

COUNTRY BRIEFER

THAILAND

DECENT WORK FOR WOMEN MIGRANT WORKERS SERIES



BACKGROUND



Migrant workers are a crucial part of Thailand's recent economic growth. According to Thailand Report 2019 published by the UN Thematic Group on Migration in Thailand, migrants are constituting over 10 per cent* of the total labour force³ and their work is estimated to contribute between 4.3 – 6.6 per cent of Thailand's GDP⁴. Thailand transitioned from being a net migrant sending to a net receiving country in the 1990s. Yet, the country's labour migration governance framework is not robust or comprehensive. According to the Ministry of Labour, as of May 2018, there were about 3.2 million documented migrant workers in Thailand. However, the vast majority of migrant workers in Thailand continue to come through irregular channels.⁵

COUNTRY OVERVIEW

Main source countries for migrant workforce

Burma/Myanmar, Cambodia, Lao PDR, Vietnam.¹

Women's share of total migration

Approximately 42 per cent of total migrant workers in Thailand.

Main sectors of employment

Garments, electronics, manufacturing, domestic work, construction, entertainment, seafood processing and agriculture.²



of total labour force

contribute to

4.3%

6.6%

of Thailand's GDP

3.2 million

documented migrant workers

Women migrant workers are employed in various sectors, including textile and garment factories, domestic work, construction, entertainment and service industries, rubber plantations and fruit orchards as well as the fishing industry, sorting fish on the port or in seafood processing factories. Migration from neighbouring countries provides an essential source of cheap labour to the thriving export industries of Thailand.



The majority of migrant workers come from Burma/Myanmar, while Cambodia and Lao PDR are also important source countries for women migrant workers.

Women migrant workers face a range of intersectional discriminations. For instance, women migrant workers' wages for the equal value of work are systematically lower than those for Thai nationals or men. Lack of formalisation in major sectors where women migrants work leads to the denial of basic labour rights, such as minimum wage, regular working hours, overtime pay and social security.⁶



Most sectors where women migrant workers are employed are dangerously negligent about enforcing legal standards of wages and working conditions.

Employment contracts are often non-existent for women migrant workers while they are prevented from organising or taking sick leave. Their documents are often withheld by the employers and the recruitment agencies.⁷

* In some economic sectors, such as construction and fishing, migrant workers represent almost 80 per cent of the total workforce.

Research by human rights groups further found that abuses against migrant workers include forced labour, assaults and even killings by government security forces, extensive use of torture and ill-treatment in detention, sexual abuse, widespread labour rights violations and

Well-documented cases of pervasive abuse, especially in the fishing sector, have led to Thailand being censured by the European Union and the United States, which led to a slew of new laws on migrant labour management in recent years.

In 2014, investigative journalists unearthed extreme cases of thousands of fishers on Thai-flagged vessels who had been in situations of forced labour for up to ten years. They had been forced to work up to 22-hour shifts, whipped with toxic stingray tails, maimed or even killed at sea. They were catching fish used to

feed shrimp that were then sold in leading supermarkets around the world. Reports also surfaced of hundreds of shrimp peeling sheds, where migrant workers, including children, were brutally beaten, handcuffed to other workers and threatened with being shot to force them to continue their work.⁹

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MINIMUM WAGE

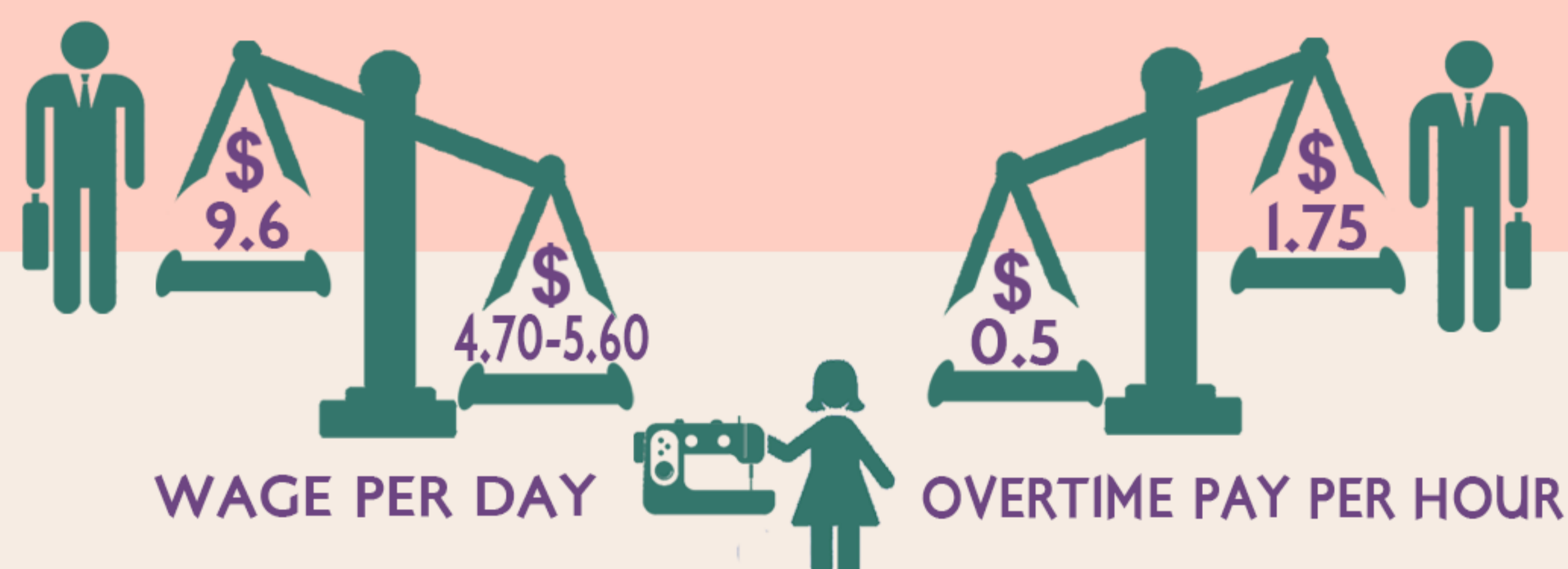


There is no legally stipulated minimum wage for domestic workers in Thailand. The standard contract* developed by HomeNet Thailand¹⁰

informs the employers and workers about the legal minimum wage for domestic workers in Thailand, but employers are not bound to pay this. Research conducted by MAP Foundation with women migrant workers in the garments, construction and domestic work sectors uncovered wide gaps between the law and the reality of migrant women's lives.

