

2014

REPORT

# MIGRANT WORKERS IN THAILAND'S GARMENT FACTORIES



## ABBREVIATION LIST

<b>ADB</b>	Asian Development Bank
<b>AFTA</b>	ASEAN Free Trade Agreement
<b>ARV</b>	Antiretroviral drugs/medication
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CBA(s)</b>	Collective Bargaining Agreement(s)
<b>CBO(s)</b>	Community-Based Organization(s)
<b>CCC</b>	Clean Clothes Campaign
<b>EU</b>	European Union
<b>FED</b>	Foundation for Education and Development
<b>FTI</b>	Federation of Thai Industries
<b>GDP</b>	Gross Domestic Product
<b>GMS</b>	Greater Mekong Subregion
<b>IDE-JETRO</b>	Institute of Developing Economies
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>JACBA</b>	Joint Action Committee for Burmese Affairs
<b>LPO</b>	Labour Protection Office
<b>MoPH</b>	Ministry of Public Health
<b>MOU</b>	Memorandum of Understanding
<b>MW</b>	Migrant Worker
<b>NESDB</b>	National Economic and Social Development Board
<b>NGO</b>	Non-Governmental Organization
<b>NV</b>	Nationality Verification process
<b>SEZ</b>	Special Economic Zone
<b>SMEs</b>	Small and medium enterprises
<b>TDRI</b>	Thailand Development Research Institute
<b>THB</b>	Thai Baht
<b>THTI</b>	Thailand Textile Institute
<b>TP</b>	Temporary Passport
<b>USD</b>	US Dollars
<b>YCOWA</b>	Yaung Chi Oo Workers' Association

## METHODOLOGY

**The information gathered for this report comes from multiple sources.** A significant portion is from desk research and MAP Foundation's (MAP) experience of working with migrants for over 15 years. This has been supplemented with extra field research carried out by MAP for the purpose of this report. MAP staff and volunteers interviewed 58 migrant workers (32 women and 26 men) working in garment factories in the Mae Sot region during February 2014. The interviewees were selected on the basis of accessibility. MAP Foundation had already, over many years, established a trust relationship with the migrant community, and all the interviewees were familiar with the organisation.

Clean Clothes Campaign (CCC) provided questionnaires in English which MAP translated into Thai and Burmese. Migrant Volunteers and MAP staff then conducted the interviews in Burmese. The filled questionnaires were then translated back into English. The quantitative data collected during interviews was classified into statistics, and the qualitative information was noted, classified and taken into account for the analysis of the report. Although the analysis has not been verified with respondents yet, the information collected corresponds with MAP's experience and the current working and living conditions of migrants in Thailand.

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The focal point of garment production is located in Mae Sot, Tak Province, roughly 500km northwest of Bangkok on the border with Myanmar.

## INTRODUCTION

# INTRODUCTION

*In 2012, the Thailand Textile Institute (THTI) set out an ambitious 300 million THB (7.29 million EUR<sup>1</sup>) plan to develop the national textile and garment industry over four years, with the aim of transforming Thailand into Southeast Asia's fashion centre<sup>2</sup>. The garment and textile industry in Thailand has existed for over 50 years however, Thailand has had to repeatedly evaluate its competitive edge.*

WHEN THE INDUSTRY first began, much of its commercial success was due to Thailand's cheap labour, low-priced property, and increases in import and export quotas. The 1997 Asian Financial crisis deeply affected the industry, however due to the drop of the baht's value, loans that had been made in dollars had to be repaid at double the initial amount. Since the recovery, the Thai labour force and related production costs have started to become increasingly expensive.

In response, the garment industry developed two strategies to cut production costs and increase competitiveness: first by improving the productivity of the garment industry around Bangkok; second by relocating textile factories to the border areas or to other countries, such as Cambodia, in search of cheap labour.

For textile factories in the Bangkok area, the government provided increased subsidies to invest in upgrading machinery and integrating logistical services<sup>3</sup>. As a result, the garment industry

shifted to the development of fully integrated manufacturing bases, forming industrial clusters on the outskirts of Bangkok and in the adjacent provinces of Nonthaburi and Samutsakorn. Thailand's Ministry of Industry developed the cluster concept in an attempt to augment the country's competitive capacity. This plan "clusters" textile, apparel, and related industries in a single area, and integrates them to increase productivity.

However, the focal point of garment production remains far away from these clusters, located in Mae Sot, Tak Province, roughly 500km northwest of Bangkok on the border with Myanmar. By focusing production in border towns, such as Mae Sot, the garment industry aims to reduce production costs by hiring migrant workers, who are seen as desperate and therefore easily exploited, at below the prevailing minimum wage. This report lays bare the working and labour conditions of these migrant workers, analyses industry and government treatment of them as well as the injustices that they suffer.

A black and white photograph of a woman with dark hair, wearing a light-colored top, looking down at her work in a garment factory. The background is slightly blurred, showing stacks of fabric. The image is partially overlaid by a blue geometric pattern on the right side.

In 2013, garment exports to the US and EU stood at 964 million EUR and 830 million EUR respectively.

## CHAPTER ONE

# THAILAND'S GARMENT INDUSTRY

*Considered one of Thailand's largest and most lucrative export industries, the value of Thailand's exports of garments and textiles has fluctuated over the years due to market forces. In 2013, Thailand's total exports of garments and textiles amounted to 5.86 billion EUR. The textile sector earns a little more than 60 percent of this value as compared to the garment sector, which earns just under 40 percent<sup>4</sup>.*

ALTHOUGH THE US and European Union (EU) are two of Thailand's top garment export markets, there has been a steady decline in these markets, while demand from both Japan and ASEAN (Association of Southeast Asian Nations) has increased. In 2013, garment exports to the US and EU stood at 964 million EUR and 830 million EUR respectively<sup>5</sup>.

With the ASEAN economic integration looming in 2015, the increased trade among its countries comes as little surprise. The ASEAN Free Trade Agreement (AFTA) was introduced in the late 1990s and progressively phased in during the early 2000s. Once it went into effect, taxes in the ASEAN region were eliminated, and thus Thailand was able to import all of the raw materials that it could not produce locally tax-free from other ASEAN countries. In turn, Thailand has focused on expanding exports to the ASEAN bloc, with the main garment export markets for 2013 being

Singapore (30 million EUR), followed by Myanmar (15.5 million EUR) and Malaysia (13.7 million EUR)<sup>6</sup>. Garment exports to China also increased by 10 percent year-on-year, totalling 25.5 million USD<sup>7</sup>.

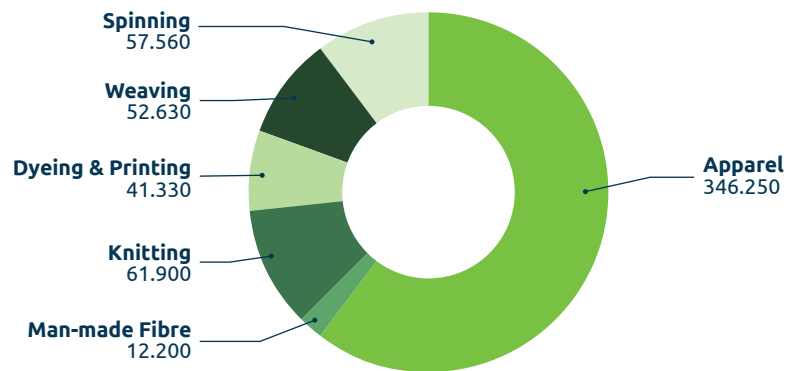
The apparel and textile industry has been one of the largest sectors of employment in Thailand. In 2008 there were some 4,385 apparel manufacturers and textile mills in Thailand, most of which were small- and medium-sized enterprises, reportedly employing more than 1.03 million workers. While in 2013, the number of factories dropped to 4,044, officially hiring only 571,870 workers<sup>8</sup> (out of a total of 39 million Thais reported as being employed in the country in 2013<sup>9</sup>). It is uncertain whether the number of indicated workers includes migrants, and if it does, it most likely under-represents the actual number, as employers are known to register only a portion of the migrant workers they employ.

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*“It is uncertain whether the number of officially hired workers includes migrants as employers are known to register only a portion of the migrant workers they employ.”*

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**FIGURE 1: NUMBER OF WORKERS IN THAILAND’S GARMENT INDUSTRY (2013)**



Sources: Thailand Textile Industry Statistics (2013), Thailand Textile Institute

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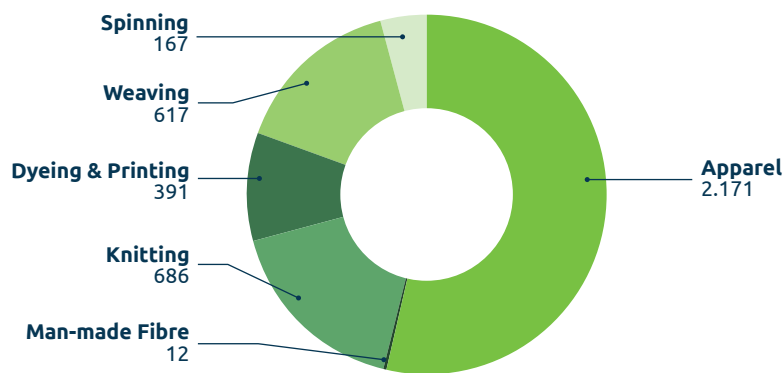
In 2009, the Tak Province Chapter of the Federation of Thai Industries (FTI), an employers association, had 300 members from Mae Sot. Ninety percent of these members were from garment and knitting factories. All registered firms are technically required by law to be FTI members. However, Mae Sot is also home to numerous unregistered, small-scale sewing enterprises. Including these unregistered “sweatshops” would increase the total number of garment related factories in the area to 400.

