

Regular Rights

Second Edition

A Study on the Impact of Regularization
of Migrant Workers from Myanmar (Burma) in Thailand



RegularRights
Second Edition

**A Study on the Impact of Regularization
of Migrant Workers from Myanmar (Burma) in Thailand**

Produced by:

MAP Foundation
Chiang Mai, Thailand

Supported by:

CCFD – Terre Solidaire
Paris, France

31 May 2015

Acknowledgement

RegularRights is a project of MAP Foundation supported by CCFD –Terre Solidaire. We thank CCFD not only for their financial support for this project but for their partnership and solidarity with our work and with our dreams for migrants. Writing was done by MAP’s team Erin Biel and Brahm Press, with the data collection team led by Kanchana Di-ut. Special thanks to Bob Walsh for donating his time to edit and give constructive suggestions.

We thank the migrant workers who took time out to share their experiences to provide information for this report. The migrants completed lengthy questionnaires and participated in workshops, using their precious free time in the hope that the information collected will make a difference to migrants in the future. We also thank the volunteers who helped to collect and collate the information. And of course a very important part of all MAP’s work, we give big thanks to all who translated at the different stages of the project.

MAP Foundation
31 May 2015

ACRONYMS	
DOE	Department of Employment
ID	Identification
ILO	International Labour Organization
IOM	International Organization for Migration
LPA	Labour Protection Act
MAP	MAP Foundation
MoPH	Ministry of Public Health
MOU	Memorandum of Understanding
NV	Nationality Verification
OSSC	One Stop Service Centers
OT	Overtime
THB	Thai Baht
TP	Temporary Passport
USD	US Dollar

RegularRights

Second Edition

A Study on the Impact of Regularization of Migrant Workers from Myanmar (Burma) in Thailand

INTRODUCTION

The Thai Royal Government has struggled to identify a single, long-term policy for migrant workers in Thailand. Instead, it has drafted and implemented a number of policies over the years. Since 2003, a main focus of migration policies has been to regularize migration into Thailand. This process was originally initiated under the *Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers*, (known as the MOU) which was signed in 2003. The MOU did not function the way it was intended, however, with very low uptake. Since then, there have been a number of piecemeal policies to compensate, including what is known as the Nationality Verification process, which is usually preceded by an open registration amnesty for those migrants already in the country. The lack of consistency in policy has sowed confusion and allowed agents to intervene and make considerable profit without migrants seeing any significant improvements in their well-being. Accompanying the policy vacillations on registration, competing policies on health insurance and social security have also arisen. These numerous vacillations make it clear that Thailand does not have a long-range vision for migrant workers, and that the formulation of migration policy continues to be a learning process of trial and error. At the same time, migrants' basic rights are guaranteed under other laws, such as the Labour Protection Act, which simply lack proper enforcement.

RegularRights is a project by MAP Foundation initiated in January 2012 to compare and analyze the benefits and drawbacks of the regularization of migrants from Myanmar (Burma) in Thailand. During Phase One of the project, from January 2012 to December 2012, the RegularRights project compared the three different migration statuses: undocumented, registered with a migrant workers card, and registered with a Temporary Passport through the Nationality Verification process. Migrant workers in Chiang Mai, Mae Sot, and Mahachai completed questionnaires about their living and working conditions. Results were verified in workshops where migrants were able to learn more about these processes and share their own experiences. The results of the research, which were published in the first edition of RegularRights, showed that documentation improved certain aspects of life, such as the ability to travel and be free from fear of police crackdowns and harassment, but it did not improve wages or working conditions.

Phase Two of the RegularRights project, conducted during late 2013-early 2014, had three different elements of inquiry. The first compared the working conditions of migrants holding a Temporary Passport through Nationality Verification, migrants holding the Temporary Passport through the MOU process, and migrants who are undocumented. The second element of research explored the steps that migrants must go through during the MOU documentation process, and compared it to the steps required to register under the Nationality Verification process. A cost comparison was also made. Lastly, data was collected through questionnaires focusing on migrants' access to Social Security and other welfare services based on their documentation type. The results of the Phase Two research are the focus of this second edition of RegularRights.

BACKGROUND: REGULARIZING MIGRANTS

Considerable numbers of migrants have entered Thailand from the neighboring countries of Myanmar (Burma), Cambodia and Peoples Democratic Republic (PDR) of Lao in search of livelihood and refuge over the past three or four decades. Most have entered the labour market. Due to the political situation in their countries of origin, most entered Thailand without any documents. Employment opportunities have grown over the years as Thailand's export industry in agricultural products, seafood, garments and furniture has grown. The demand for workers in the service industries has also increased with the growth of tourism and the growth of the local middle class.