The government of Thailand focused on developing export-oriented manufacturing industries that rely heavily on cheap, often migrant labour. Large numbers of young migrant women are employed in the textile and clothing manufacturing industry in Thailand, working restlessly to produce garments which export to all over the world. A study done by War on Want found that the women migrants earn extremely low. The women working in garment factories in Mae Sot received only THB 69 (USD 2.3) a day for a 10–11 hours of work; when the legal minimum wage in Mae Sot at the time of the interviews was THB 153 (USD 5) a day.

For example, in Mae Sot, Tak province on the border of Burma/Myanmar, young women migrants working in garment factories reported being paid between THB 150–180 (USD 4.70–5.60) per day, far below the legal minimum wage of THB 300 (USD 9.6) per day. Workers were required to work overtime but only received around THB 16 (USD 0.5) per hour or less for overtime pay, while legally they should be receiving THB 56 (USD 1.75) per hour.¹¹



In one factory where the workers were employed to do piece work, they were paid THB 20 (USD 0.66) per 100 pieces. Overtime was paid at THB 15 (USD 0.5) for two hours' work. In addition, women workers also reported that wages were rarely paid on time.¹² Migrant workers who are brought into the country under the seasonal worker category (according to the 2017 Royal Ordinance) are rarely paid the minimum wage.¹³ Gender-based disparities were also found among migrant workers.

* The standard contract is part of the "My Fair Home" campaign initiated by International Domestic Workers' Federation (IDWF) with assistance from the International Labour Organization

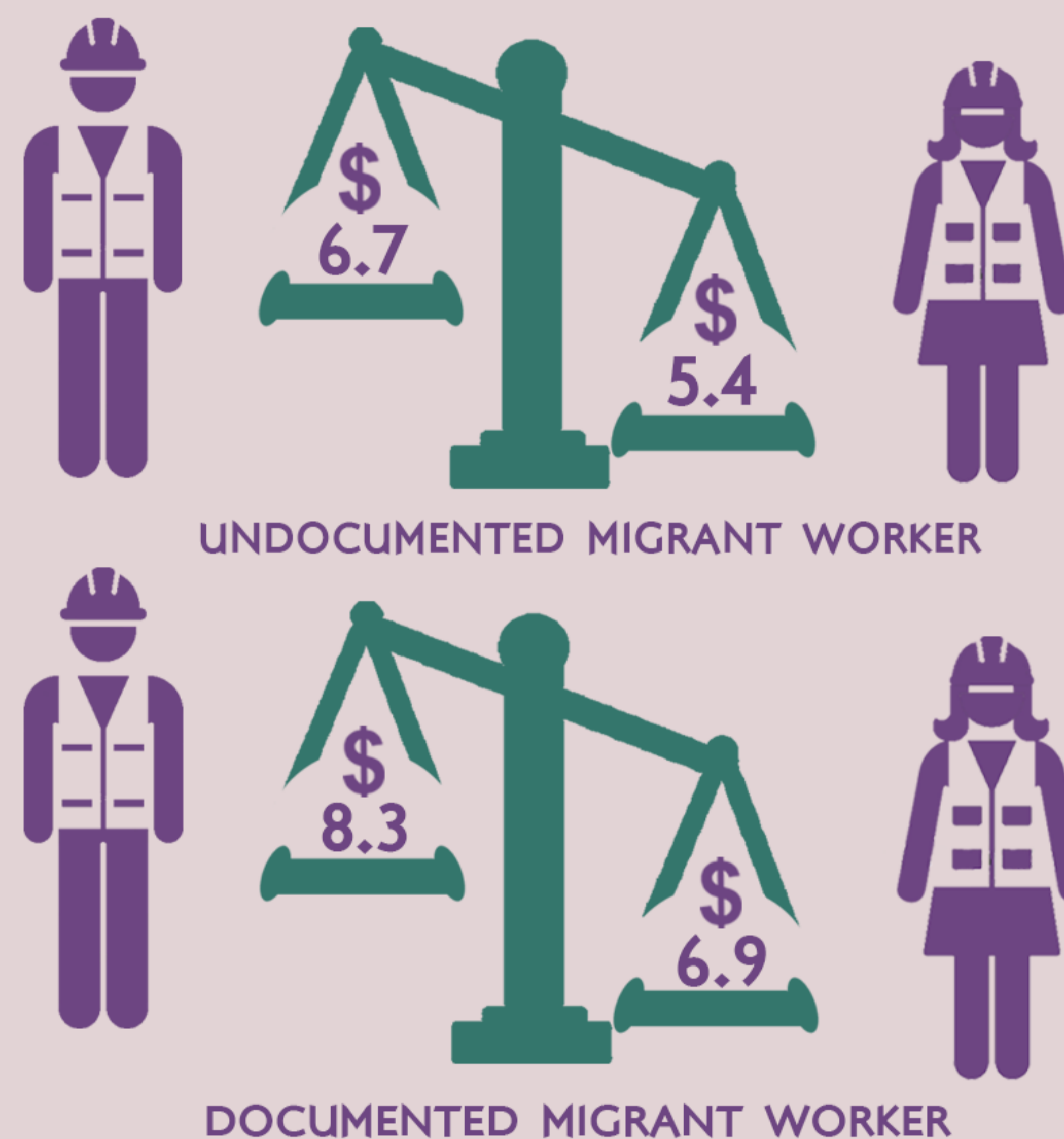
THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

WOMEN MIGRANT WORKERS IN THAILAND FACE WIDESPREAD WAGE DISPARITIES

Recent research by MAP Foundation, a grassroots NGO in Thailand, found that women migrant workers regularly faced wage discrimination and were rarely paid according to the law.

This was notable in the construction sector, where women made less than men by a difference ranging between THB 30–100 (USD 1–3) per day. Generally, in work where men and women did similar work, undocumented migrant women migrants earned an average of THB 174 (USD 5.4) per day, while undocumented migrant men earned an average of THB 214 (USD 6.7) per day. Among those respondents who were documented with temporary passports under the Nationality Verification scheme, women earned an average of THB 221 (USD 6.9 USD) per day while men earned THB 269 (USD 8.3) per day.