The majority of knitting and garment factories in Mae Sot are subsidiaries of companies producing in Bangkok or central Thailand, and ownership is roughly half Thai and half foreign, with foreign owners coming primarily from China, Taiwan, Hong Kong, Japan and South Korea. Production is primarily for export, but also contributes to domestic markets. The largest factories may employ up to 3000 workers, but it is difficult to know exact numbers as factories are closed compounds and employers only tend to register a fraction of their workers; small and middle size factories tend not to register their workforce at all.<sup>10</sup>

The following section will look in more detail into the situation of migrant workers in Mae Sot, the focus of the MAP research for this report.



**FIGURE 2: NUMBER OF REGISTERED GARMENT FACTORIES IN THAILAND BY TYPE (2013)**



Sources: Thailand Textile Industry Statistics (2013), Thailand Textile Institute

*“The majority of knitting and garment factories in Mae Sot are subsidiaries of companies producing in Bangkok or central Thailand, and ownership is roughly half Thai and half foreign, with foreign owners coming primarily from China, Taiwan, Hong Kong, Japan and South Korea.”*

## ECONOMIC CONTRIBUTION OF MIGRANTS

Economic growth over the past 20 years has created new opportunities for Thai workers, leaving labour gaps in certain industries that require manual labour such as, agriculture, construction, fisheries, and certain types of manufacturing. While it is evident that migrant workers have filled these gaps and fulfil an essential function including garment production in the economy, there is still a debate as to their economic contribution.

To answer this, there have been attempts at estimating the economic contribution of migrant workers’ production to the Thai economy (using constant USD from 2000 as the unit of measure). In 1995, the Thailand Development Research Institute (TDRI) estimated that migrants contributed 600 million USD (470 million EUR) or 0.5 percent to Thailand’s gross domestic product (GDP). In 2005, when migrants were estimated to comprise 5 percent of the Thai labour force, the economic contribution of migrant workers was estimated at 1.25 percent of GDP, or 1.8 billion USD (1.4 billion EUR), and possibly up to 6.2 percent of the GDP depending on the methodology used in estimating value-added <sup>11</sup>.

Similarly, a 2012 joint report by the International Labour Organization (ILO) and the Migration Policy Institute estimated that migrant workers contributed, on average, 1 percent to the Thai real GDP<sup>12</sup>. An addition on a micro level, which is not reflected in these studies, is the fact that migrants are also consumers of local goods and services. In fact, there are some locales where migrants are Thai vendors’ main customers, a fact that is not commonly included in these economic assessments.

As early as the mid-1990s, garment factory production facilities were moving to this border area because migrant labour was abundant and could be paid below the prevailing wage.

## CHAPTER TWO

# MAE SOT

*Mae Sot sits on the Moei River, connected to Myawaddy - its sister border town - by the “Thai–Myanmar Friendship Bridge” which was completed in 1997 through the support of the Thai government. Mae Sot’s geographic location has been vital in attracting migrant workers from Myanmar who cross the border in search of economic opportunities, or who have been displaced by conflict.*

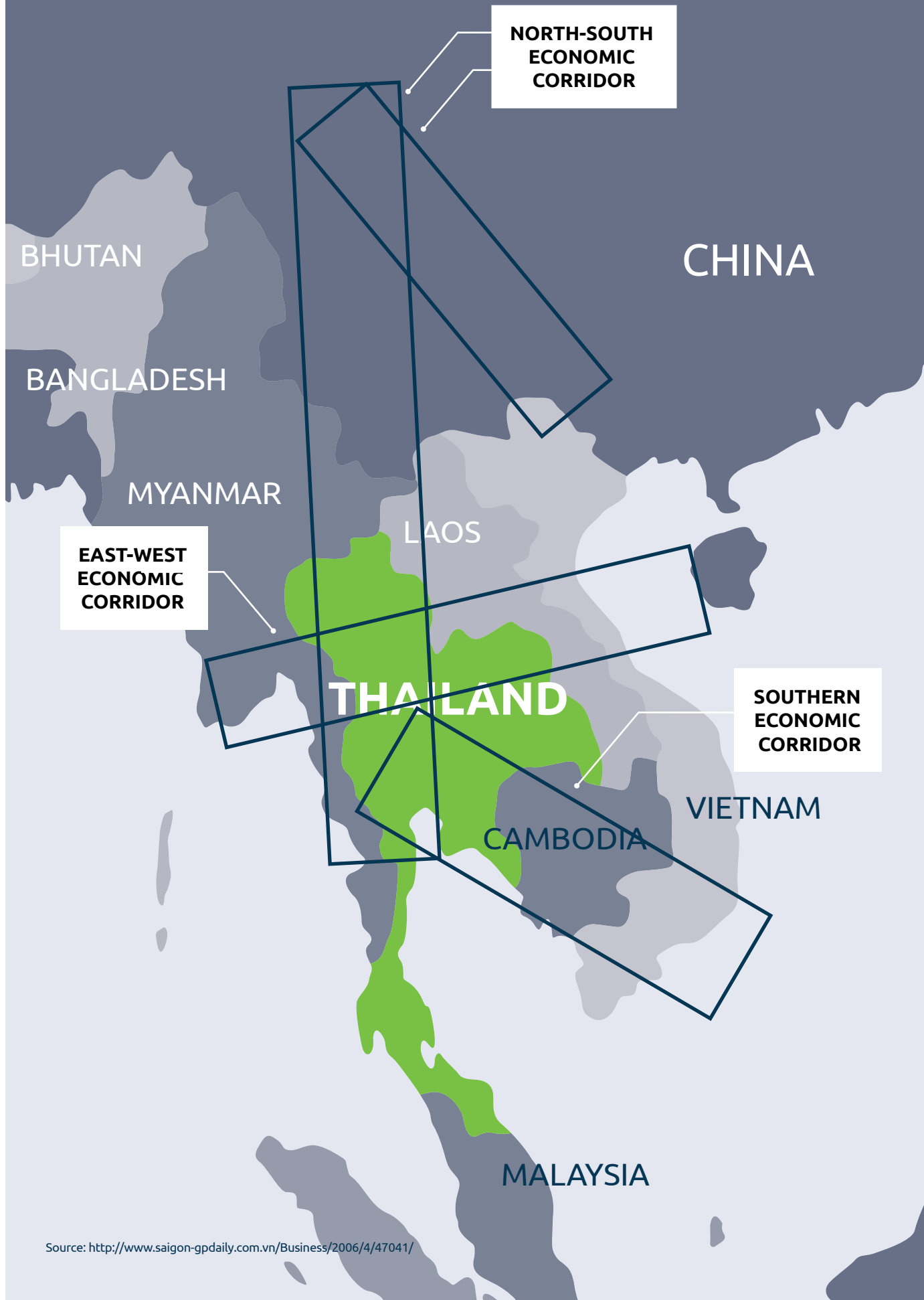
SEEKING BETTER LIVES, these migrant workers often find themselves instead subjected to further human rights and labour abuses.

In 1992, the Asian Development Bank (ADB) initiated the Greater Mekong Sub region (GMS) Economic Cooperation Program to stimulate free trade and investment in the region among member countries, including Thailand, Myanmar, Lao PDR, Cambodia, Vietnam and Yunnan, China. One of the strategies identified was the development of Special Economic Zones (SEZ), primarily at border areas. SEZs on or near Thailand’s borders have

been focused on attracting investment, but recently have also been promoted as a way to “manage” and contain migrant labour so as to prevent migrants from entering deeper into the country.

The most developed SEZ in the GMS is in Mae Sot, which also sits along the country’s East-West Economic Corridor under the ADB-GMS project. Since January 2005 this area has been pending approval for official status as a SEZ, and only in January 2013 did the Thai cabinet finally grant its approval.

## GMS ECONOMIC CORRIDORS



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As early as the mid-1990s, prior to discussions about making Mae Sot an official SEZ, garment factory production facilities were moving to this border area because migrant labour was abundant and could be paid below the prevailing wage. Infrastructure was in place with tax incentives provided and enforcement of regulations - from occupational safety and health to environmental protections - was lax. As profit rates for textile and garment and other labour-intensive industries started declining, Thai manufacturers attempted to maintain competitiveness by adopting a series of strategies commonly used in Mae Sot<sup>13</sup> such as:

- Downsizing operations by laying-off workers regularly without compensation
- Hiring workers on contracts through labour agencies
- Outsourcing production to home-based workers and smaller-scale workshops<sup>14</sup>

All of these factors amount to extremely poor working conditions for migrants in Mae Sot factories. Pay is well below the minimum wage and work hours often exceed 12 hours during peak periods. Workers who live in factory dorms are not allowed to leave the factory compounds or are unable to because they lack proper documents. In fact, few factories in the Mae Sot area register their migrant workforce with the Ministry of Labour, or else only register a portion of them.

There is little in the way of labour monitoring or protection for migrants working in these factories. The problem stems from the Labour Protection Office, which finally opened an office in Mae Sot in 2004, which is significantly understaffed and under-resourced. As a result, there is a lack of labour inspections and enforcement of labour regulations.

Also contributing to the environment of exploitation is the fact that a large proportion of factories in Mae Sot are sub-subcontractors for factories in central Thailand. This murky line of production obscures the supply chain, making it difficult to track what clothing brands are using which factories, and limiting oversight by parent companies<sup>15</sup>. In fact, none of the garment factory workers interviewed for this report knew which brands they were producing garments for. This is because, generally, workers are not informed of who the parent company is, and because of the way that production is organized. In outsourced factories, production is separated by steps: cut, sew, trim, pack.

