

## **Rights Interpretation by Burmese Migrant Worker in Agriculture and Construction Sector: a Case Study of Chiang Mai, Thailand**

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### **Abstract**

The research draws on the case study of Myanmar migrant workers in the construction and agriculture sectors of Chiang Mai, Thailand. This study explores the concepts and theories of migration, the real working conditions of workers and how worker awareness about labour rights under Thai Labour Protection Law. The article examines new emergence of push-pull factors of migration, mainly the unrest political, economic reasons and personal belief, which bring migrants in to Thailand. Both registered labourers and illegal labourer employees are identified that have the same rights as Thai workers, without exception. The primary data is generated by conducting interviews 40 participants, 15 workers from construction and 15 from agriculture workers, 5 from migrant community leaders and 5 NGO's paralegal staffs and migrant workers educator. The studies show that there is still a lack of law enforcement and implementation of labour law and rights violators, 11 field Labour Protection officers could not investigate over 10,000 private sectors in Chiang Mai province. 70 percent of interviewees responded they do not received basic labour rights of Thai Labour Protection Law. In addition, the rights of migrant workers and policies of Thai government are also used to analyze the issues. It is possible to address labour shortage under development of the City, due to the fact Thai government is more focusing on legal status of the migrant workers more than legally working condition. Therefore Thai government should make migrants workers in compliance with Employment Alien working act and supporting of these Myanmar migrant workers to fill the gap of the labour force in the construction and agricultural sectors in the future.

*Keywords: rights interpretation, migrant, labour rights, privilege, construction, agriculture*

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### **1. Introduction**

Myanmar is one of the developing countries in among all south-east Asia countries. Myanmar people, particularly for the Shan ethnic group from Shan State in Myanmar occupational are agricultural fields. Many people are seeking jobs, fleeing from lack of economic opportunities and the longest internal civil war in their homeland (Jirattikorn, 2017). At the same time of the political and economic recession in Myanmar, Burmese refugees and migrants entered Thailand during the 1980s. The northern Chiang Mai Thailand cultural and linguistic are similarity between the Thai dialects and neighboring countries' ethnic people's languages, more labour requirement to fill the gap labour in construction and agricultural sectors. So Thailand is one of the options for the Burmese migrant workers expected to get better life and higher wages to compare with their own country.

Myanmar has suffered from many decades of military dictatorship and political instability, the longest civil war in the world in the past 60 years and economic recession, so most of Burmese people are jobless and cannot earn enough income to help their family. Since the 1980s, more than 3 million migrant workers from Myanmar crossed borders unlawfully and have been working in Thailand (Hall, 2011). In the present, migrant workers are estimated to be 3.5 to 4.0 million including those with regular or irregular status in Thailand. Myanmar migrant was the largest ethnic group of migrants in Thailand followed by the Shan, Mon, Kayin, Kayar, Rakhine, Kachin, Chin, and Barman. 76 percent of the migrant workforces are from Myanmar, (International Organization for Migration and the Asian Research Center for Migration, 2013) mention that 3 million of these migrants are approximately 7 percent of the total Thai working population. In northern Thailand especially in Chiang Mai which is the main center of push-pull factor of Shan ethnic group migrants. Chiang Mai is close to the Thai-Burma border and easy to cross the border to the City. So most of the Shan migrants flowed fro there. Northern Thailand has become a destination for the Burmese migrant workers who are seeking job opportunities and a better life. It is estimated that migrant

workers are one-sixth of the total population in the Chiang Mai province or around 200,000 in the city (Pripotjanart, 2015).

