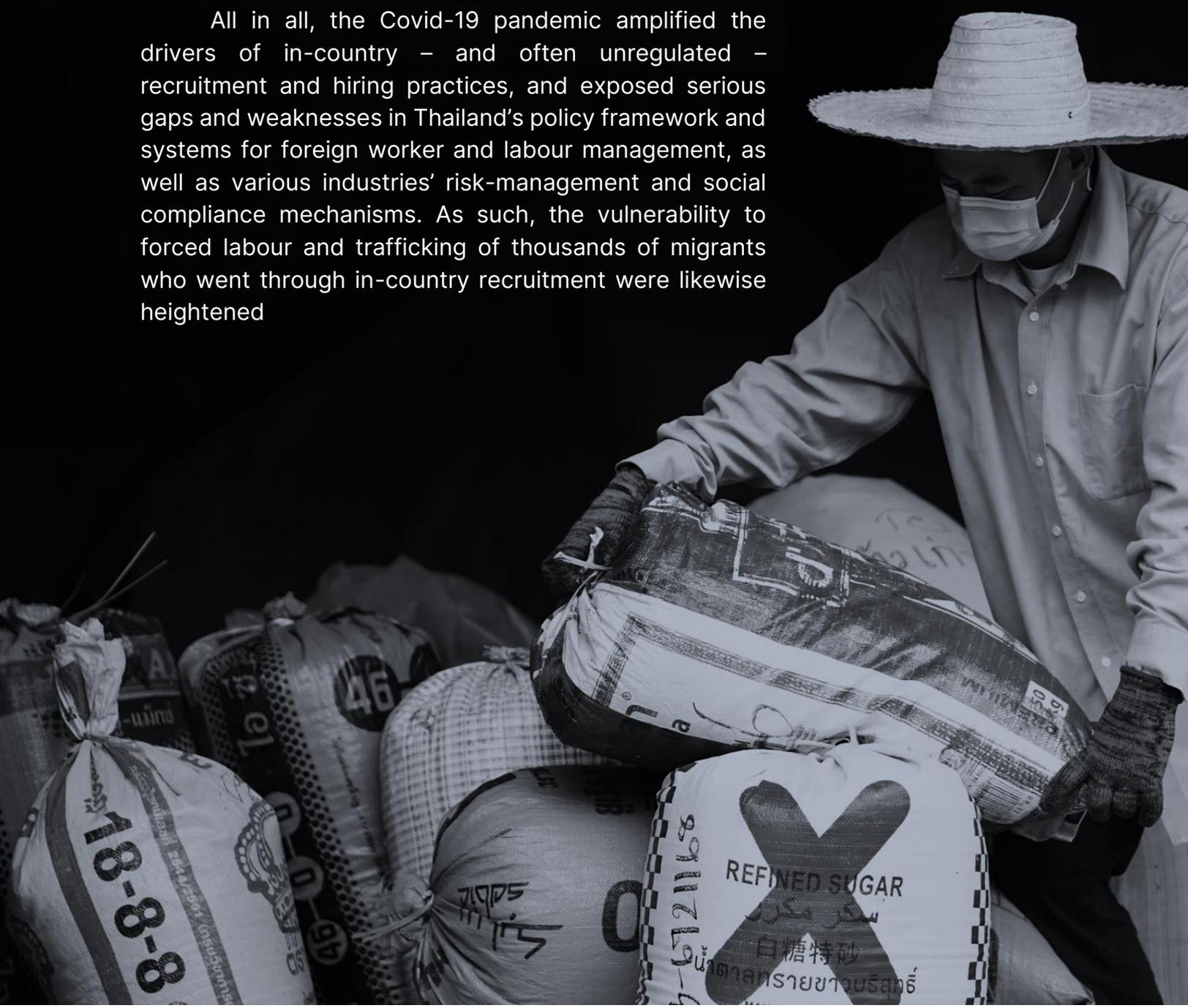
- The bulk of recruitment-related fees – including those associated with the legal registration process - were borne by the jobseekers and workers;
- There were no mechanisms to ensure that workers receive accurate information about their employment conditions, rights, and entitlements, even under the regulated registration and recruitment process;
- Most workers did not get a copy of their employment contract, and there are no provisions within the Cabinet Resolutions or the Labour Protection Act to ensure that workers should be provided accurate and legal written contracts;