Women migrant workers generally earn less than their male counterparts for the same type of work.



In a similar research done by MAP Foundation, surveying 20 migrant domestic workers, only 14 were being paid monthly. According to the minimum wage of THB 300 (USD 9.5) per day, a worker should be receiving a monthly salary of at least THB 7,200 (USD 220). However, the majority of the domestic workers being paid monthly were receiving only THB 4,300–5,000 (USD 134–156). All the domestic workers who were being paid monthly, except for one, were working 13–14 hours per day. Out of those being paid daily, the migrant workers reported working 8–9 hours/day and receiving THB 200–300 (USD 6.3–9.5). Only one person out of the 20 migrant domestic workers interviewed received more than the minimum wage at 400 THB (USD12.7) a day.

Ann (not her real name), who is a migrant domestic worker, said, “The domestic worker must be the first to wake up and the last to go to sleep... A domestic worker is a human being and a worker like other workers. We need to eat, we have daily expenses and we need to send money to our families. We have the same expenses and obligations as other workers.” She goes on to explain that, “Some domestic workers have come together as a group to exchange experiences and build our own capacity. Most importantly we have connected with other workers’ networks and NGO networks that promote migrant workers’ rights, and advocate and lobby for domestic workers’ labour protection.”



14 out of 20

- paid monthly,
- working 13-14 hours per day
- receiving only USD 134-156 (less than the minimum wage)

5 out of 20

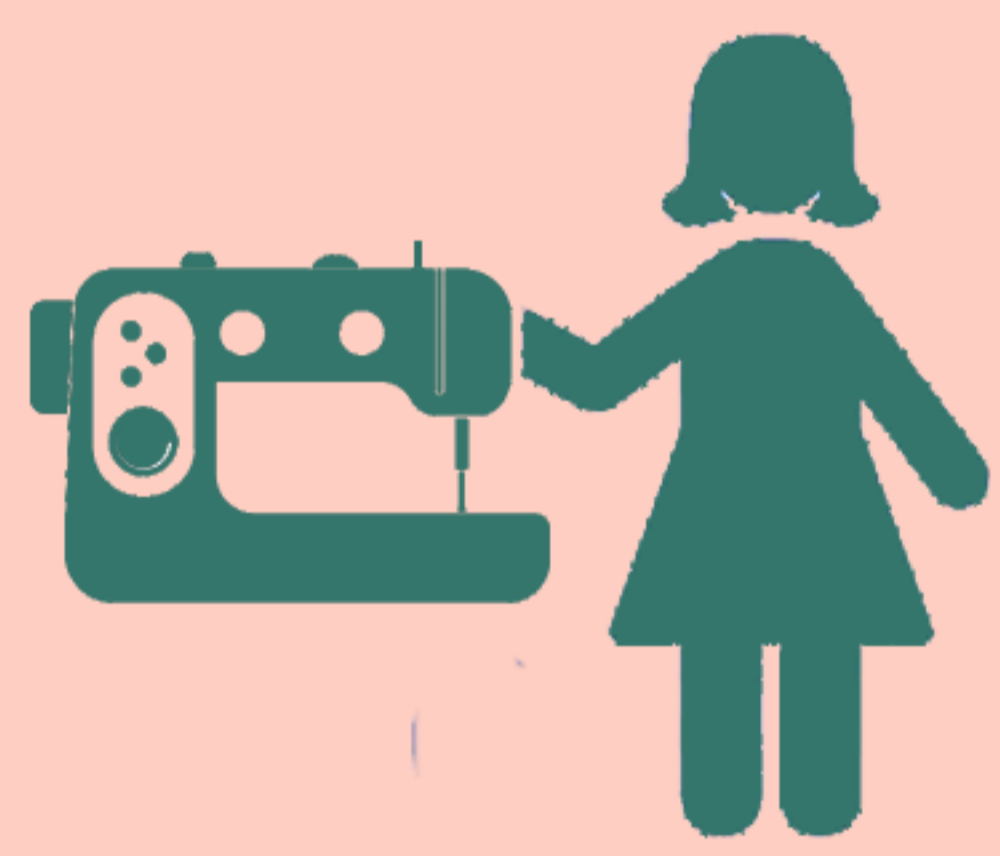
- paid daily
- working 8-9 hours per day
- receiving USD 6.3-9.5

THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

WORKING HOURS



Thailand's Labour Protection Act (1998) limits working hours to eight hours a day, or 48 hours a week. After eight hours, overtime should be paid at the rate of 1.5 times the normal wage. However, in practice this is rarely the case for migrant workers. Migrant women working in the manufacturing sector reported that they get one day off every week, or in some cases one day off every two weeks. They are fined when taking an extra day off (with or without permission) and can only get unpaid sick leaves. Although they are legally entitled to an 8-hour workday, most workers reported working around 11 hours per day without overtime pay. Overtime payment only starts after these 11 hours of work – overtime is mandatory, not optional. Moreover, the legally mandated 1.5 times the regular wage for overtime is rarely paid.



- 11 hours working time per day
- One day off every week or every two week
- Overtime is mandatory, paid less than legal standard
- Unpaid sick leaves



- No limit set on working hours by law
- 13 hours working time per day
- On-call 24 hours

SOCIAL PROTECTION



Although Thai nationals employed in domestic work are partially covered under Section 40 of the Social Security Act, migrant workers are covered instead under the Workmen's Compensation Act. This means that migrant domestic workers are entitled to compensation for a workplace injury, but they do not have access to other social protections such as maternity leave pay. Undocumented migrants are also covered under the Workmen's Compensation Act, but in practice, the strict policing of undocumented workers and fear of being arrested create barriers to access such legal protection. Seasonal workers under section 64 of the 2017 Ordinance have immense difficulty getting compensation for work-related injuries due to the temporary nature of their work.¹⁵

Domestic workers lack formal protections from dismissal for pregnancy. Thai nationals working as domestic workers are covered under the Universal Health Care programme and migrant workers are eligible for Migrant Health Insurance.¹⁶ Women migrants working in sectors other than domestic work can pay an annual fee to have access to the National Health Service. Migrants without temporary passports have to pay for their own health care.