Currently, there are more than 100,000 of migrant workers, who have legally passed the Nationality Verification (NV) and MOU process of migrant workers in Chiang Mai province. Registered and holding a work permit total 93,718 (Foreign Workers Administration Office, 2017). Thus, the number of Shan ethnic group migrant workers in Chiang Mai is growing due to the economics incentive of the city. The majority of Burmese migrant workers are working in construction and agriculture sites with are dangerous, difficult and dirty areas to fill the gap of labour shortage in it. Most of Burmese migrant workers are not receiving equal rights and minimum wages, annual holiday, traditional holiday, weekly holiday and working hours according to Thai labour protection law (The Irrawaddy , 2016). When migrant workers do not get basic labour rights, it is more difficult for them to access to other benefits such as social security law and workmen compensation law. Thus, the compensation funds to compensate for an accident due to the work of migrant workers, who are also claimed as expenses by the fund, are all a problem (Thailand - World Report, 2018). However, there are many Labour protection Acts and Laws, for the migrant workers who were challenge to access to basic Labour Rights and Thai Labor Protection Law (1998) (Archavanitkul, & Hall, 2006). However, this search aim to find out what is the really happening to migrant workers in agricultural and construction sectors? What is the workers' perspective of access to labour rights? What is the Thai government resolution for migration?

## 2. Objectives

This article aims to study suitable, affective methods and the solutions of the shortcomings between labour rights and migration policies, based on the data collection of migrant workers interviewees. The thesis aims to analyze the impacts in the rights of access to justice for Myanmar migrant workers in Chiang Mai, Thailand. Specifically, the real working conditions of Myanmar migrant workers and the workers who are working in agricultural and construction sectors in Chiang Mai province are aware of labour rights and are the rights given under Thai Labour Protection Law.

## 3. Materials and Methods

The research was conducted as a qualitative approach both in primary and secondary data. This research used in-depth interview focusing Shan ethnic migrants worker who are working in construction and agriculture sector in Chiang Mai. The interview focused around 30 migrant workers participants and 10 from Community Base Organizations (CBO) and Non-Government Organization (NGO). The focus areas at the Amphur Murg and San Kham Pang districts were conducted interview for constructions workers and the Mae Rim and Fang districts for agricultures migrant workers. The interview started with open and ending question to the group and individual participants. All migrant workers interview were conducted in Thai and Shan with the reveal of interviewees and the same language of the workers because the researcher also original from Shan ethnic group in Myanmar.

The secondary data collected from relevant documents, build from multiple sources such as books from International Organization for Migration, The Asian Research Center for Migration, Chulalongkorn University, articles, migration reports, mass media about migrant issue or newspapers, and journals both local and international sources to completed the whole paper. The research analysis was based on the primary data and generated by conducting interviews with Burmese migrant workers and all the secondary data - collected from relevant documents. The researcher compiled all summary results from in-depth interview and secondary data to improve the solution and research recommendation to migrant's policies makers and the government.

## 4. Results and Discussion

### 4.1. Results

The research shows that the migrant workers in Thailand, only think about employing and earning more money to support their family who are left behind. As "Migration Theory" reviewed: migrants will migrate to another country for benefits comparing to their home country (International Labour Standards on Migrant Workers' Rights, 2007). Based on the result of in-depth interview, 90 percent of migrant workers

were afraid of losing jobs. Because the workers have to spend at least 6,180 THB (Health check 3,700 THB, two years Visa 500 THB, two year work permits 1,900 THB and work permit card 80 THB) for the process of the immigration, border cross, registration, the legal document such as Passport, work permit and Visa extending every two years. Under labour Law and Labour rights assessment, according to Thai Labour Law every worker has the rights to access Thai labour Protection Law 2541. But in this point the result found that Department of Labour Protection office case applying process is still a problem.