Commonly a migrant is only responsible for performing one step in producing one part of the garment, i.e. sewing a right sleeve. Parts of a shirt, for example, are assembled by the trimming team, so are the labels. Workers can, however, recognize the logo of the brand, even if they do not know the name of the brand.

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*“Many factories in Mae Sot are sub-subcontractors which limits the oversight by parent companies.”*

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*“The employer and the workers should know their duties and rights, and should follow the law.”*

Hnin Weh, from Burma

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### **WORKER PERSPECTIVE: HNIN WEH**

Hnin Weh is 23 years old and comes from Burma. She has been living in Thailand for over 15 years and has sewn Adidas clothes in the same factory for 10 of those years. Hnin does not know her employer’s real name - only a nickname. She has a passport and a one year contract that she cannot read as it is in Thai, and also does not hold her own copy. She is paid between 100 - 200 THB (2.4-4.8 EUR) per day and there is a deduction of 250 THB (6 EUR) per month to cover water, electricity and accommodation at the factory. These things are probably explained on her pay slip, but she cannot read it, again because it is in Thai. She works 12 hours a day but does not get paid for overtime. The only day off she gets is on pay day - when all the workers come to the factory to receive their money. There are also 13 days of public holidays a year but it is unclear whether she has to work on these days or not. She does not have social security or health insurance, and thinks that it would not be of benefit anyhow as migrant workers are not treated equally because they are not Thai. When she is sick, Hnin simply goes to the Mae Tao Clinic. When asked if she got maternity leave, she answered, *“Yes, I can take leave however long I want, but it is unpaid!”* As for delivery, she paid the hospital fee herself. When asked if migrants want to be treated with respect and receive their rights she replied, *“The employer and the workers should know their duties and rights, and should follow the law.”*



Workers who live in factory dorms are not allowed to leave the factory compounds or are unable to because they lack proper documents.



Migrant workers comprise close to 10 percent of the Thai workforce, and are an integral part of Thailand's market competitiveness.



## CHAPTER THREE

# MIGRANT LABOUR & POLICIES IN THAILAND

*As of 2014, it is estimated that there are between 3-4 million migrants working in Thailand's labour-intensive industries, including seafood processing and fisheries, construction, agriculture, domestic work, and manufacturing sectors such as textiles and garments.*

ACCORDING TO THIS estimate, migrant workers comprise close to 10 percent of the Thai workforce, primarily occupying manual labour jobs that are an integral part of Thailand's market competitiveness. Around 60 percent of registered migrants are male; however, female migrants are prominent in certain occupations and provinces, making up the majority of workers in seafood processing, garment factories and almost all domestic work. Approximately 80 percent of the migrant workers in Thailand are from Myanmar, with the next two largest migrant populations coming from Cambodia and Lao PDR. Only about 30-50 percent of migrant workers are registered with work permits and proper identification or travel documents.

The total number of migrants estimated to be working in the Mae Sot area is between 200,000 - 300,000<sup>16</sup>, with 60,000-80,000 estimated to be working in knitting and garment factories<sup>17</sup>. It is possible that 70 percent of garment factory workers could be women<sup>18</sup>.

Yet, numbers of migrants registered in this area is low with wide fluctuations. In 2008, there were 25,000 migrants registered in Tak Province (the province where Mae Sot is located)<sup>19</sup>; while in 2012, the total number of migrants registered in the province was 35,984 (of which, 23,062 were women)<sup>20</sup>. In 2013, only 9,700 migrants were registered with temporary passports and work permits. As of 2014, once again policies have altered following the change in Thai government, and 30,352 migrant workers were registered temporarily.

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*“The overall process of becoming legally registered should only cost around 4,000 THB (97 EUR) but in reality costs migrants around 10,000-12,000 THB (242-291 EUR).”*

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In the early 1990s, the Thai government began formally registering migrant workers from Myanmar. From 1992 to 2000 migrants from all three neighbouring countries were allowed to register but only in select industries and provinces. Starting in 2001, all industries and provinces were eligible to register migrant workers<sup>21</sup>. A bi-lateral Memorandum of Understanding (MOUs) on the “Cooperation in the Employment of Workers” was signed by the Thai Royal Government in 2002 with the government of Lao PDR, and in 2003 with Cambodia and Myanmar. The aim of the MOU was to set up a system by which to normalise migration from neighbouring countries into Thailand. Actual implementation of the MOUs started in 2006 with Cambodia and Lao PDR, and not until 2009 with Myanmar.

Ultimately the system that evolved under the MOU provides two primary channels to register with a passport and work permit:

- 1 Recruitment of workers through recruitment agencies in the countries of origin, which is expensive and slow, but provides registration with temporary passports and work permits, and identifies an employer prior to entry into Thailand (hereafter called the MOU process);
- 2 the Nationality Verification (NV) system for migrants who are already in Thailand with an employer, which allows them to obtain temporary passports and work permits (hereafter called the NV process).

The Temporary Passport (TP) granted to migrants through these processes supposedly allows them to travel freely throughout Thailand, and allows those migrants working in jobs considered to be in the formal sector (excluding fisheries and seafood processing, agriculture and domestic work) to enter into and benefit under the Thai Social Security System.

The TP is valid for six years, but migrants are only allowed to work up to four years in Thailand by registering for a two year visa that can be renewed once for another two years. Originally, under the MOU, migrants whose four year visa expired were required to return home for three years before being eligible to return to Thailand for work. However, once the first round of four years ended and highly trained migrants were required to return home, the poor planning of this policy became evident and employers complained. Changes to the policy have been raised with a proposal to do away with requirements to return home and a lifting of limitations on visas, but the proposal, at the time of publication of this report, has not yet been approved by the Cabinet due to political instability.

Migrant policy is focused primarily around migrants registering with relevant documents including a work permit. A common policy that arises periodically is similar to a registration amnesty, which allows all undocumented migrants a chance to enter the system without penalty. However, this type of registration is not open year round and is usually announced only one month in advance. The government also only allows a brief period for migrants to register, such as 60-90 days, as a result the government commonly has to extend deadlines. Once a registration is closed, it is commonly followed by crackdowns that entail arrest, detention and deportation.

There is no clear, long-range migration policy in Thailand. However, since the initiation of migrant management policies, the type of document, the process for obtaining these documents and relevant fees have changed regularly over time. Unfortunately, the changes to migrant policy have not addressed issues of improving migrants' rights. Instead changes have increased the fees and the number of bureaucratic steps it takes to register, leaving increasing room for employers and brokers to take advantage of migrants by overcharging them to assist with navigating the registration process.

*“Changes to migrant registration policy have not addressed issues of improving migrants’ rights. Instead changes have increased the fees and the number of bureaucratic steps it takes to register.”*

**TABLE 1: NUMBER OF MIGRANT WORKERS BY TYPE OF REGISTRATION (2011-13)**

CABINET RESOLUTION YEAR	NUMBER OF FULLY REGISTERED MW	TYPE OF REGISTRATION		
		Annual Waiver	Nationality Verification (NV)	Imported Labor (MOU)
2011 (Cabinet resolution providing amnesty registration)	1,825,658	1,248,064	505,238	72,356
2012	994,749	167,881	733,609	93,265
2013	1,105,528 (an additional 252,019 were in process for NV)	19,850	917,212	168,486 (approximately 26% from Myanmar) <sup>22</sup>

Source: Kantayaporn, T. and Mallik, S., 2013. p.30.

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*“A worker’s registration status is linked to the employer, making it difficult for a migrant to leave an abusive situation.”*

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One aspect that severely weakens migrants’ rights is the fact that their registration status is linked to the employer, making it difficult for a migrant to leave an abusive situation. The process for changing employers is also cumbersome and requires the former employer to sign a release letter while only giving the migrant one week (seven days) to find a new employer. Many employers and recruitment brokers are known to withhold these documents as a guarantee that the migrant will not run away seeking better working conditions or wages. Migrants who decide to remain undocumented or intentionally become undocumented by running away from employers then face exploitation by new employers and police, as well as potentially being arrested, detained and deported for being an “illegal alien”.

In practice, the overall process of becoming legally registered includes registering for a temporary passport, work permit, visa, and healthcare, and should only cost around 4,000 THB (97 EUR) for migrants entering the NV system, but in reality costs migrants around 10,000-12,000 THB (242-291 EUR). The exorbitant cost is mainly because brokers are hired to assist, and because of travel required to access service points, termed “One stop service centres.” Those entering through the MOU from their home countries pay even more, close to 25,000 THB (606 EUR). Migrant workers cannot afford this amount upfront, so they often repay the fees to the employer through deductions of their wages, typically anywhere from 500-1000 THB (12-24 EUR) per month, often without proper record keeping which results in overpayment that is never reimbursed.

The fronting of the fees by employers has numerous repercussions:

- Employers do not want the workers to run away before they have repaid the fees, so employers tend to keep migrants’ original documents and give a photocopy to workers.
- Employers often continue to withhold migrant workers’ legal documents even after a worker has paid the employer back in full for the cost of registration. The employer does this in order to limit the worker’s mobility and prevent the worker from seeking employment elsewhere.
- The formal process of changing employers is very difficult as the employer needs to sign a document allowing the migrant to leave. Then the worker is only given one week to find a new employer who is willing to go through the trouble of registering the worker before being considered “illegal”.

Not being able to hold their own documents makes it dangerous for workers to venture outside the factory premises. They are particularly vulnerable to extortion by local police. Workers found without their permits, even if they have a photocopy on hand, usually must pay a bribe. Those who are not able to pay the bribe may be taken to jail. If the employer cannot be reached or fails to show any registration on behalf of the worker, the worker can be deported.

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It is this environment of extortion and severe policing that allows employers to easily constrain workers' daily movements, to the point where workers - particularly unregistered ones - are commonly confined to the factories in which they work and rarely exercise any freedom of movement.