- Entitled to compensation for workplace injury, however
- No access to social protection other than injury compensation
- No access to National Health Services
- Barriers for undocumented and seasonal workers

THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

SOCIAL PROTECTION



Only (non-domestic worker) migrants who have their nationality verified and have been issued temporary passports can join the Social Security System, which requires the employer, employee and government to contribute three per cent of the salary earned. However, many migrant workers are unaware of what benefits they are entitled to. Moreover, language barriers prevent many workers from accessing their legal rights. The ILO-supported Migrant Resource Centers (MRCs) and MAP Foundation in Thailand provide gender-responsive services for migrants and their families, such as guiding the migrants who are in crisis and facilitating them to access the appropriate services through hotline services.

While migrant workers, including domestic workers and undocumented workers, can file complaints to the Labour Protection and Welfare Office, workers who pursue a complaint are often subjected to threats, harassment and dismissal by the employers. Migrant workers have also been blacklisted from factories in their area for filing a complaint against their employer.¹⁷

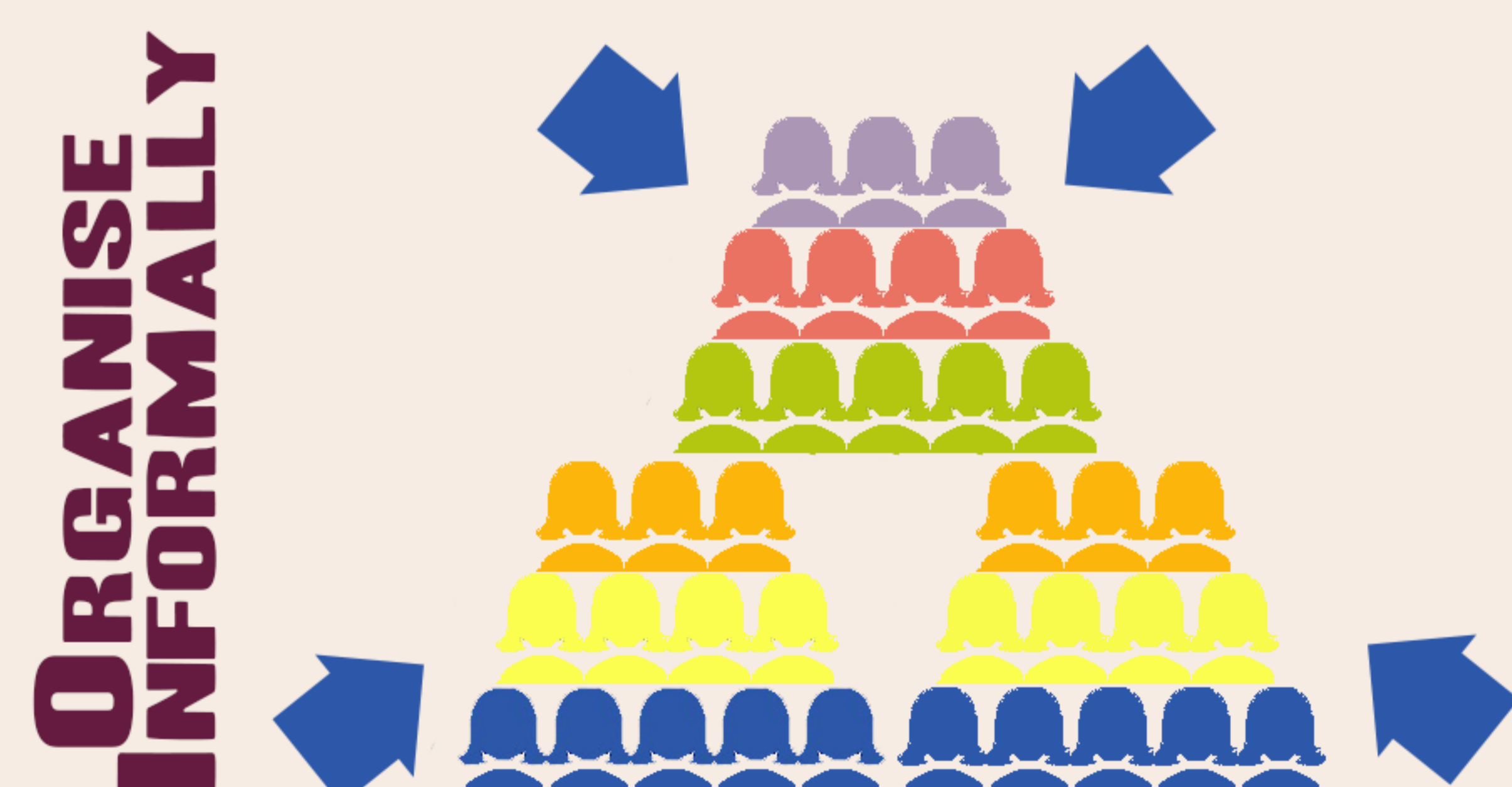


FREEDOM OF ASSOCIATION



Under the Labour Relations Act (1975), migrant workers are prohibited from setting up or registering a union. They are also not allowed to serve as union committee members that choose union leaders, but are allowed to join unions as regular members. Although some Thai unions are reaching out to migrant workers, language barriers and restrictions on travel make it difficult for migrant workers to be active union members.