According to the Constitution of the Kingdom of Thailand “All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or constitutional political views, shall not be permitted” (Constitution Drafting Commission, Constituent Assembly, 2007), and the study found that the migrant workers still have a problem with getting basic labour rights and there is a gap between the rights and the law. The research also founded most of migrant workers in Chiang Mai province faced rights access to information because all of the applications of the migrant’s regulation and laws are mostly in Thai, Burmese, Lao and Cambodia languages. From reviewed result, 90 percent of more than 200,000 of migrant peoples in Chiang Mai were a Shan ethnic group of migrant workers from Myanmar at the reviewed result. Finally, the research found there is still a lack of law enforcement affectively and punishment of the law and rights violators in the research conducted areas, 11 of field Labour Protection officers could not investigate over 10,000 private sectors in Chiang Mai province. There are so many violations that occurred in construction and agricultural sectors which bring Burmese migrant workers to access basic labour rights under the Thai Labour Law. Based on the research, Thai government was more focusing on legal status of the migrant workers than legally working conditions because more than 28 participants of the interviewees reported that in reality the working place and work permit of migrant workers are not matching because the migrant workers working places are not the same places of workers permitted to work. So according to Thai Alien Working Act B.E. 2008 and Thai Labour Protection Law Act B.E.2541 they were noncompliance workers who worked in difference place of not mentioned in their work permit. According to the in-depth interviewed of the construction and agriculture sectors of 30 participants, 15 from each group of migrant workers in Chiang Mai, the research shows that there are 3 categories of employed condition in construction sites and 5 categories of employed condition in agriculture sites in Chiang Mai.

#### 4.2. Discussion

##### *A Shan Ethnic group of Burmese Migrant workers in Chiang Mai*

From the reviewed result, full of the large movements of immigrant are taking place in the neighboring and other developing countries. Chiang Mai is also full of neighboring migrant workers such as ethnic group migrant workers from Myanmar, Lao People’s Democratic Republic, which is based on the research information from interviews about Chiang Mai province. Migrant workers situation are still faced with rights abuse, exploitation and becoming more and more complex in this areas (Maneeakat & Kemasingki, 2017).

28 out of 30 interviewees claim that they come to Chiang Mai to get a better life and search for a job. It is the first reason why Burmese migrant workers decided to leave their home country. So the finding shows that’s why the migrant workers still have problem to get basic labour rights because the workers themselves don’t want to be unemployed and they will continue even though they know that their rights were abused by their employers. Based the data collection in agriculture and construction sites some workers were working at the same places and same employers that mention in the employee work permit and travel document. But some of migrant workers who gained knowledge and more working skills they were more confidence and become a sub-constructor in their working sites. But some migrant workers were hire the broker to be their employers and employed where difference places of they were permitted to work. According to Employment Alien Working Act B.E.2551 and Thai Labour Protection Law B.E. 2541, the migrant workers were not allowed to be work as a sub-constructor, the migrant workers must be employee as the same of registered employment only, if not they were be a non-compliance migrant workers. The

research found that there are a lot of non-compliance migrant workers in construction and agricultural sectors in Chiang Mai.

One of the agriculture interviews said she got 170 Baht for her wages by working in an orange field in Fang district. But she could not do anything even though she wanted higher wages. She didn't know about the labour rights and Thai labour protection law. She said the employer was very kind to employees because he provided accommodation, electricity and water free to all. Each employee get 10 baht increased daily wages every year and they were enjoyable with their way of life. The selected interviewees were monthly rate paid, workers received the wage less than the legal minimum wage (THB 150 women and THB180 Men per day). According to the Minimum Wage is THB 300 per day in 2017 but the workers did not get it. The employer should guarantee the minimum wage to ensure that all workers will receive the wage not less than the minimum wage.

The finding in this study, department of Labour Protection office case applying process is still a problem because based on the case of Perfecto Company, over 100 of employees were abused in terms of labour rights by their employer (Prachatai News, 2016). When this case was reported to the Department of Labor Protection Welfare (DLPW), it was found that the reporting process was not easy for migrant workers. Based on the Human Rights and Development Foundation paralegal staff interviewed information, the DLPW office does not have a translator to explain how to fill the case submitting forms. In this case if employees were not get assistance from NGO's staffs, the worker would face problems because they cannot read and write Thai. In the processing of unpaid case each of employee have to fill case submitting form. There is another issue with labour rights violation to DLPW office because most of the workers have a problem calculating all of their wages due to the fact that the employers do not provide payment receipts to employees.