The dependence of workers on their employers and the unequal power-relations between them makes workers especially vulnerable to human rights and labour rights violations, including: mandatory, excessive working hours, often without any overtime payment; payment below the minimum wage; lack of safe working and living conditions; and deductions for basic necessities including room and board and utilities. The unequal balance of power is further exacerbated by barriers to migrant workers forming unions themselves. By Thai law migrant workers are not allowed to form or take up positions within a trade union. In Mae Sot, where the absolute majority of workers are migrants, no unions are registered or active.

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*“The dependence of workers on their employers makes workers especially vulnerable to human rights and labour rights violations.”*





As of 2014, adult migrants pay 500 THB (12 EUR) for the required medical examination, and 1,600 THB (39 EUR) for a year of health insurance coverage.

## CHAPTER FOUR

# THE MIGRANT HEALTH INSURANCE PLAN AND SOCIAL SECURITY

*A health insurance program for registered migrant workers has been in place since 1997. It has always consisted of a health exam for specific conditions<sup>23</sup> and health care coverage for a standard set of conditions at a designated hospital. Conditions requiring long-term treatment are excluded.*

MIGRANTS USUALLY PAY the fees for the health test and insurance at one time as part of the annual registration which migrants enter preceding entering the Nationality Verification system.

The fees for health insurance have stayed relatively static for a number of years but have recently fluctuated. As of 2014, adult migrants pay 500 THB (12 EUR) for the required medical examination, and 1,600 THB (39 EUR) for a full year of health insurance coverage (there are also 3 and 6 month plans available for seasonal workers), coming to a total of 2,100 THB (51 EUR).

Since November 2010, the Social Security Office of Thailand announced that migrant workers holding temporary passports and working in

formal sectors would be able to enter the social security system and receive the same benefits as Thais. Originally this was only intended for those entering through the MOU, but was expanded to be included as an option to migrants with a temporary passport.

In order to enrol under the Social Security program, each month the employer must send the equivalent of 10 percent of the employees' monthly salary to the Social Security office: 5 percent of which is deducted from the migrant's wages, and the other 5 percent is contributed by the employer. Migrants who enrolled would then supposedly be able to access the seven benefits of social security, including the Workmen's Compensation Fund, giving them the same rights as Thai workers<sup>24</sup>.

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*“Due to numerous obstacles in accessing the system, the number of migrants who have Social Security is limited.”*

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On May 28, 2013, Mr Somkiat Chawatsriwong, Permanent Secretary to Ministry of Labour, announced that after studying ILO obligations, he believed that a separate social security system with fewer benefits should be set up for migrant workers. Women in particular were targeted for restricted rights. While women would still be able to claim the costs of giving birth, they would not receive benefits for maternity leave or child allowance.

Mr. Somkiat said that migrants should know that they are only coming to Thailand to work temporarily and are not supposed to establish a family or permanent life in the country. He also said that migrants were not eligible for unemployment benefits, because migrants are not permitted to remain in the country for longer than seven days if they are unemployed. He proposed giving migrants a lump sum instead of monthly pensions<sup>25</sup>. While this separate Social Security system has not been enacted, it is an illustration of the reluctance to recognize migrants equal rights to social welfare<sup>26</sup>.

Due to numerous obstacles in accessing the system, the number of migrants who have Social Security is limited. There are two main reasons for this: firstly, in order for migrants to be eligible for benefits, their employers must enrol them and make monthly contributions: secondly, Social Security is more expensive than the Migrant Health Insurance Plan, and the migrant, along with the employer, may make the decision to register with the annual migrant health insurance plan to save money.





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Leaving the responsibility to enrol in Social Security solely up to the employer is problematic because employers may not tell their employees about this option, and because migrants have no way of proving whether they have been enrolled or not. In the latter case, an employer may not enrol his or her migrant workers into the Social Security system because they do not want (or are unable) to pay their part of the contribution.

There are also cases of employers telling their migrant employees that they are deducting the requisite 5 percent of their monthly pay for Social Security, but never actually enrol the workers in Social Security, in effect, stealing their money. These migrant workers are left without any health insurance coverage. Contributing to this, the employer is not held accountable for not enrolling their migrant employees in Social Security. It is also common that when a migrant registers under a false employer's name, which happens frequently with brokers, the migrant receives no coverage.

On the other hand, for those migrants who choose the health insurance policy over Social Security, they are making a calculated decision that entails weighing short-term versus long-term benefits, and in-part reflects the sense of "temporary-ness" that the Thai government wishes to instil in migrants.

By paying more for Social Security, the benefits that are supposed to be available include:

- Full health treatment (but no preventative health)
- Payment of death benefits to immediate relative
- Disabilities payment
- Antenatal care, birth and maternity leave, child support
- Unemployment benefits and retirement pension

Whereas migrant who pay for the health insurance get only health related benefits, including treatment for a core set of health conditions but not chronic conditions, and preventative healthcare. (For example HIV treatment is available under Social Security, but has not been provided under the health insurance yet.)

Insurance is purchased per person and needs to be renewed each year, accompanied by the health exam. Since workers must pay 5 percent of their monthly wage to the Social Security fund for as long as they work, this typically exceeds the annual 2,100 THB (51 EUR) that migrant workers would pay for one year of the Migrant Health Insurance Plan (as of August 2014). For instance, if a worker were making only 5,000 THB (121 EUR) per month, which is much lower than the legal minimum wage, the worker would still be required to pay 3,000 THB (72.2 EUR) per year for Social Security - more than the Migrant Health Insurance Plan. If the worker made more than 5,000 THB (121 EUR) per month, he or she would be paying even more for Social Security.

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*“There are also cases of employers telling their migrant employees that they are deducting 5 percent of their monthly pay for Social Security, but never actually enrol the workers.”*

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*“As of August 2013, there were 357,643 migrant workers enrolled in Social Security- 46 percent of those who were eligible.”*

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Additionally, there is a lag period of three months from the initial payment before social security benefits are available. To fill this gap, migrants awaiting Social Security benefits to kick-in are obliged to pay 500 THB (12 EUR) for three months of health coverage. Moreover, due to the short-term nature of workers’ contracts and the seven-day restriction on migrant workers’ unemployment, migrant workers cannot access the long-term benefits of Social Security. There is also no system for transferring the long-term benefits such as the pension, even though it can supposedly be claimed if a person leaves the country. As such, this leaves few incentives for migrants to participate in the Social Security system. As of August 2013, there were 357,643 migrant workers enrolled in Social Security (only 46 percent of those who were eligible in Thailand)<sup>27</sup>.

### **MAP WORKER SURVEY**


For this report 58 migrant factory workers (32 female and 26 male) from 10 different factories (six garment factories and four knitting factories) in Mae Sot were interviewed: all were properly documented and therefore legally eligible for Social Security. Yet over 90 percent said that they either had absolutely no idea whether they qualified for Social Security, or said that they had not been able to access the Social Security system because their employers did not enrol them.

Only nine workers (16 percent) said that they were contributing monthly to Social Security, and only one (2 percent) indicated using the Social Security card for health services. In at least three cases, migrants were required to contribute 4 percent of their salaries to Social Security (under a temporary measure the percentage was reduced from 5 to 4 percent) while also paying 1900 THB (46 EUR) to enter into a one-year migrant health insurance plan (during one of the recent price fluctuations). Essentially, these migrants were paying twice for health benefits, provided that the time of coverage overlapped. All registered migrants surveyed who were not contributing to the Social Security system had purchased the annual migrant health insurance plan except for one individual.



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*“When a migrant registers under a false employer’s name, which happens frequently with brokers, the migrant receives no coverage.”*



Migrant women are denied paid maternity leave, contravening Section 57 of the Thai Labour Protection Act of 1998.

## CHAPTER FIVE

# GENDER DISCRIMINATION

*It is common knowledge that the garment industry in Thailand is predominantly composed of young female migrant workers. While no immediate numbers are available on gender breakdown of workers in garment factories, it can be estimated through extrapolation that women may out-number men by at least 2:1. In 2012, when the last meaningful disaggregated data was made available, 23,062 of the 35,984 migrants registered in Tak Province were women<sup>28</sup>.*

MOST FACTORY WORKERS live on factory compounds the entire time and are restricted to their immediate surroundings. They have little contact with family, are isolated from the community, and enjoy little if any access to medical services, although they do find time to socialize with colleagues on and off the compound.

Condoms and birth control measures are not commonly provided in factories. Like all migrant workers, female migrant workers are not given time off to visit a doctor. This makes accessing sexual and reproductive health services especially difficult. If a woman suspects she is pregnant and wants to seek out pre-natal care, she does so at the expense of losing a day's wages, transportation, and the possibility of losing her job if her employer finds out. As a woman's pregnancy advances, she

may be dismissed or forced to take temporary leave. Dismissal on the grounds of pregnancy specifically violates Section 43 of Thailand's Labour Protection Act of 1998, yet is never upheld for migrant workers, as employers commonly make up other reasons for dismissing the women in order to circumvent the law.

Migrant women are also denied paid maternity leave, contravening Section 57 of the Labour Protection Act of 1998, which requires that employers pay at least 45 days out of a potential 90 days of maternity leave. If the woman does decide to return to the factory after giving birth, commonly she will find that her position has been given to someone else, and has effectively been turned away from her from job without severance pay.

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*“Authorities have publicly threatened on numerous occasions to deport migrant women who are found to be pregnant.”*

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The Thai Government has also been complicit in the mistreatment of pregnant migrant women. Authorities have publicly threatened on numerous occasions to deport migrant women who are found to be pregnant. Pregnancy is tested in the health exam for registration with a work permit, and even though it is not considered an exclusionary condition, the employer sees the results. The testing, paired with periodic threats of deportation for pregnancy, commonly results in an upsurge of migrant women seeking out unsafe abortions after these announcements are made. Unsafe abortion is especially common among migrants from Myanmar who go to midwives, many of whom are located on the Myanmar side and use dangerous techniques. Commonly this results in complications such as haemorrhaging and other negative health outcomes that endanger the women’s lives or reproductive health.