Domestic workers are not allowed to join trade unions as they are not classified as “workers” under the Thai labour law. However, HomeNet Thailand has been supporting migrant domestic workers in Thailand to organise informally.¹⁸



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LABOUR INSPECTION & REGULATION OF RECRUITMENT AGENCIES



The Department of Labour Protection and Welfare (DLPW) is responsible for monitoring legal compliance and for providing towards the improvement of working conditions. The DLPW is mandated to ensure workers' rights and benefits in both formal and informal economies. Labour inspectors are responsible for monitoring compliance with general working conditions, occupational safety and health, labour welfare, labour relations, establishment of trade unions, negotiations and application of collective bargaining agreements and settling labour disputes.¹⁹

However, the failure of labour inspections in Thailand to stop abuses such as forced labour is well documented, especially when it comes to the migrant labour force. Research by human rights groups in sectors such as fisheries, electronics and garment manufacturing has found that labour inspections have failed to uncover abuses such as retention of identity documents, withholding wage, excessive work hours and obstruction of workers' freedom to change employers.²⁰



The Royal Decree on Bringing Alien to Work in the Kingdom (2016) stipulates that only Thai employers or licensed operators (recruitment agencies) are permitted to bring migrant workers into Thailand. For domestic workers, the recruitment agencies are allowed to charge up to two months' wages as fees. Recruitment agencies are also required to deposit five million Thai Baht (USD 140,600), from which compensation can be requested by employers or workers.²¹

Unclear Regulation on Recruitment and Management of Migrant Workers

Inspection Failure



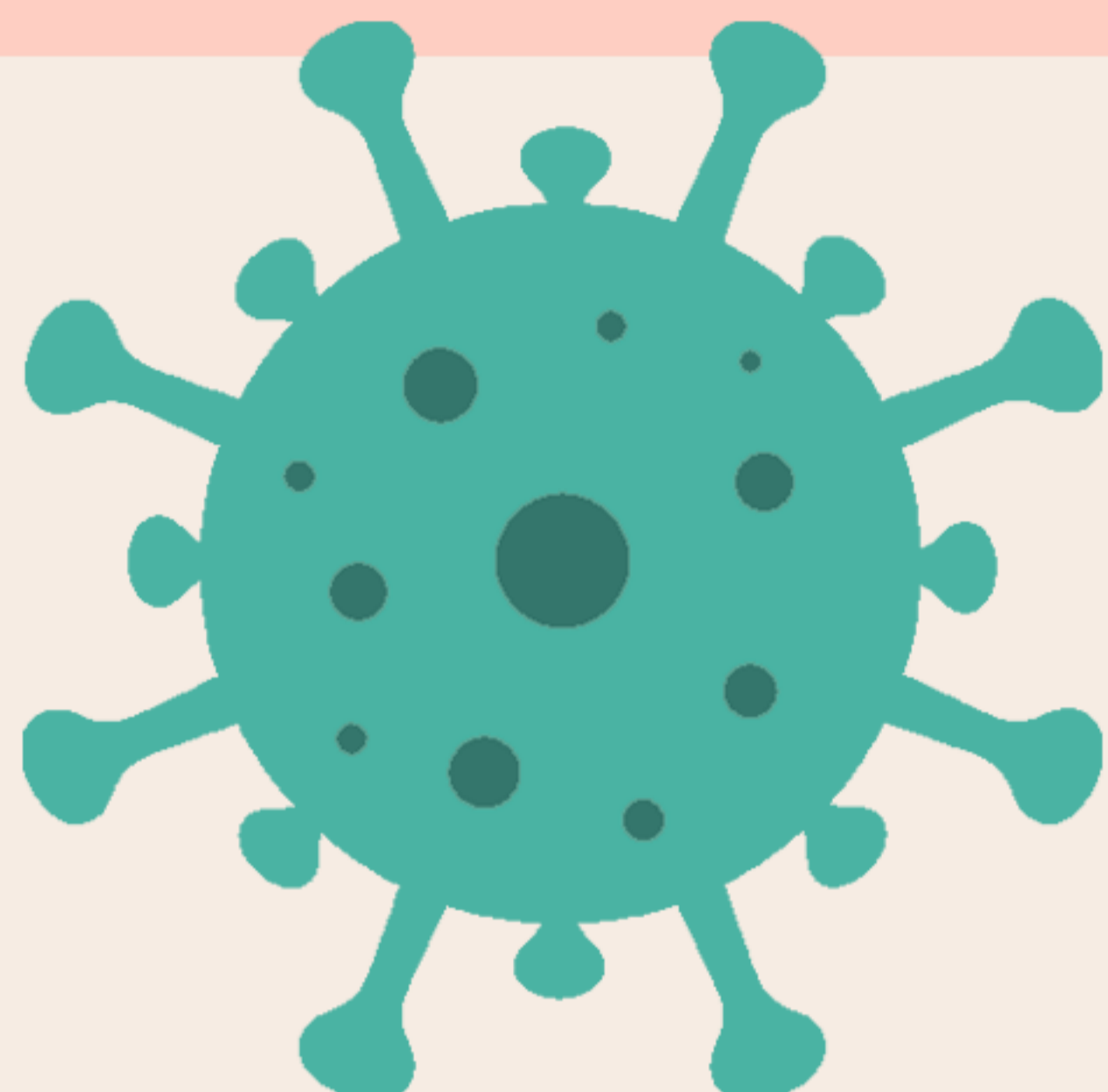
The lack of a clear and rigorous legal framework regarding recruitment and management of migrant workers creates numerous opportunities for workers to be exploited by recruitment agencies. For example, migrants who file complaints against abusive employers are usually dismissed immediately and are given only 15 days to find a new job. This restriction forces them to turn to brokers again as they will lose legal status and likely be deported if they do not find a new employer within 15 days. Similarly, migrants looking to change provinces to look for work often need the help of brokers to get past police checkpoints.²²

Migrant Resource Centers²³ such as the Map Foundation, try to assist migrant workers with information to reduce their reliance on and exploitation by brokers. They conduct training on workers' rights, laws, policies, women's human rights and help workers to develop self-reliance and defend their own rights. They also connect migrant workers with local trade unions and help them to approach the Thai government directly to hold abusive employers to account. MAP Foundation also produces a weekly radio programme called "Organising for Justice" in Burmese and Shan languages.²⁴