- Many workers, regardless of whether they went through the government-approved scheme or used solely informal brokerage systems, experienced deception during the recruitment process, and some ended up in jobs and conditions different from what was promised or agreed upon;
- Both documented and undocumented migrant workers experienced more stringent restrictions to freedom of movement during the pandemic;
- Migrant workers who used the formal registration and recruitment process, with fees and costs either advanced by employers or paid through debts and deductions, had no freedom to terminate employment without incurring some form of penalty or loss;
- There were no formal channels established for receiving reports and grievances from workers as part of the formal registration process during the pandemic. Access to remedy and grievance mechanisms was limited for all workers, but more so for undocumented workers. No one used government channels to report issues, most reached out to families, friends, faith-based organizations, and NGOs.

The public health and economic crisis brought on by Covid-19, in combination with weak oversight, also led to young workers and minors being engaged for work in some sectors without protective restrictions. Further research is recommended to understand better the severity of the issue, and its drivers.

Moreover, businesses covered by industry codes of conduct that tend to have standards that are higher than legal standards, also rarely address the specific risks and vulnerabilities of irregular workers, and in-country recruitment models. One global brand representative interviewed for this study mentioned that one of the challenges they faced in Thailand was determining who should be accountable for fees and expenses charged to workers by brokers and when these charges are related to the regularization process during the pandemic, and when workers were not linked to any employer yet.

All in all, the Covid-19 pandemic amplified the drivers of in-country – and often unregulated – recruitment and hiring practices, and exposed serious gaps and weaknesses in Thailand’s policy framework and systems for foreign worker and labour management, as well as various industries’ risk-management and social compliance mechanisms. As such, the vulnerability to forced labour and trafficking of thousands of migrants who went through in-country recruitment were likewise heightened



Recommendations

Government

Management of in-country recruitment is a significant part of Thailand's overall labour management and policy framework. It directly affects counter-trafficking and forced labour prevention programs, especially as they apply to migrant workers. In line with insights in this report, the following recommendations are made:

- Responsible recruitment standards, some of which are already referenced in existing MOUs guiding formal recruitment processes, should apply to other modes of migrant worker recruitment, including in-country recruitment. These standards pertain to limits on fee-charging, document-handling, access to information, contract terms and conditions, responsibility and accountability of recruitment agency and employer, which are absent in the ad-hoc registration and recruitment process established during the pandemic.
- The cost implications, efficiency and effectiveness, as well as accessibility of existing registration, job-matching, and employer-transfer processes that form part of the government's in-country recruitment model should be reviewed, if an increase in the uptake of these processes is one of the aims.
- The government may lower the cost of compliance with, and improve turnaround time of, these registration processes. The government should consider opening more processing centers in more provinces to cut the cost of transportation, and provide more intervention points for government, and to socialize the government scheme to existing migrant worker communities in Thailand. The use of more units receiving documents and facilitating the process of registration and job-matching may speed up some steps of the process.

The schedule of fees should clearly indicate appropriate limits on service fees, and other auxiliary expenses that are not fully accounted for, to improve workers' access to registration processes and reduce employers' barriers towards legal employment of Migrant workers, while reflecting the cost of public service provision. Given the migrant workers' demographic profile, controls should be in place to ensure they can easily access information to

self-navigate the system or with the support of government-accredited agents.

- Finally, appropriate communication channels, technical support, and grievance mechanisms should be established to ensure migrant workers are able to access relevant information, make informed decisions, report concerns and receive appropriate support, especially in the pandemic and analogous situations.

Private Sector

The private sector, industry associations, and businesses should be provided ample support from the government as well, to enable the hiring of workers through processes that are reasonable, practical, and ethical. Given the viability of in-country recruitment channels, clear guidelines should be provided for employers, to ensure workers are not disadvantaged and abused.

- Employers of migrant workers are in the best position to ensure that their hiring practices do not heighten workers' vulnerability to exploitation and abuse; and that working conditions are fair and safe, and wages are sufficient for workers to earn a decent living.
- Industry associations and businesses should reference in-country recruitment and their attendant risks in their compliance standards, and risk management and monitoring measures.
- Brands, consumer goods firms, and larger companies should provide support and resources to their suppliers located in countries like Thailand which rely heavily on migrant workers, and whose recruitment channels include in-country and sometimes informal processes.