The first migrant worker policy was instituted in 1992, and was based on quotas allowing hiring of migrants in only ten border provinces. There were incremental changes in the policy after that, adding to the number of provinces and duration of stay permitted, until in 2001 the first open registration for the whole country was initiated. However, this policy also established the linkage of a migrant worker's status to the employer. Since then, there have been numerous policy gyrations, including the signing of MOUs and an emphasis on regularization. The failure of these policies to encourage migrants to enter the country through regular or "legal" channels has led the Thai government to announce temporary policies to allow undocumented migrants to enter the registration system on what seems to be an annual basis. These policies act as a form of amnesty for migrants who are already in the country but are not documented, and are a prerequisite to migrants entering the Nationality Verification process.

Despite the various policy changes aimed at regularizing migrants, the majority of migrant workers are still undocumented. Current estimates of undocumented migrants in Thailand vary, averaging around two million or half of all migrants present, with more coming all the time. All undocumented migrants are vulnerable to raids, arrests, detention, and deportation at any time. To avoid this, they pay bribes and remain hidden, which leaves them more vulnerable to poor working and living conditions.

TEMPORARY PASSPORTS (TP)

Memoranda of Understanding (MOU) on the "Cooperation in the Employment of Workers" were signed between the Thai Government and the governments of Myanmar, Cambodia and Lao in 2003. These MOUs aimed to set up systems by which to regulate and regularize migration. It took considerable time to operationalize the MOUs between the countries, with the Myanmar MOU taking the longest to implement, only starting in 2009.

The signing of the MOUs and their limited success has led to two processes arising: 1) the "MOU Process," which involves the recruitment of workers through recruitment agencies in the countries of origin and includes their registration prior to entry into Thailand, which was the original intent of the MOUs; and 2) the Nationality Verification (NV) process, which regularizes migrants who are already working in Thailand without proper documents, and which was developed as a result of low uptake of the MOU process from origin countries. Migrants who complete the NV process or are recruited through the MOU process both end up receiving a temporary passport (TP) that supposedly allows them to travel freely throughout Thailand and enter into the Social Security System, among other benefits. However, the temporary passport obtained through the MOU process for migrants from Myanmar is currently valid for six years with a transition to real passports being phased in, while the temporary passport obtained through the NV process is only valid for five years.

According to the original MOU, migrants are only allowed to work for two periods of two years, or four years in total. According to the original intent of the policy, at the end of the four-year period migrants are to return home for three years before becoming eligible to return to Thailand to work again. This proved to be a short-sighted policy, as migrants who had developed skills over the years were being told to return home, leaving employers to invest in training new migrants. In an attempt to rectify this, a policy was established in November 2013 that reduced the mandatory return period from three years to only one month, and later just one day (IOM, 2013b). Another Cabinet resolution in March 2014 allowed a 180-day grace period for those whose visa had expired to apply for an extension in Thailand under a new policy to be approved (IOM 2014a). Unfortunately, no official announcement was issued, due in part to delays caused by political unrest. As a result, thousands of migrants who were among the first to have completed their four years of legal work in Thailand were forced to make an unpalatable decision – to return home, to revert to illegal status, or to sacrifice the benefits accrued by having a passport, including Social Security, and re-enter the system under a new name. It was not until late 2014 that the announcement was made allowing migrants to re-register. By that time, hundreds of thousands of migrants had already fallen out of the system.

MOU AND THE REGULARIZATION OF MIGRATION

The main objective of the MOU between Thailand and its neighboring countries was to encourage migrants to enter the country through regular channels. Accordingly, under the MOU, migrants were to be fully documented before they left their home country, entering Thailand in a systematic way, linked to an employer and a job.

The system starts with employers in Thailand, who must first advertise job vacancies with the local employment office. If no Thai workers apply, the Department of Employment can issue a quota for migrant workers. An agency in Myanmar is then contacted to recruit and arrange the deployment of the workers from Myanmar. Once the workers are recruited, the employer has to provide the terms and conditions of employment, to which the workers supposedly agree. The names of the workers are then sent to authorities in Myanmar and Thailand. The workers then enter through the border for a health check by Thai Public Health. Migrants who pass the medical checkup can apply for a passport and a Myanmar labour card. The employment contract has to be signed by the employer (or a designated representative, which is usually the recruitment agent) and the workers in the presence of the Myanmar officials. At Thai Immigration on the border, the workers should be issued a two-year visa, which they can renew once (according to the previous policy). Then they can apply for a work permit in the province where they will work.