The labour rights and the law, according to the Constitution of the Kingdom of Thailand "All persons are equal before the law and shall enjoy equal protection under the law" for the Perfecto Company unpaid case of more than 100 people, and they get equal rights but they did not get the compensation from employers even the case was ended and decided by the labour court that the employer must give all the compensation to employees. However migrant workers have to wait out the process after the labour court order 30 days, during that period the employer or employees can appeal the court decision if he/she does not agreed it. But in this case study the employer closed the company left Chiang Mai. The study found that there gaps between the law and the rights. The employees have the right to get compensation from their employer and they also have access to justice but the employees did not get compensation in the end. The argument is why the process have to take 30 days to enforce the law? Why the related department of the labour protection welfare cannot do anything? Why DLPW cannot check the company's data? And why the DLPW ask workers to go and find out all related information of the employer for them? How the migrant workers can get all employer's information and from where? The workers lack power and information because they cannot read and write Thai.

Base on the interview of research the participants reported that there are not Shan language publications about labour law and labour rights information that they can read. This study shows that the migrant workers in construction and agriculture and other sectors in Chiang Mai province still face a problem to access labour related information. Especially for the migrant workers who worked in Orange fields because they stay faraway from the town and city, then transportation is not easy for them to get in the city. The interviewees reported that the employer never provided occupational health and safety (OHS) at the work place training for them. The OHS law mentions that the employers who have employee more than ten, have to post the work regulation on their working places for his/her employees at least mention at following:

- "(1) Working Days, normal working time and rest periods;*
- (2) Holidays and rules of taking Holidays;*
- (3) Rules governing Overtime and Holiday Work;*
- (4) The date and place of payment of Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay;*
- (5) Leave and rules of the taking Leave;*
- (6) Discipline and disciplinary measures;*

(7) *Lodging of grievances; and*

(8) *Termination of employment, Severance Pay and Special Severance Pay*” (Labour Protection Act B.E. 2541, 2014). The employer asked the old workers to take responsibility to explained work duty to all new workers. The migrant workers never have a chance to attend OHS training before they start work. This study can say that there is no access to rights information because all related labour department publication of labour rights and law were only in Thai and Burmese. Chiang Mai is the 90 percent of over 200 thousand migrant workers were Shan ethnic group and mostly use to read and write Shan language. The study show that rights to access information still needs improvement (Chiang Mai Labour Office, 2017a).

According to Labour protection law 2541, “The employee who has worked continuously for one full year shall be entitled to an annual holiday of not less than six working days which shall be fixed in advance by the employer or prescribed in agreement of the employer and employee” in this point migrant workers reported there are no holidays. Even the employees who took leave to go to a hospital did not get wages. The Labour law had mentioned, the employer can fix an annual vacation for his employees of more than six working days. The employer and employee can discuss or make agreement in advance for the following year. For an employee who has worked for less than one year, the employer can fix an annual vacation proportionately. Based on data collection most of the interviewees said they can get a holiday such as on full moon day or Buddhist lent and end of Buddhist lent days.

For employee working hours in normal working hours from the starting and finishing times for each working day does not exceed the number of working hours set for each category of Ministerial Regulations. According to Labour Protection Law 2541, the one day working hours does not exceed 8 and all the total number of working hours in one week are no more than 48 hours, except the work that may harmful to health of safety of the employee, one day working hours is not to exceed 7 and all total working hours in one week is no more than 42 hours. However the employer and employee can discuss and make agreements to fix the number of working hours for each day, and the type of work does to exceed 8 hours a day and the total number of working hours in one week does not exceed 48 hours. This study shows that most of agriculture’s site workers worked more than 8 hours per day. It are not clear if law enforcement to protection of the migrant rights under Thai Labour Protection Law in Chiang Mai. All the labour protection law and the Constitution of the Kingdom of Thailand only mention about all are equal rights and have the no affective law enforcement pertaining to workers’ rights (Chiang Mai Labour Office, 2017b).