Civil Society Organizations

CSOs have long played an important role in filling the gaps left by limited policy frameworks and programs for migrant workers in Thailand. They and the workers they are in direct contact with are in the best position to provide insights into the ways that in-country recruitment can be improved, and workers' grievances and access to remediation and support can be addressed.

- Embedding CSO participation in the registration process can displace unauthorized brokers offering services to workers to navigate the system, and increase workers' confidence to register in the system. CSOs such as HRDF (and others) are already providing services to migrant workers and are involved in the current process through stakeholder consultations conducted by the government. However, these sessions are not standardized or embedded into the process, and are done mostly as a response to pressure. The CSOs as intermediaries can help government to review and improve effectiveness of the process for continuous improvement.
- The current approach of the Thai government has shown some successes in terms of getting migrant workers registered, with CSOs involved, more workers can be assisted in understanding and successfully completing the application process.
- CSOs' involvement also reduces the risk of workers being taken advantage of by brokers (and potential employers). CSOs provide a measure of protection for workers who are oriented on the benefits of legalisation and their rights. Even with CSOs empowering workers and acting as watchdogs to ensure costs are not padded or transferred solely to workers, some costs may still be borne by workers. However, communication issues (asymmetric information) may need to be addressed. Employers may still turn to brokers and agents to handle the process, but costs can be negotiated between the parties, and CSOs can help ensure workers are not disadvantaged in the process.

It is important to note, however, the above are short-term measures. DIWA echoes the recommendation of many Thailand-based CSOs for the government to pursue long-term policy solutions to the issues faced by migrants in Thailand, which the pandemic and unregulated and informal in-country recruitment processes only highlighted.

Endnotes

¹¹ The term “migrant worker” is used herein to refer to foreign migrant workers; i.e., non-Thai citizens who work in Thailand. It does not include domestic migrant workers, or Thai citizens who move from one region to another to obtain employment.

² See, for example, ILO’s General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_703485.pdf.

³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), June 2020. “Eight hundred thousand masks to help protect migrant workers from COVID-19.” <https://reliefweb.int/report/thailand/eight-hundred-thousand-masks-help-protect-migrant-workers-covid-19>.

⁴ See, for example, Prachatai, November 2021, “100 องค์การนอกภาครัฐส่งจดหมายเปิดผนึกจี้คุ้มครองสิทธิแรงงานข้ามชาติหลังเกิดเหตุที่สน.ดินแดง,” <https://prachatai.com/journal/2021/11/95784>; Thairath, January 2022, “จับ 18 เมียนมา ลอบเข้าไทย จำหน่ายหน้าหลักหมื่น อดข้าวทิวไซ 4 วัน 4 คืน,” <https://www.thairath.co.th/news/local/north/2287804>; and Radio Free Asia, June 2022, “Migration from Myanmar to Thailand surges amid fighting, COVID concerns,” <https://www.rfa.org/english/news/myanmar/migrants-thailand-06162022164845.html>.

⁵ See, for example, The Irrawaddy, January 2021, “More than 30 Thai police accused of trafficking Myanmar migrants,” <https://www.irrawaddy.com/news/burma/30-thai-police-accused-trafficking-myanmar-migrants.html>; and VOA News, December 2020, “Thailand’s Prime Minister orders crackdown on officials abetting human traffickers,” https://www.voanews.com/a/east-asia-pacific_thailands-prime-minister-orders-crackdown-officials-abetting-human-traffickers/6200100.html.

⁶ Then still known as Verité Southeast Asia or VSEA.

⁷ International Organization for Migration (IOM), 2021. <https://publications.iom.int/system/files/pdf/Socioeconomic-Impact-of-COVID-19-on-Migrant-Workers.pdf>.

⁸

Migrant Working Group (MWG), November 2021. “Situation on Migrant Workers and Border Crossing During the Covid-19 Pandemic.” <https://www.mwgthailand.org/sites/default/files/2022-02/Situation%20on%20Migrant%20Workers%20and%20border%20crossing%20During%20the%20covid19%20pandemic.pdf>.

⁹ WHO, 2023. <https://covid19.who.int/region/searo/country/th>.

¹⁰ IOM, 2021; MWG, 2021.