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IMPACT OF COVID-19

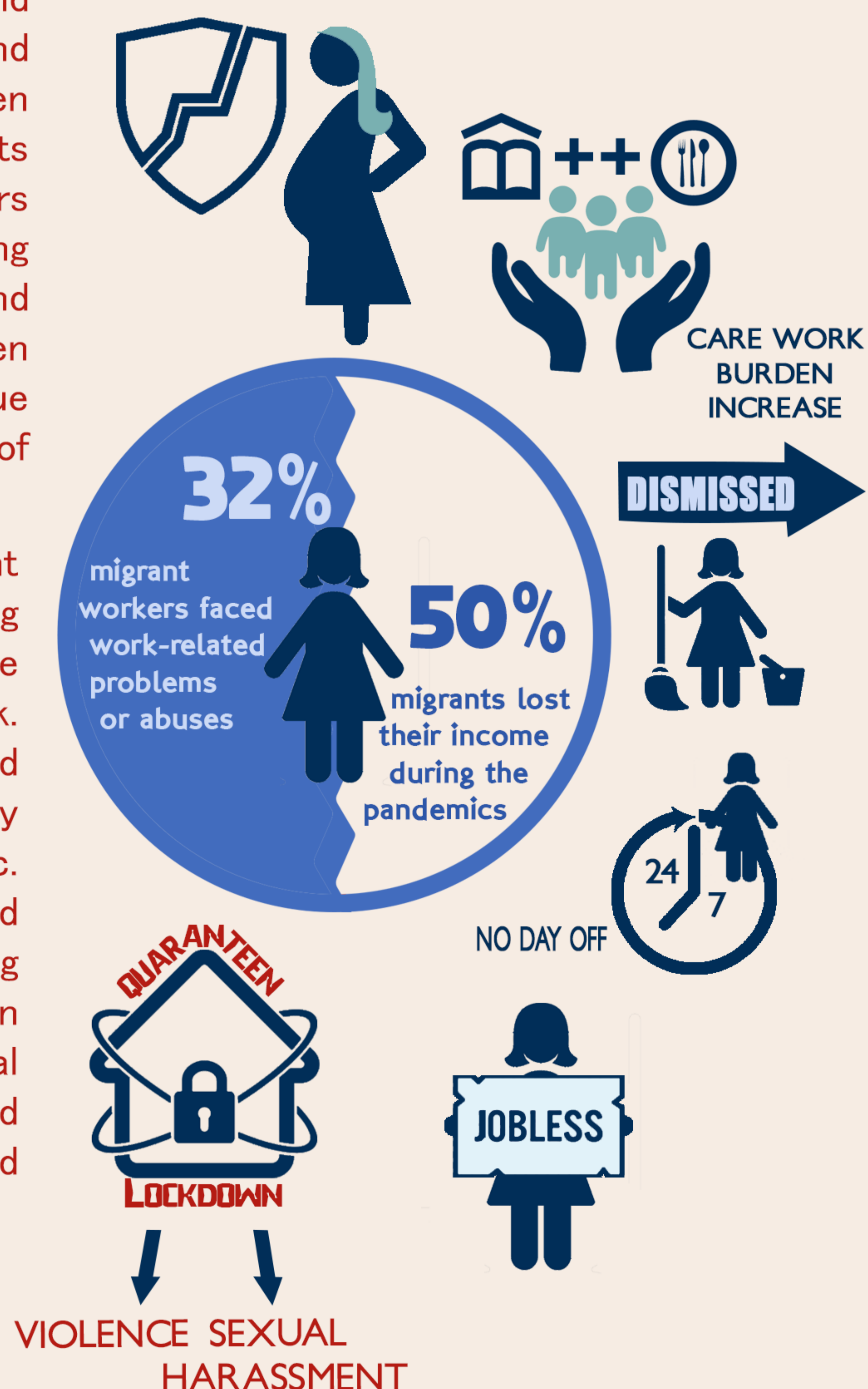
PANDEMIC ON MIGRANTS WORKERS IN THAILAND



A rapid assessment conducted by ILO in Thailand between April and May 2020 found that 32 per cent of migrant workers faced work-related problems or abuses such as being forced to take unpaid leave, having personal documents kept by employers, threatened with having their contracts terminated or other forms of harassment and violence. The majority of workers participating in the assessment were women.*

Another report by CARE International found that while 50 per cent of migrants in Thailand lost their income during the pandemic, women migrant workers were more impacted by cuts to working hours than men. Pregnant workers were particularly vulnerable due to not being able to access adequate health facilities and being unable to return home. Migrant women also saw their care work burden increase due to the challenges associated with closure of shops and schools.²⁵

Domestic workers, who are largely migrant women, were dismissed by employers during the pandemic due to fear of bringing the disease into the homes where they work. Those who continued to work reported having to work long hours without extra pay or being denied days off during the pandemic. Migrant women working in entertainment and retail also lost jobs due to businesses being required to shut down. Migrant women in general also faced additional risks of sexual harassment and violence in cramped accommodations during lockdown and quarantine.²⁶



LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

The Royal Ordinance Concerning the Management of Employment of Foreign Worker of 2017 (the 2017 Royal Ordinance) as the major policy on employment of migrant workers, placed further restrictions on the migration and employment of workers rather than rights protection. This ordinance was criticised for being poorly designed and implemented, and for having overly harsh punishments for migrants who lack proper documentation. As a result of criticisms, some of the provisions of the Ordinance were softened in a 2018 Executive Decree.²⁷

WORK PERMIT

The 2017 Royal Ordinance is seen to have created alternatives to side-step the protections provided to migrant workers through bilateral Memorandum of Understanding (MoU). Under the Ordinance, many migrant workers are now being brought in as seasonal workers, which means less responsibility for the employers to register them or provide social security. Although the seasonal worker provision was created for those living in the border areas, it is being used by employers in all parts of Thailand as a cheaper, faster and easier option, while putting workers at greater risk.²⁸

Migrant workers are barred from changing jobs without authorisation. Changing jobs without permission can lead to arrest, fines, detention and deportation. In cases where authorisation is provided, workers are given only 15 days to find a new job.²⁹

STANDARD EMPLOYMENT CONTRACT

Standard contracts for domestic workers have been developed as part of the “My Fair Home” initiative by the ILO, the International Domestic Workers Federation (IDWF) and HomeNet Thailand. This standard contract provides guidance on working conditions such as working hours, rest days, wages, leave and social protection according to ILO Convention 189 and Thai law.³⁰

Research on migrant women working in the electronics or garment industry in Thailand found that workers often had no employment contracts or, where they did, they were not legally valid contracts.

PATH TO PERMANENT RESIDENCY OR CITIZENSHIP

Migrant workers to Thailand have no path to permanent residency or citizenship.

LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

POLICING

Since 2014, Thailand's ruling junta has been undertaking strong campaigns to regulate the foreign workforce within the country. The 2017 Royal Ordinance has increased fines for employers (up to THB 800,000 or USD 23,557) who hire unregistered migrant workers.³¹ The new Ordinance also imposes strict criminal penalties on migrants who work without a permit – up to five years in prison and fines between THB 2,000 to 100,000 (USD 60 – 2,935). Punishments were lowered in the 2018 Executive Decree and migrant workers now do not face jail time for working without a permit and the fine ceiling was lowered to THB 50,000 (USD 1,599). Similarly, the fine ceiling for employers was lowered to THB 100,000 (USD 3,198). However, even if workers have authorisation, employers and workers can still be fined if the job is not the same as a registered at the Department of Employment.

Human rights advocates have said that the new, strict measures only make it easier for corrupt law enforcement officials and unscrupulous employers to exploit migrants. In fact, the new law and accompanying crackdown has led to an unprecedented number of migrant workers fleeing Thailand.

CONFISCATION OF PASSPORTS AND DOCUMENTS

The 2017 Royal Ordinance criminalises the employers who are withholding the work permits and other documents of migrant workers, and imposes punishments of up to six months in prison and fines up to THB 100,000 (USD 2,935) for those who engage in such acts.³²

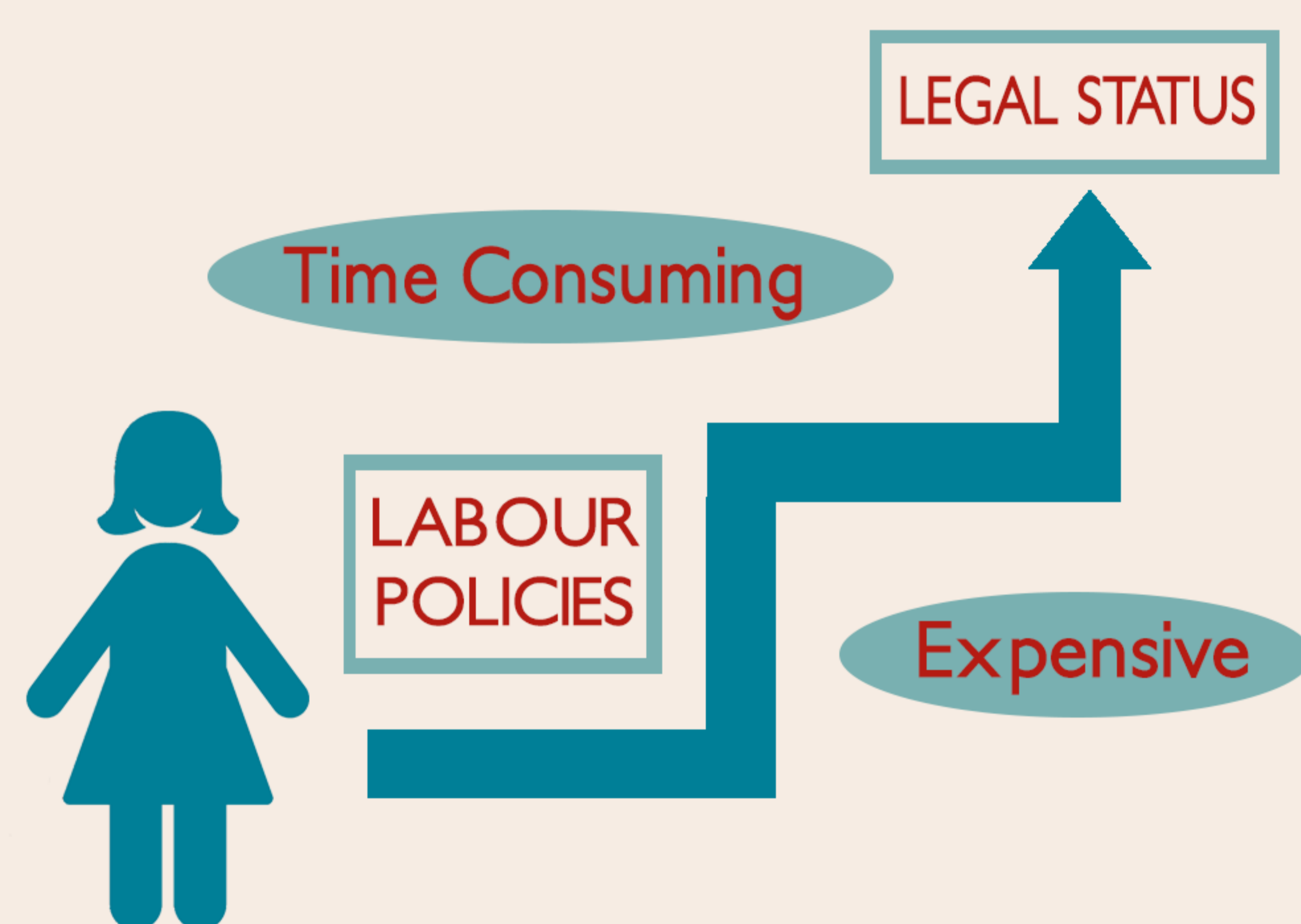
FREEDOM OF EMPLOYMENT

The 2017 Royal Ordinance gives the Labour Minister and the Committee on the Management of Foreign Workers Policy power to issue announcements to prohibit the migrants from working in certain types of work. In the latest update in March 2020, a new list of works are added to prohibit migrants/non-Thai nationals from working, such as driving, traditional hand crafting, tour guide, etc.³³

LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

Earning minimum wage and stable documentation are the most urgent issues for the migrant women workers in Thailand. Wage discrimination is serious – migrant women earn significantly lower than men and the work that women do is not recognised as work. In addition, many migrant women are struggling to maintain documentation status. Thailand's migrant labour policy treats migrant women as a threat to national security³⁴ and hence strict control is imposed, such as restriction on changing employers and jobs. The constantly changing labour policy in Thailand makes the migrant women keep going through the time consuming and expensive procedure to maintain their legal status to work in Thailand. Even though employers have the responsibility to register a worker, in practice, many employers do not follow the regulations to circumvent the time consuming bureaucratic process.

Some employers choose to pass the task to the agency and deduct the cost from migrant women workers' salary. These leave migrant women with the only option to either accept the overcharging in order to obtain a legal status, or work without documents, and be subjected to arrest, payment of fines, imprisonment and deportation.