## 5. Conclusion

The paper had explored and found the concept and theories related to migration, migrant worker rights are human rights and this is recognized by International community. So the protection of the rights of workers in all developing countries has become acknowledged as a key issue. The Constitution of the Kingdom of Thailand also mentions about everyone has equal rights before the law even though they were men and women and they have the equal rights and no discrimination of the origin, sex, language, age, physical, education or any background condition were shall enjoy equal protection under the law. The information and facts in which mention to protection labour rights of all who are working in Thailand were under Thai Labour protection law B.E.2541. Overall, Burmese migrant workers in construction and agriculture sectors, the paper had the full concept and theories in order to discuss and analyze in order to answer all the research questions and the findings.

The findings can be summarize as the following: 1) Burmese migrant workers themselves have only one main point to be employed in Chiang Mai City because of the economic reason and full factor of migration. The Shan ethnic migrant workers don't have a choice if comparing wages in their native country as the workers earned more. For this to be changed positively, the paper suggests that there it is possible to address the labour shortages under the development of the City both local, global NGO organization and national Thai government should hold further social discussion action and supporting of these migrant workers. 2) Many people and employers took advantage of the migrant workers. Based on the fact, the study found that in the construction and agriculture sites there are many categories of employed are not the same which were registered with the employers. Therefore the Thai government should explore migrants working accordingly and match due to the Employment Alien Working Act and supporting of these Myanmar migrant workers to fill the gap of the labour force in the construction and agricultural sectors in

the future. So the paper suggested that the Thai government should open more categories of working places for agriculture workers as the same with construction workers.

Finally, to prevent the rights and supporting Burmese migrant workers in construction and agricultural sectors. First Thai and Myanmar Ministry of Labour should translate the publication of Labour rights and Law to distribute and reveal and most ethnic migrant workers areas. Because the Thai Ministry already had in Burmese, Lao and Cambodian language publications on basic rights according to Thai Labour Protection Law. However, the Pripotjanart (2015) said, over 200,000 migrant workers, 90 percent of Shan ethnic migrant workers in Chiang Mai province mostly use the Shan language.

## 6. Acknowledgements

This paper would not have been possible without the assistance and support of Institutes of Diplomacy and International Studies (IDIS), Rangsit University. All their comments and suggestions were interesting and helped the researcher complete this research. The researcher owes the deepest gratitude to the IDIS professors for their imparted knowledge, advice and guidance which both directly and indirectly influenced the writing of this research. It is an honor to express thankfulness to the dean of the Institute of Diplomacy and International Studies for vital encouragement and strong support.

For the academic advices and continuous support for attempts for migrant workers' rights, the researcher would like to express respectful gratitude to Dr. Darmp Sukontasap for valuable guidance and providing the image for seeing rights interpretation of Burmese migrant workers wider and deeper. His encouragement, guidance and support from the initial to the final level enabled the researcher to develop understanding of the subject. In addition, he gave the moral support to continue this research.

Special thanks go to my family member and friends in both Thailand and abroad who always support the researcher physically and mentally and those who make life more meaningful. Especially, to mom and Dad who never tired of supporting their children to be well educated and always offered support.

For the financial support, the researcher would like to express gratitude to Thabyay Education Network and Supplementary Grant Program Burma (SGPA) that supported the study at the IDIS program, Rangsit University. And another special thanks to Human Rights and Development Foundation (HRDF), classmates for helping to find the relevant research materials and related comments. The exchange of information and viewpoints helped greatly.

Lastly, the researcher offers regards and blessings to all research participants (Shan Migrant workers in Chiang Mai and Fang districts) who supported information through the completion of this research.

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