¹¹ World Health Organization (WHO), December 2022. “Coronavirus disease 2019 (COVID-19) WHO Thailand Situation Report 254 - 21 December 2022.” <https://reliefweb.int/report/thailand/coronavirus-disease-2019-covid-19-who-thailand-situation-report-254-21-december-2022>.

¹² International Labour Organization (ILO), 1997. “Global Estimates of Modern Slavery Forced Labour and Forced Marriage.” https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854795.pdf.

¹³ What are forced labour, modern slavery and human trafficking?
<https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>.

¹⁴ General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs. International Labour Office - Fundamental Principles and Rights at Work Branch, Labour Migration Branch – Geneva: ILO, 2019.

¹⁵ ILO, 1997. “Private Employment Agencies Convention, 1997 (No. 181)”
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326.

¹⁶ ILO, 2016. “General Principles and Operational Guidelines for Fair Recruitment”
www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536263.pdf.

¹⁷ Institute for Human Rights and Business, December 2012. “Dhaka Principles for Migration with Dignity” <https://dhakaprinciples.org>.

¹⁸ Office of the High Commissioner for Human Rights (UN Human Rights), 2011. “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”
https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹⁹ IOM. “International Recruitment Integrity System.” <https://iris.iom.int>.

²⁰ Fair Hiring Initiative. “On the Level Core Principles and Standards of Ethical Recruitment.”
<https://otl-protocol.com/>.

²¹ ILO, 1930. “C029 - Forced Labour Convention, 1930 (No. 29).”
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

²² For reference, the full list of indicators provided by the ICLS guidance are as follows:

Indicators of involuntary work (any work taking place without the free and informed consent of the worker):

- unfree recruitment at birth or through transaction such as slavery or bonded labour;
- abusive requirements for overtime or on-call work that were not previously agreed with the employer;
- work in hazardous conditions to which the worker has not consented, with or without compensation or protective equipment;
- work with very low or no wages;
- degrading living conditions imposed by the employer, recruiter, or other third-party;
- work for other employers than agreed;
- work for longer period of time than agreed; and
- work with no or limited freedom to terminate work contract.

Indicators of threat and menace of any penalty (coercion used to impose work on a worker against a person’s will):

- threats or violence against workers or workers’ families and relatives or close associates;
- restrictions on workers’ movement;
- debt bondage or manipulation of debt;
- withholding of wages or other promised benefits;
- withholding of valuable documents (such as identity documents or residence permits); and

-
- abuse of workers' vulnerability through the denial of rights or privileges, threats of dismissal,
 - or deportation.

The indicator approach can be applied to identify an individual case of forced labour or to understand which indicators are present across a given population of workers. This approach can help to identify risk even in cases where forced labour itself may not be occurring. The indicator approach lends itself to the identification of components of forced labour risk that can then be addressed in targeted company engagement that addresses root causes. Where forced labour indicators are identified, an evaluation should be performed of how those indicators operate in practice, and what contextual issues enable the presence of vulnerability to and presence of risk factors for forced labour. See the ILO's "Guidelines Concerning Measurement of Forced Labour," 20th International Conference of Labour Statisticians, Department of Statisticians, ILO, Oct 2018. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf.

²³ Office of Foreign Workers Administration, Department of Employment, May 2020.

²⁴ ILO. "Ratifications for Thailand."

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:102843.

²⁵ The United Nations Convention against Transnational Organized Crime (UNTOC) establishes a comprehensive framework to promote cooperation in preventing and combating transnational organized crime and their criminal groups more effectively and efficiently. The Convention aims to prevent, investigate, and prosecute criminal offenses of participation in an organized criminal group, money laundering, corruption, and obstruction of justice as well as other serious crimes, constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty where the offense is transnational in nature and involves an organized criminal group. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, has as its main purpose the prevention and combating of trafficking in persons as well as protecting and assisting the victims of such trafficking.

²⁶ The Protocol of 2014 to the Forced Labour Convention, supported by Recommendation No. 203, aims to advance the prevention, protection, and compensation measures, as well as to intensify efforts to eliminate all forms of forced labour, including trafficking in persons. Its purpose is to address gaps in the implementation of the Forced Labour Convention of 1930.

²⁷ ILO.

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:3038483216050:::P11200_INSTRUMENT_SO RT:2.