### **WORKER PERSPECTIVE: SWE SWE MYINT & AUNG SI THU**

Swe Swe Myint is 33 years old. She crossed the border from Burma simply by taking a boat. Swe Swe has been living in Thailand and working in the same garment factory for the past five years but is unaware of the brands of clothes she sews. She has a passport and a work permit, but only knows her employer by his nickname. She cannot read her contract and does not have a copy of it. Swe Swe works long hours and does not get any days off, apart from pay day. Although she knows that the legal minimum wage is 300 THB (7.27 EUR) per day, she only receives 120 THB (2.9 EUR) per day. There are also deductions from her salary to cover living costs at the factory. She does not get the legal minimum wage, “because I am not Thai” and feels that the Social Security system does not give her the same benefits as Thai people for the same reason. Although Swe Swe says she got “maternity leave” she was actually fired from her job. She was then told that she can re-apply for the job after she gives birth, but her place was not saved. Some workers get re-employed, some do not. Although she had health insurance and gave birth in the hospital, she had to pay for the delivery. Delivery is supposed to be covered by the insurance, but because she lost her job she no longer had rights to insurance. In the face of this inequity, Swe Swe asserts: “We have to be good to the employer, we need to work hard, and we need to strive for justice.”

Aung Si Thu, a young man of 20 years old from Mawlamyine in Mon State who came to Mae Sot a year ago, has been working in the Mae Pa 4 garment factory sewing clothes for the last five months. He does not know the brand of clothes he helps produce. His contract is for three months, is written in Burmese, and he has a copy. He also has health insurance. Aung Si Thu says he is paid 300 THB (7.27 EUR) per day, but also that he is paid per piece. He “fulfils his quota to get the full pay rate,” he explains further. Working in a seemingly exemplary factory, Aung Si Thu works eight hours a day and gets 50 THB (1.2 EUR) per hour when he does OT. Sundays are a day off along with 13 public holidays. He thinks that migrants “need to work hard” to ensure that they are treated with respect and receive their rights.


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Women migrant workers in factories and other occupations are also known to suffer sexual harassment and verbal abuse at the hands of managers and co-workers, but less so these days. One survey of 400 migrant women from Myanmar in the Mae Sot and Pro Pra regions found that 56 percent of them had not suffered from any work violations or forms of violence in the work place. Out of the total number of respondents who had suffered violence, less than 1 percent had suffered sexual harassment at work. However, almost 30 percent of women reportedly had been prevented from getting pregnant by their employer; 15 percent had suffered verbal harassment; 10 percent had been fired for pregnancy; 7 percent did not have permission to take maternity leave; 6.5 percent lost their job after maternity leave; and 4.5 percent were compelled to do work that was unsafe during pregnancy<sup>29</sup>.

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*“Dismissal on the grounds of pregnancy specifically violates Section 43 of Thailand’s Labour Protection Act of 1998, yet is never upheld for migrant workers.”*





Although migrant workers are currently entitled to the minimum wage they are typically paid between 150-180 THB (3.6-4.36 EUR) per day.



## CHAPTER SIX

# MINIMUM WAGE AND WORKING HOURS

*In January 2013, Thailand raised its minimum wage nationwide to 300 THB (7.27 EUR) a day<sup>30</sup>. The new system, introduced by then-Prime Minister Yingluck Shinawatra to fulfil part of her 2011 election campaign, raised the minimum wage across the country to a single standard. Previously, each province in Thailand set its own minimum wage according to the stage of local economic development or average living costs.<sup>31</sup>*

THE PREVIOUS PRO-RATED minimum wage system had made rural areas more attractive for industrial investment as they could provide lower wages. In January 2011, Tak Province's minimum wage was 162 THB (3.9 EUR), compared to 215 (5.2 EUR) in Bangkok; in April 2012, it was adjusted to 226 THB (5.5 EUR) per day as the first steps in complying with the planned new minimum wage. As of 2013, the minimum wage in Tak Province should be 300 THB (7.27 EUR).

Supposedly, the minimum wage applies to every worker, regardless of age, sex, industry, or nationality. Employers convicted of failing to pay the minimum wage supposedly face six months in jail and/or a 100,000 THB (2,423 EUR) fine<sup>32</sup>. The reality is that a significant portion of migrant workers never receive the minimum wage<sup>33</sup>. There is also no record of an employer who has been jailed or fined to the extent that the law

lays out for failing to pay the minimum wage to migrant workers, although there have been successful larger suits for non-payment of wages. Most commonly when migrant workers negotiate for wage payments, even though the Labour Protection Office is involved, negotiations are made informally, and settlements typically start at the legal minimum wage and are negotiated down from there.

Although migrant workers are currently entitled to the minimum wage, they are typically paid between 150-180 THB (3.6-4.36 EUR) per day. This is, according to interviews by MAP, in contrast to the few Thai nationals working in garment factories who reportedly receive the legal minimum wage. Paid monthly, migrants commonly have deductions made for food and lodging by the factory, resulting in very little left over, most of which is either saved or remitted back home.

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*“The minimum wage applies to every worker, regardless of age, sex, industry, or nationality - in reality a significant portion of migrant workers never receive it.”*

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Workers are also commonly required to work overtime. On average, migrants work almost 11 hours a day, and sometimes between 12-16 hours during peak periods or deadlines. Yet, they only receive on average approximately 16 THB (0.40 EUR) per hour or less for overtime<sup>34</sup>, when legally they should be receiving 56 THB (1.42 EUR) per hour.

The new minimum wage was first implemented in seven provinces on May 1, 2012, including Bangkok. This immediately ignited debate among employers, labour unions, government ministries, and academics<sup>35</sup>. Among the many arguments, it was expressed that small and medium enterprises (SMEs) would not be able to support the costs of the new minimum wage. Private sector bodies called on the government to set up a compensation fund for Thai businesses, particularly for SMEs, to alleviate the impact of the wage increase<sup>36</sup>. Although the government rejected that idea, it instead implemented a number of other measures including: reducing employers' contributions to the Social Security fund from 5 to 4 percent; reducing the withholding tax for SMEs from 3 to 2 percent; and reducing corporate income tax from 30 to 20 percent.

The response from owners has been to start moving to other countries with lower labour costs. The President of the Thai Garment Manufacturers Association, Sukij Kongpiyacharn, claimed that the general increase in the minimum wage had encouraged Thailand's fifteen largest garment manufacturers to relocate to neighbouring countries, with many of them shifting operations to Myanmar<sup>37</sup>.

Producers that have remained in Thailand tend to utilize illicit tactics to maximize revenue. For example, a company may dismiss most of its employees at a factory but continue operating it. The company then creates a separate, unregistered production facility and transfers the laid-off workers there, where they are forced to work for less than the minimum wage. The workers will continue to work for less than minimum wage

### **EMPLOYER RESPONSE: RELOCATION RATHER THAN PAYING MINIMUM WAGE**

“According to Thaveekij Jaturajaroenkun, the Chairman of TK Garment, the higher minimum wage in Thailand makes it difficult to run a profitable business. They are now building a factory in Banteay Meanchey province in neighbouring Cambodia. “We have a labour-intensive garment-manufacturing facility in Mae Sot district, Tak province, which previously benefited from lower labour costs,” Thaveekij argued. “However, with the government’s policy to increase the minimum [daily] wage to 300 THB (7.27 EUR), which will be applied in outer provinces by next year, investments in Mae Sot will get no benefit from cheap labour anymore.” He continues: “Investments close to the border in neighbouring countries such as Cambodia will bring an advantage, as minimum wages in those areas are still between 1,575 - 1,890 THB (38 – 45.8 EUR) a month. They have been awarded GSP [Generalised System of Preferences] privileges of between 15-17 percent for exports to Europe.”<sup>38</sup>”

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as they are essentially tied to this employer due to the way that Thai migrant policies have been established<sup>39</sup>. More often than not, however, employers do not have to go to this extent; they just do not pay the minimum wage and get away with it due to lack of enforcement and a number of barriers migrants face in seeking justice.

There are many ways that employers skirt the law, but the reality is that employers operate with impunity when it comes to the legal minimum wage. This often does not change even once officials are notified about the transgressions. MAP has a legal team that takes on dozens of cases each year, the majority of which have to do with wages: failure to pay the minimum wage, failure to pay wages at all, failure to comply with a wage agreement (contract or otherwise), et cetera.

## MINIMUM WAGES VERSUS TAKE-HOME WAGES

Out of the 58 different migrant workers from 10 different factories in Mae Sot that MAP interviewed for this research, only one person (2 percent) was receiving the daily minimum wage. This person worked at a knitting factory. There were six individuals (10 percent) who were paid per every dozen articles that they made, and three of these individuals occasionally made the minimum wage - if they were productive enough. This means that 88 percent of the workers surveyed never brought home the minimum wage. Rather, the average daily take-home wage was approximately 170 THB (4 EUR).

One person, an 18 year-old female, was paid as low as 100 THB (2.4 EUR) per day, and another was paid only 120 THB (2.9 EUR) per day. The garment factory workers were working, on average, close to 11 hours per day, and the majority did not get paid for overtime. Those who did get paid for overtime were receiving between 7 to 25 THB (0.17- 0.60 EUR) an hour. Section 61 of the Thai Labour Protection Act puts the overtime rate at 1.5 the hourly amount, meaning they should be receiving at least 56 THB (1.3 EUR) per hour.