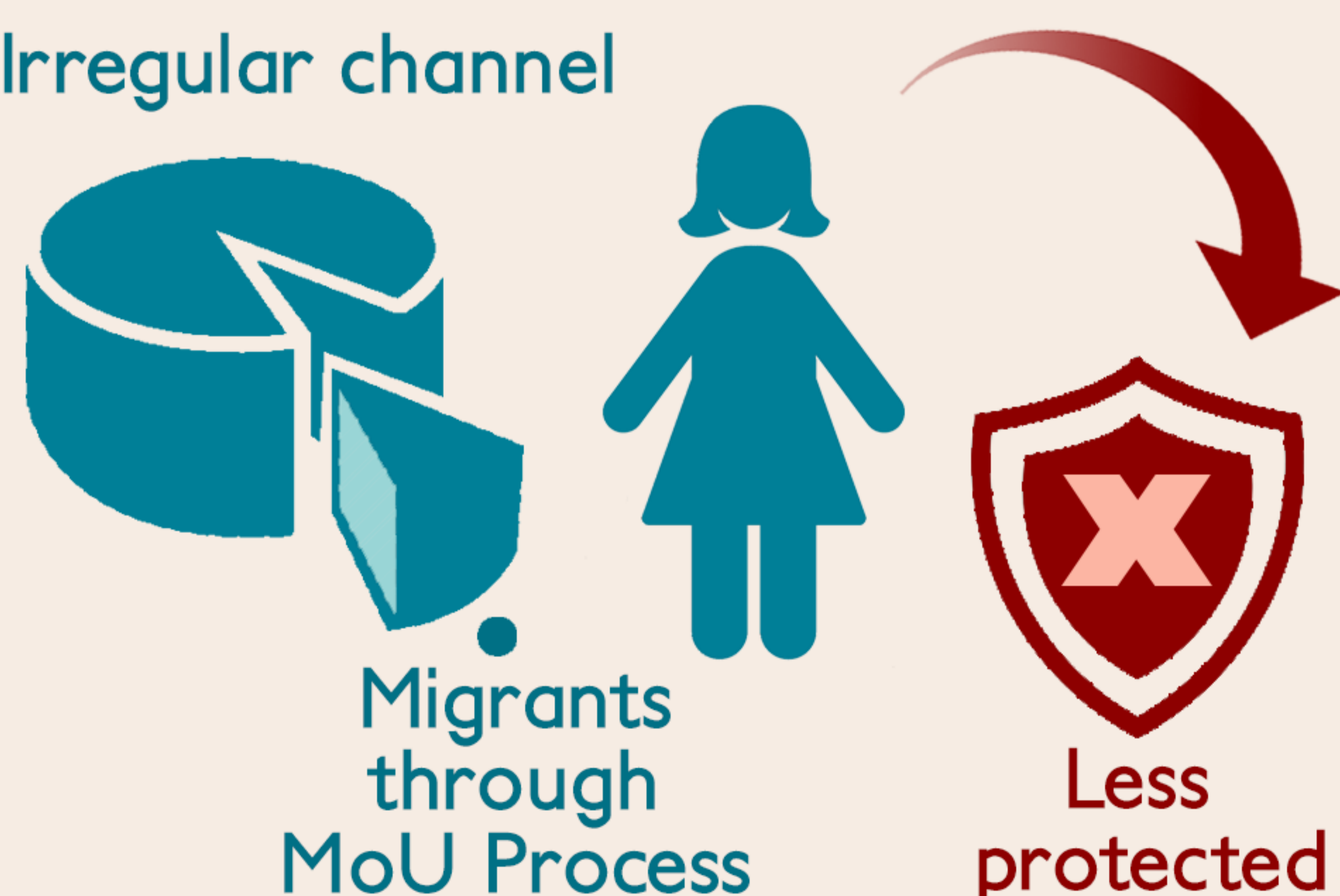
MEMORANDUM OF UNDERSTANDING (MoU), BILATERAL AGREEMENTS AND BANS

Between 2002 and 2003, the Thai government signed MoUs on employment cooperation with Cambodia, Lao PDR and Burma/Myanmar, which established a channel for regular labour migration to Thailand. In 2015 and 2016, Thailand revised the MoUs to broaden cooperation on issues such as skills development, social protection as well as signed a new agreement with Vietnam, which only allows migration of workers in the fishing and construction sectors.³⁵

However, due to complicated, lengthy and expensive procedures set out in the MoUs, only a small proportion of migrants enter Thailand through the MoU process while a large number of workers continue to enter the country through irregular channels. Research has also found that MoUs have not resulted in fundamental changes to working conditions for migrants. Instead, the high cost of migration set out in these MoUs has resulted in migrants incurring insurmountable debt. Recruiters have also benefited from the MoU process, with some even establishing themselves as de-facto employers of migrant workers and contracting out labourers to companies.

The 2017 Royal Ordinance further weakens the MoU process by providing the alternative of hiring migrant workers as seasonal workers, thus bypassing the rights and protection provided by MoUs.

Irregular channel



STATUS OF RATIFICATION OF INTERNATIONAL INSTRUMENT AND CONVENTIONS

NAME	ADOPTION STATUS
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)	
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)	
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)	
INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)	
ILO 29 FORCED LABOUR CONVENTION	
ILO 87 CONVENTION ON FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE	
ILO 97 MIGRATION FOR EMPLOYMENT CONVENTION	
ILO 98 CONVENTION ON RIGHT TO ORGANISE AND COLLECTIVE BARGAINING	
ILO 100 CONVENTION ON EQUAL REMUNERATION	
ILO 105 ABOLITION OF FORCED LABOUR CONVENTION	
ILO 111 DISCRIMINATION IN EMPLOYMENT AND OCCUPATION CONVENTION	
ILO 143 MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION	
ILO 156 WORKERS WITH FAMILY RESPONSIBILITIES CONVENTION	
ILO 181 ON PRIVATE EMPLOYMENT AGENCIES CONVENTION	
ILO 183 MATERNITY PROTECTION CONVENTION	
ILO 189 DOMESTIC WORKERS CONVENTION	
ILO 190 VIOLENCE AND HARASSMENT CONVENTION	



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