²⁸ Section 4 Human dignity, rights, liberties and equality of the people shall be protected. The Thai people shall enjoy equal protection under the Constitution.

²⁹ Section 27: All persons are equal before the law, and shall have rights and liberties and be protected equally under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution or on any other grounds, shall not be permitted. Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.

Members of the armed forces, police force, government officials, other officials of the State, and officers or employees of State organisations shall enjoy the same rights and liberties as those enjoyed by other persons, except those restricted by law specifically in relation to politics, capacities, disciplines or ethics.

³⁰ ILO, 2020. "COVID-19 employment and labour market impact in Thailand"
https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_747944.pdf.

³¹ https://www.matichon.co.th/covid19/news_2738809.

³² Ibid.

³³ ILO, 2020. "COVID-19 employment and labour market impact in Thailand"
https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_747944.pdf.

³⁴ National Statistics Office, 2023. <http://statbbi.nso.go.th/staticreport/page/sector/en/02.aspx>.

³⁵ In accordance with Section 64 of the Thai law, migrant workers from countries sharing a land border with Thailand may undergo a Border Pass Scheme through which they may be permitted to enter the Kingdom on a temporary basis or for seasonal work at a specified location. These workers are often referred to as "seasonal workers."

³⁶ The ombudsman written notice of the decision dated on 2 August 2021. See next note.

³⁷ Human Rights and Development Foundation (27 September 2021). "Press release: In its reply to migrant workers, the Ombudsman finds "Section 33, We Love Each Other" scheme does not constitute a discrimination and not breach Constitution's Section 27 given its discrimination based on race, not nationality." <https://hrdfoundation.org/?p=2645>.

³⁸ Verité, May 2019. "Thailand Bound: An Exploration of Labour Migration Infrastructures in Cambodia, Myanmar, and Lao PDR." <https://verite.org/wp-content/uploads/2019/05/Thailand-Bound-An-Exploration-of-Migration-Infrastructures-in-Cambodia-Myanmar-Lao-PDR-1.pdf>.

³⁹ Veasna, N. (2022, July 27). Thailand allows illegal migrant workers to register and work. Retrieved from: <https://www.khmertimeskh.com/501120076/thailand-allows-illegal-migrant-workers-to-register-and-work/>.

⁴⁰ Thai PBS, March 2022. "Applause for allowing migrant workers to stay on in Thailand"
<https://www.thaipbsworld.com/applause-for-allowing-migrant-workers-to-stay-on-in-thailand/>.

⁴¹

Human Rights and Development Foundation (HRDF). (2022). *Recommendations for the Management of Foreign Workers in Tak Special Economic Zone*. Retrieved from <http://hrdfoundation.org/?p=2731&lang=en>.

⁴² Office of the United Nations High Commissioner for Human Rights (OHCHR), n.d. "Regularization of migrants in Thailand"
<https://www.ohchr.org/sites/default/files/documents/issues/migration/cfis/regularization/submissions-regularization-pm-thailand.pdf>.

⁴³ Thailand Ministry of Labour. *New Minimum Wage Rate Table - Under the National Wage Committee's Notification on Minimum Wage Rate (No.10), Published to be Effective on January 1, 2020*. Retrieved from: <https://www.mol.go.th/en/minimum-wage>.

⁴⁴ Ensuring fair recruitment during the COVID-19 pandemic.

https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_748839.pdf.

⁴⁵ These provinces are: Bangkok, Chiang Mai, Chonburi, Nakhon Pathom, Nonthaburi, Pathum Thani, Pattani, Phang Nga, Prachinburi, Ratchaburi, Rayong, Samut Prakan, Saraburi, and Tak.

⁴⁶ N. Wichitaksorn, personal communication, June 16, 2022.

⁴⁷ In which workers who wish to apply for or renew their work permits “rent” an employer whose name they will put in their application, in order for them to receive their papers. Brokers “rent out” these employers and charge workers exorbitant fees for them.

DIGNITY IN WORK FOR ALL

A global labor and human rights organization working to promote the dignity and rights of workers everywhere. Our mission is to achieve transformative social and economic justice, where all workers are empowered to advocate for their rights and wellbeing, through innovation, collaboration, and the promotion of policies that drive key stakeholders to action.

For inquiries contact us at comms@dignityinwork.org

www.dignityinwork.org