In general, wages have remained flat while living costs have increased. Factory workers are often compelled to live in factory compounds and pay for food and accommodation at artificially inflated prices. Each month workers are subjected to pay deductions for accommodations, electricity, water, and food (typically plain rice, for which they must then purchase their own curries). These total deductions may range from 200-2,500 THB (4.8 – 60.5 EUR) per month / per person – or up to 100 THB (2.4 EUR) per day. In many cases, this is in addition to the 500-1,000 THB ( 12– 24 EUR) per month being deducted from migrants who are still paying back their employer for the fronted fees for registration documents such as passport and work permit.

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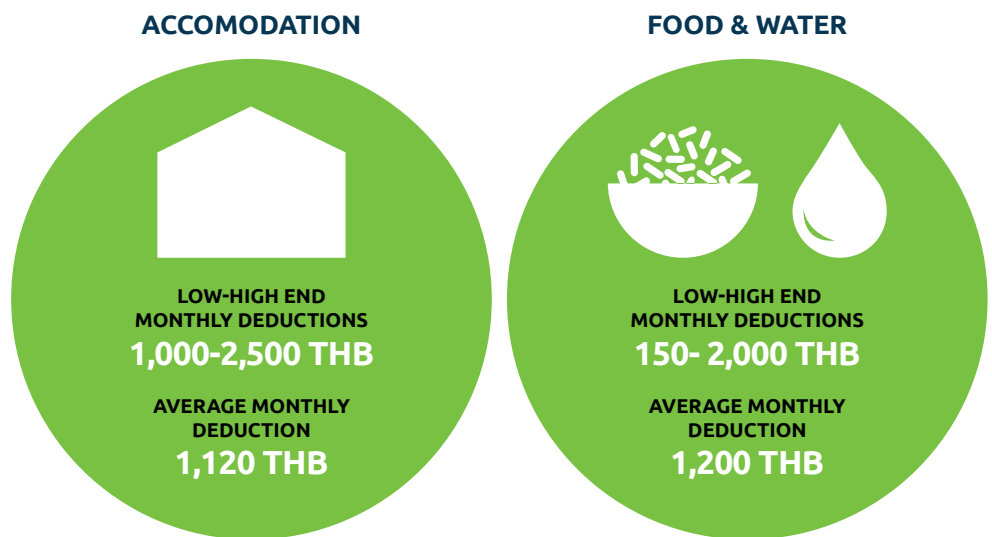
*“There are many ways that employers skirt the law, but the reality is that employers operate with impunity when it comes to the legal minimum wage.”*

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*“Paid monthly, migrants commonly have deductions made for food and lodging by the factory, resulting in very little left over, most of which is either saved or remitted back home.”*

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**TABLE 2: DEDUCTIONS FOR ROOM AND BOARD (MAP RESEARCH)**



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Typically, the amount deducted for living expenses is agreed upon informally with the employer. The use of electricity and water is limited, however, and due to restrictions, workers are often unable to use their own cooking stoves and have barely any light in their tight living quarters. When workers try to challenge this status quo, they are faced with numerous obstacles, especially those who are undocumented.

Those who are documented generally fare no better. Workers can file a complaint at the Thai Labour Protection Office (LPO), but that requires taking time off work, arousing suspicions of the employer, and/or may lead to retaliation from the employer, i.e. dismissal. There are a few NGOs, such as MAP, that offer legal support, providing advice on how to proceed in these situations and liaising with the Labour Protection Office. However, even with this assistance the process is slow.

The LPO may send representatives to inspect the factory, but in many instances nothing will be done after evaluating the factory and speaking with the employer. On occasions LPO representatives have asked MAP's legal staff not to come to the factory when they are doing evaluations, raising concerns over transparency. Sometimes the workers are left to negotiate with the employer on their own, which is a highly inequitable arrangement. Sometimes the LPO does help to negotiate a settlement; however, as mentioned, the starting point for negotiation is commonly the legal minimum wage and is typically negotiated down to a sum suitable to the employer, which is nevertheless only slightly above what the employee was previously earning.

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## PAY SLIPS

Most garment workers are not given pay slips. Those who are given pay slips fail to hold onto them, because they do not feel the need to keep them as a form of documentation. Moreover, MAP's legal team has found that employers often give pay slips that do not actually reflect the amount of money given to the worker, as the employer does not indicate money subtracted for food, housing, electricity, registration costs, et cetera. Employers may also write the pay slips to make it seem as if they are paying more than they do so that they appear to be in line with the minimum wage. Out of the 58 people interviewed in the 10 different factories, 21 (36 percent) said that they had received pay slips (four of them indicating that they had supporting documentation because they transferred payment through bank accounts). However, none of these individuals had pay slips to show since they had all misplaced or disposed of them.

## REMITTANCES

Migrants significantly contribute to their families' economies back home through remittances. According to surveys done in 2008 (524 interviewees) and in 2009 (209 interviewees), Myanmar migrants reported sending an average remittance of 19,000 THB (460 EUR) per year<sup>40</sup> and 34,000 THB (823 EUR) per year<sup>41</sup> respectively.

For this research, only a handful of migrants indicated that they were remitting money home, and they were women. The few who did remit money home indicated they were sending between 3,000 - 3,500 THB (72.4-84.75 EUR) a month.

A 2012 study by the Institute of Developing Economies (IDE-JETRO) estimated that approximately half of Burmese migrants sent remittances through brokers, who then deducted a broker fee. Twenty percent sent remittances through relatives or friends, and around seven percent carried the money back themselves when they returned to Myanmar<sup>42</sup>.

## CONTRACTS

On average, the 58 individuals interviewed in Mae Sot had been working at their factories for 3 years, 25 (43 percent) stated they had signed contracts with their employers, specifying the amount of time for which they have been hired. Six of these individuals had agreed to work one year; the other 19 had agreed to two-year terms. None of them had copies of the contracts to show. At least 10 of the 25 (40 percent) stated that their bosses kept the contracts and that they were not given a copy. Others said that they did not understand the full importance of keeping the contract and had thus disposed of it or misplaced it.

Even when workers sign a contract, it is common practice for the boss to list a fake employer's name. Most workers surveyed did not know their real employer's name, regardless of whether a contract had been signed or not. The lack of contract and/or listing of a false name leaves further room for the employer to do as he/she wishes, as it is common that terms of employment (work hours, pay arrangement, severance pay) are not established in the contract and are made by verbal agreement instead.

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*“MAP’s legal team has found that employers often give pay slips that do not actually reflect the amount of money given to the worker, as the employer does not indicate money subtracted for food, housing, electricity etc.”*

## CASE STUDY

### GAINING GROUND HERE, LOSING GROUND THERE

Since late March 2014, MAP has been working in conjunction with Yaung Chi Oo Workers' Association (YCOWA), Foundation for Education and Development (FED), Arakan Workers' Union, and Clean Clothes Campaign on a case involving approximately 500 migrant garment factory workers in Mae Sot.

The workers were demanding the legal minimum wage from their employer, among other grievances. They had only been receiving around 170-190 THB (4 -4.6 EUR) per day, depending on the number of years spent working at the factory. The factory is owned by two Thai individuals and one Chinese individual. The Thai workers at the garment factory were all receiving 300 THB (7.24 EUR) per day in accordance with the legal minimum wage.

Originally the workers had tried striking, but the employer threatened to fire anyone who continued to strike. It was at this point that MAP Foundation became involved. The workers were to select seven workers among themselves to represent their interests, and ended up with 17 representatives. MAP, along with the other organizations involved, arranged to meet regularly with the workers at a specified location offsite. MAP helped the workers write a letter to the employer (translated from Burmese into Thai), which laid out the workers grievances and demands. Here is a condensed version of the demands:

- 1 Post work rules in both Burmese and Thai
- 2 Reduce the daily workload
- 3 Pay the minimum wage
- 4 Provide paid sick leave
- 5 Let registered workers keep their own documents in their possession (Only half of the workforce was documented, and registration of workers was the responsibility of the employer)
- 6 Provide paid maternity leave for 45 days, in accordance with the law
- 7 Pay wages regularly on a specific date

A settlement was then negotiated between the employer and the workers, and the employer agreed to raise the wages by approximately 20 THB (0.48 EUR), to a total of 190 THB (4.6 EUR), still significantly far below the minimum wage. The employer refused to address any of the other grievances. Following consultation with MAP, the workers decided to stop working. The following day, they arrived at the factory to find that the factory was temporarily closed. The Labour Protection Office (LPO) was notified, visited the factory, and took no formal action. The LPO also refused MAP's legal counsel the opportunity to accompany the LPO's factory visit.

The workers were able to identify one of the brands for which they manufacture garments. The brand, Jack Wolfskin, sent an auditor and a brand representative to visit the factory. Identifying the brand has put additional pressure on the employer to fall in line with the law. However, the negotiation process has been a long and arduous one. December 2014, yet the majority of the workers still lacked a formal contract or work permit.

On May 10, 2014, the workers reported that they had started receiving 300 THB (7.24 EUR) wages for the first time, making the factory the first garment factory in Mae Sot that, to MAP's knowledge, paid workers the legal minimum wage.<sup>42</sup> However, immediately new issues arose: the employer reportedly no longer paid the workers any overtime wages. Moreover, the employer continued deducting a certain percentage of money for an ambiguous "tax," which MAP's legal team said is not in accordance with the law. These pay deductions are in addition to the agreed-upon deductions for accommodations, electricity, water, and food, which amount to around 800 THB (19.37 EUR) per month.

## CASE STUDY

### WILD CAT STRIKE AT THE SD FASHION/IDEA GARMENT FACTORY<sup>43</sup>

On Friday, the 4<sup>th</sup> of May 2012, about 500 migrant workers from Myanmar employed at the SD Fashion/Idea Garment (SD) factory in Mae Sot, Tak Province, claimed victory in the struggle against their employer for increased wages and improved living and working conditions. As a result of a two-day wildcat strike they achieved a doubling of their wages.

Most of the day-rate workers had been earning 75 THB (1.8 EUR) for a daily shift working from 8:00 am to 9:00 pm. The wage was far below the legal minimum wage in Tak Province, which had recently increased from 162 to 226 THB (3.9 -5.47 EUR). From 9:00 pm onwards these workers received overtime pay at a rate of 7.5 THB (0.18 EUR) an hour; however, most factories in Mae Sot began overtime pay at 6:00 pm, meaning that the three hours from 6:00 to 9:00 pm were for the SD workers unpaid, forced overtime. The workers also complained of grossly unhygienic sanitation facilities, a lack of water in the washrooms, and the fact that there was no door on the toilet. They approached the employer on 8 April with their complaints, but were rejected.

Some of these workers attended a local May Day rally in Mae Sot where they ran into colleagues from Royal Knitting, another Mae Sot-based garment factory, which a couple of weeks prior had won

a wage increase to 155 THB (3.75 EUR) per day through collective action. The Royal and SD workers discussed common grievances and how they engaged in collective bargaining. Encouraged by the May Day rally and the discussion with the Royal Knitting factory workers, the SD workers organised themselves that night in order to carry out a wildcat strike the next day if their demands remained unmet.

By 11:30 the next morning word reached workers throughout the factory that the employer was not going to make any concessions. Thus, as planned, the wildcat action began with workers in the knitting department shutting off their lights and walking out followed by all the other departments. The workers' chosen representatives then approached the manager to issue their demands. The employer again rejected their demands, so the workers remained on strike and contacted the Mae Sot branch of the Thai Labour Protection Office (LPO), which sent a lawyer to meet with the factory manager.

The next day workers met with the Yaung Chi Oo Workers Association and the Joint Action Committee for Burmese Affairs (JACBA) before going to negotiations at the Labour Protection Office. When negotiations finished at around 1:00 pm, both sides signed an agreement under the auspices of the Labour Protection Office with the following conditions:

- 1 The base daily wage was increased to 155 THB per day (with wages of higher paid workers increasing commensurately)
- 2 The piece rate was increased by 20 percent
- 3 The standard shift for the daily wage was shortened to 8:00 am – 5:00 pm
- 4 Management would address workers' concerns about the lack of water and poor sanitation facilities
- 5 No workers would be fired for taking part in the action

While the new wage rate was doubled, but still remained far below the official minimum wage at that time (and below the pre-1 April rate), the SD workers involved in this action were generally satisfied with the final agreement.

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*When factories close, workers typically are not outright forced to relocate but rather must decide whether they will follow the employer or find a new job.*

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## ISSUES OF UNIONIZATION AND COLLECTIVE BARGAINING AGREEMENTS (CBAS)

The Thai labour force is largely non-unionized, with less than four percent (3.7 percent) or around 330,000 Thai workers being members of trade unions<sup>44</sup>. Regardless the limited numbers of union members, 2008 was a testament to the power of collective bargaining when most of the demands (75 percent or 174 out of 234 cases) made for improved working conditions in Thailand were made by labour unions<sup>45</sup>.

Not coincidentally, migrant workers lack the legal right to form trade unions and cannot hold leadership roles in unions. Under the Thai Labour Protection Act of 1998, only Thai nationals may form unions, and thus migrant workers may only join unions formed and led by Thais. Moreover, most of the labour unions are concentrated in the Bangkok Metropolitan area and surrounding provinces. Not only that, many unions established by Thai workers are xenophobic and harbour anti-migrant sentiments. Thai unions commonly view migrant workers as a threat to both job and national security, with the only Thai union known to have migrant members being for dock workers<sup>46</sup>.

An underlying problem is that Thailand has not ratified the International Labour Organisation's Conventions 87 and 98 on freedom of association and collective bargaining. In October 2013, following a 3,000-person rally made up of workers from national federations, unions, networks of migrant workers, informal workers, and allied organizations, the Deputy Prime Minister signed a Memorandum of Understanding with leaders of the Thai labour movement agreeing to ratify the two conventions by May 1st, 2014. However, early 2014 the Thai government became embroiled in political turmoil, and May 1st came and passed without ratification of the conventions.

According to Section 13 of the Thai Labour Relations Act, collective bargaining agreements must be negotiated and signed by individuals representing the employees - elected by a minimum 15 percent of the workforce - and by employers, represented by the director, shareholder, regular employee or Committee member. When migrant factory workers in Mae Sot have elected leaders to collectively negotiate and initiated the process through a work stoppage or strike, they have commonly been faced with threats by employers to dismiss, arrest and deport them if they do not return to work. When dismissed unfairly, migrant workers are generally reluctant to seek out justice because they feel that they have no leverage. This happens to both registered and unregistered migrant workers and is part of the environment of fear that pervades this border area.

There have, however, been attempts to organize migrants. While NGOs such as Thai Labour Campaign and Thai Labour Solidarity Committee (TLSC) raise awareness among Thai labour of the need for solidarity with migrant workers, there are also a number of migrant worker organizations, such as the Yaung Chi Oo Workers Association and the Joint Action Committee for Burmese Affairs (JACBA), that help to organize migrant workers or provide support to migrants who want to collectively bargain. As testimony to the agency migrant



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workers can muster when they organize, there is a history of cases of wild cat strikes and other actions where migrants have successfully negotiated for improved conditions or pay with their employer. The problem is that these often result in temporary and miniscule gains as compared to being fully recognized and protected under labour laws.

## RELOCATING FROM THE BORDER

In terms of relocation and migrants, MAP has been faced with a number of cases where garment factories were suddenly closed, without any prior notification given to the migrant workers. The factories were moved to other sites, in different provinces, such as Bangkok. In these cases, workers typically are not outright forced to relocate but rather must decide whether they will follow the employer (if they know where the employer has moved to) or if they will seek out a new job. However, more often than not, the workers have no insight as to where the employer has gone or why the factory closed. The workers are suddenly unemployed, unable to claim severance benefits, and are forced to find new jobs within seven days or else they again become “illegal.”

### CASE STUDY

#### MOVING TO BANGKOK

MAP was contacted by a group of Burmese migrant workers who were working at a factory in Mae Sot. The workers were demanding that the employer abide by the minimum wage. The employer responded that the workers should move to his other factory in Bangkok if they were keen on 300 THB (7.24 EUR) per day – perpetuating a myth that workers in Bangkok and other prominent urban areas are entitled to higher wages, even though the minimum wage is now the same across all the country. The workers retorted that they should not have to move; workers in Mae Sot were also entitled to the 300 THB (7.24 EUR) wage.

MAP’s legal advisor instructed the workers to demand that the employer pay for transportation, accommodations, and any other expenses incurred if the workers decided to move to Bangkok. The employer was reluctant to acquiesce so the workers decided to bring the case to the Labour Protection Office. After taking this step, the employer agreed to pay for the requested costs but only enough to cover the workers, not their family members as well. For the workers who did not want to move to Bangkok under those terms, the employer agreed to slightly raise wages in Mae Sot, but still far below the minimum wage. Most workers agreed to stay, as they did not want to leave their families. Yet, even after bringing the case under the aegis of the Labour Protection Office, this settlement did not secure the legal minimum wage.

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*“Fluctuating migrant policies and the fact that a migrant’s documentation status is linked to the employer undermine migrant workers’ security and limit their liberty.”*



Migrants need to be entitled to enjoy the same rights as Thai workers under the law and in practice.

## CHAPTER SEVEN

# CONCLUSION

*This report, and the research carried out by MAP has highlighted how migrants working in textile and garment factories in Mae Sot, Tak Province of Thailand, are vulnerable to labour rights violations and exploitation including being paid less than other Thai workers, having their precious documentation confiscated, and paying too much into health and social benefit plans that they do not know how to claim.*

FLUCTUATING MIGRANT POLICIES and the fact that a migrant's documentation status is linked to the employer undermine migrant workers' security and limit their liberty. Restrictions on forming unions and collective bargaining stem from the Thai Labour Protection Act of 1998 and the fact that the Royal Thai Government has not yet ratified relevant ILO Conventions. All of these factors result in extremely poor working conditions for migrants working in the garment industry. Labour abuses are characterized by extremely long working hours, receiving wages considerably below legally set minimum wages and unfair deductions. Without legal enforcement to protect migrants' labour rights, few see the benefit of being registered, and so only a fraction have proper documents.

While organizations like the MAP Foundation and others can assist migrant workers by providing them with knowledge on labour rights and collective bargaining, these efforts will always be limited. In order to provide equity and security to migrants working in the garment and textile industry in Mae Sot, and all occupations throughout Thailand, fundamental changes need to be made to labour laws, accompanied by meaningful monitoring and enforcement. Essentially, migrants need to be entitled to enjoy the same rights as Thai workers under the law and in practice.

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*“When dismissed unfairly, migrant workers are generally reluctant to seek out justice because they feel that they have no leverage. This happens to both registered and unregistered migrant workers.”*

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**Recommendations to the Thai Royal Government on how to improve the working conditions of migrants working in the textile and garment industry in Mae Sot, Tak Province, Thailand:**

- Ratify the International Labour Organisation’s (ILO) Conventions 87 and 98 on freedom of association and collective bargaining and adjust relevant elements of the Thai Labour Protection Act of 1998 accordingly.
- Make the migrant registration system fair and accessible to all migrants, and punish employers or brokers who prevent their employees from registering or who extort them by extracting fees beyond the stipulated registration fees.
- Ensure that migrant workers receive the full minimum wage of 300 THB (7.24 EUR) a day in accordance with Thai Labour Law, and increase this wage to meet a living wage as soon as possible.
- Ensure that migrants are allowed to keep in their possession their documents, namely their passport, work permit and relevant social security card or health insurance card and punish those who withhold these documents.
- Ensure that all migrant workers in factories are given contracts with clear terms of employment that abide by the current labour standards, are in migrants’ own language and are signed by both parties.
- Ensure that migrants receive detailed pay slips, and that any additional fees are mutually agreed to in advance and are not deducted directly from wages.
- The Labour Protection Office needs to increase monitoring of labour conditions at garment factories and follow up with proper enforcement of laws and standards.
- Third parties, such as NGOs and workers’ organizations, need to be allowed to witness labour negotiations at the Labour Protections Office and contribute in a meaningful way to monitoring of labour rights.
- Ensure that Special Economic Zones and border areas are not exempt from National labour rights standards and protections.

**Recommendations to garment and textile producing companies sourcing from Thailand in general, and Mae Sot, Tak Province in particular:**

- Ensure that the take-home wages paid to (migrant) workers are in accordance with Thai Labour Law on minimum wages (currently set at 300 THB (7.24 EUR) a day), as well as meet credible living wage benchmarks for Thailand.
- Ensure that migrants are properly registered and are enrolled under Social Security or with health insurance and allowed to keep in their possession their documents, namely their passport or ID card and work permit, as well as social security or health insurance card.
- Ensure that all migrant workers in factories are given contracts with clear terms of employment that abide by the current labour standards, are in migrants’ own language and are signed by both parties.

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- Ensure that migrants receive detailed pay slips, and that any additional fees are mutually agreed to in advance and are not deducted directly from wages.
  - Take practical measures to ensure that freedom of association and the right to organise and collectively bargain are respected inside all workplaces. Where migrant workers are limited to form and join trade unions, migrant worker representatives should be allowed to negotiate wages and working conditions at a workplace level, and receive protection against retaliation equal to trade union members and representatives as stipulated in ILO convention 98.
  - Adopt responsible purchasing practices, including long term commitments to factories or other production units, and FOB prices that are sufficient to pay workers a specified living wage figure, protected in contractual agreements when placing orders.
  - Where collective bargaining agreements are not in place or cannot be negotiated, take interim measures to increase wages to living wage benchmarks and report regularly and publicly on wage progress at workplace level.
  - Publish locations of all workplaces in Thailand producing for the brand/retailer to allow independent monitoring and verification that workers are receiving a living wage instead of just the legal minimum, as well as allow identifying subcontracting to Mae Sot workplaces and home-based migrant workers.

**Recommendations to trade unions and other civil society organisations in Thailand in general, and Mae Sot in particular:**

**1. Representing migrant workers:**

- Allow workers to join a trade union and include migrants in elections and negotiations;
- Ensure that migrant workers are represented in collective bargaining agreements;
- Work with migrant worker organisations to ensure their interests are best served through trade union action;
- Promote the development and deployment of interpreters among representatives to assist in translation for negotiation and participation in collective bargaining.

**2. Advocacy:**

- Civil society/labour organisations should work with migrant workers, regardless of pressure or criticisms that might be made of them;
- Encourage trade union solidarity action with migrant workers along supply chains
- NGOs should prioritize supporting the fulfillment of migrant workers equal rights and treatment
- Civil society/labour organisations should pressure governments and companies to respect migrant workers' rights

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*“NGOs such as Thai Labour Campaign and Thai Labour Solidarity Committee (TLSC) raise awareness among Thai labour of the need for solidarity with migrant workers.”*

*Moe Swe, who leads a local worker organization, summarized the situation: “In Mae Sot, nobody gets the minimum wage, this is quite sure...employers keep their work permit and migrant registration card. So the workers cannot move. If they run away, they become illegal. The other problem is that it is quite difficult to change jobs. These limitations make workers powerless”<sup>47</sup>.*

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# ENDNOTES

- <sup>1</sup> All currencies in the report were converted on 20 October 2014
- <sup>2</sup> Tuan, 2012
- <sup>3</sup> While in the past, the government granted the textile and garment industry approximately 2.5 billion THB (60.6 million EUR) for machinery and technology, the Thailand Textile Institute petitioned the government, which responded by increasing annual funds to 5 billion THB (121.2 million EUR) in 2008 (Thailand Board of Investment, 2008).
- <sup>4</sup> Thailand Textile Institute, 2014. [www.thaitextile.org/main/documents/T26\\_JAN\\_DEC\\_2013.xlsx](http://www.thaitextile.org/main/documents/T26_JAN_DEC_2013.xlsx)
- <sup>5</sup> *ibid.*
- <sup>6</sup> *ibid.*
- <sup>7</sup> *ibid.*
- <sup>8</sup> *ibid.*
- <sup>9</sup> Bank of Thailand National Employment Statistics, 2014
- <sup>10</sup> Arnold & Pickles, 2011, p. 1610-11.
- <sup>11</sup> Martin, 2007, p. xii
- <sup>12</sup> Huguet, Chamrathirong, & Natali, 2012, p. 5.
- <sup>13</sup> Arnold & Pickles, 2011, p. 1606.
- <sup>14</sup> Downsizing and outsourcing production oftentimes places the production line outside the realm of legal oversight. Thailand's Factory Act B.E. 2535 (1992) set out regulations for factory construction and operations, factory expansion, and safety requirements as follows. A factory is defined as any site that uses machinery of five horsepower or more, or that employs seven or more workers for manufacturing, producing, assembling, packing, repairing, improving, processing, storing or destroying anything included in the types of factory listed in the Ministerial Regulations. Factories that use machinery between five to twenty horsepower and/or that employ seven to twenty people for manufacturing do not require a license. Only factories that emit a certain level of pollution, use machinery equivalent to more than 50 horsepower, and/or employ more than 50 people for manufacturing have to receive a license. Home-based workers, who may be working as subcontracted labourers, as well as smaller-scale workshops avoid need for a license by using less than seven workers.
- <sup>15</sup> Arnold & Pickles, 2011.
- <sup>16</sup> Aung.K (2009, August), P.22.
- <sup>17</sup> Arnold & Pickles, 2011, P.1611.
- <sup>18</sup> Pollock., J. , 2010, P.217.
- <sup>19</sup> Arnold & Pickles, 2011, P.1611.
- <sup>20</sup> Dept. of Employment, Ministry of Labour, Royal Thai Government. May 2012, P. 3.
- <sup>21</sup> Arnold & Pickles, 2011, P. 1616.
- <sup>22</sup> IOM Thailand, 2013b, P.4.
- <sup>23</sup> Tuberculosis (TB); Syphilis; Elephantiasis (also known as Filiaraisis); Leprosy; Intestinal worms; Amphetamines; Alcoholism; and Mental disorder.
- <sup>24</sup> Social Security coverage is divided into seven elements: sickness, maternity, disability, death, child allowance, old age, and unemployment.
- <sup>25</sup> MAP Foundation, August 2013.
- <sup>26</sup> The current post-May 2014 migrant registration does not offer the possibility for migrants to enter the social security system.
- <sup>27</sup> Kantayaporn, T. and Mallik, S. (2013 December), P.33.
- <sup>28</sup> Dept. of Employment, Ministry of Labour, Royal Thai Government. May 2012, P.8.
- <sup>29</sup> Dendoung, N. and Dendoung, S. (2013), P. 127.
- <sup>30</sup> According to the Fair Wear Foundation wage ladder (<http://www.fairwear.org/563/wage-ladder/> accessed on December 15, 2014), the estimated Thai living wage would be the equivalent to around 420 THB a day. According to Mr. Narong Petprasert, an economist at Chulalongkorn University, 561.79THB a day in 2011 would be nearer to a living wage. <http://www.ftijob.com/news/detail.aspx?id=1181>.
- <sup>31</sup> Previously, the minimum wage was determined by relevant provincial departments after consultation with employers, employees and the local government bodies, and a rate was proposed to the national Minimum Wage Bureau.
- <sup>32</sup> Alexander, Salze-Lozac'h & Winijkulchai, (30 January, 2013).
- <sup>33</sup> There are no data on migrant workers receiving the minimum wage, in part because there has been no systematic study. There is plenty of anecdotal evidence and reports from a number of years ago by the ILO under the "Mekong Challenge" series of reports. Migrants often receive no work contract, and are commonly paid without a pay slip. When there is a work contract, and the minimum wage is stated it is often not what the worker receives, due to (unlawful) deductions made by the employer for water, electricity, accommodation etc.
- <sup>34</sup> There were anecdotal accounts in the past of migrant workers simply receiving a packet of instant noodles as compensation.
- <sup>35</sup> Alexander, Salze-Lozac'h & Winijkulchai, (30 January, 2013).
- <sup>36</sup> *Ibid.*,
- <sup>37</sup> Pratrungkrai, (17 March, 2012).
- <sup>38</sup> Thongrung W., (8 June, 2012).
- <sup>39</sup> Ono, (3 October, 2013).
- <sup>40</sup> Turnell, Vicary & Bradford, 2008, P.74.
- <sup>41</sup> Jampaklay & Kittisuksathit, 2009, P.17.
- <sup>42</sup> Chantavanich & Vungsiriphisal, 2012, P. 227.
- <sup>43</sup> MAP knows of one other factory, a lingerie factory, which now also pays 300THB (7.24 EUR) per day.
- <sup>44</sup> Campbell,S., (11 May 2012).
- <sup>45</sup> Ayudhya, S.,2010. P.5.
- <sup>46</sup> *Ibid.*,
- <sup>47</sup> Arnold & Pickles, 2011, P. 18.
- <sup>48</sup> Waites, 2011.



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