By July 2013, only 36,650 migrants from Myanmar had entered under the MOU. The number jumped to 148,841 in June 2014 but then dropped again most recently to 109,662 as of February 2015 (IOM Thailand, 2013b, 2014b, 2015a). It should be noted that regularization under the MOU was originally intended to be the primary mode of recruitment for migrant workers from neighboring countries, a target it has fallen well short of when compared to the 830,549 who had registered under the Nationality Verification process by the same date (Office of Foreign Workers Administration, Nov. 2014). The reasons for the MOU system's failure are many, and will be discussed later. However, one key element is the cost. According to research by MAP, migrants entering Thailand through the MOU reported spending an average of 24,000 Thai Baht (THB) or the equivalent of 740 USD on the process, which is practically one third of a migrant's annual earnings.

Chart 1: Number of Migrants Documented through the MOU System, by Nationality and Sex, as reported Aug. 2013

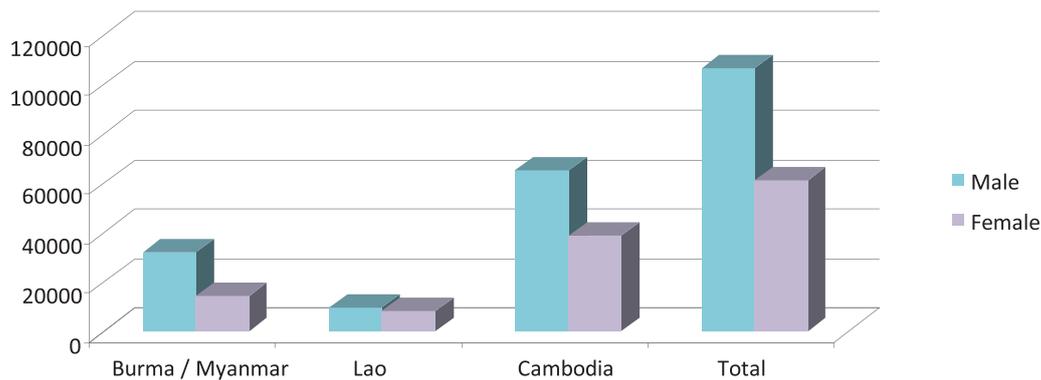
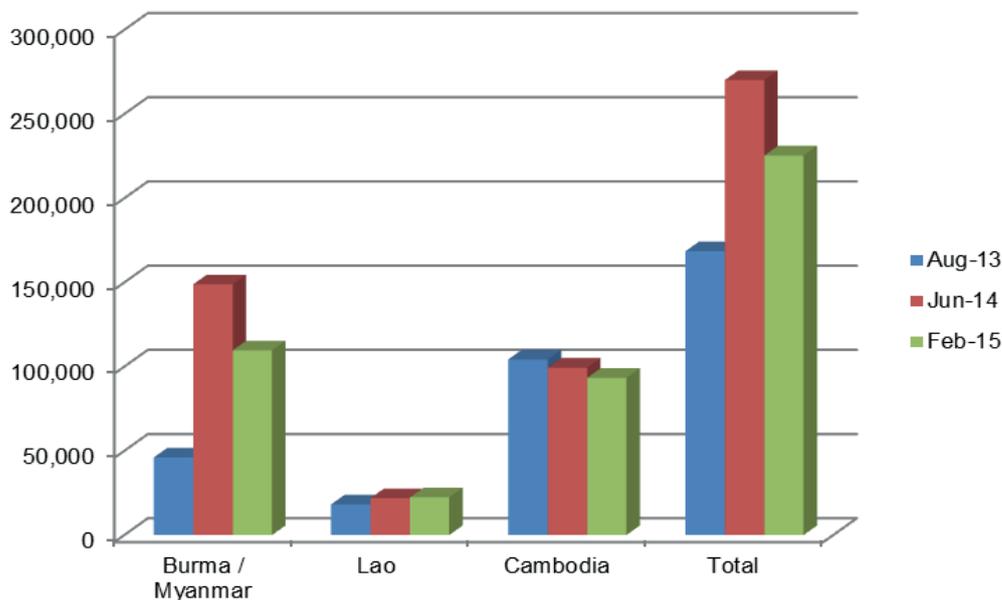


Chart 2: Number of Migrants Documented through the MOU System, by Nationality: as reported Aug. 2013, June 2014, and Feb. 2015



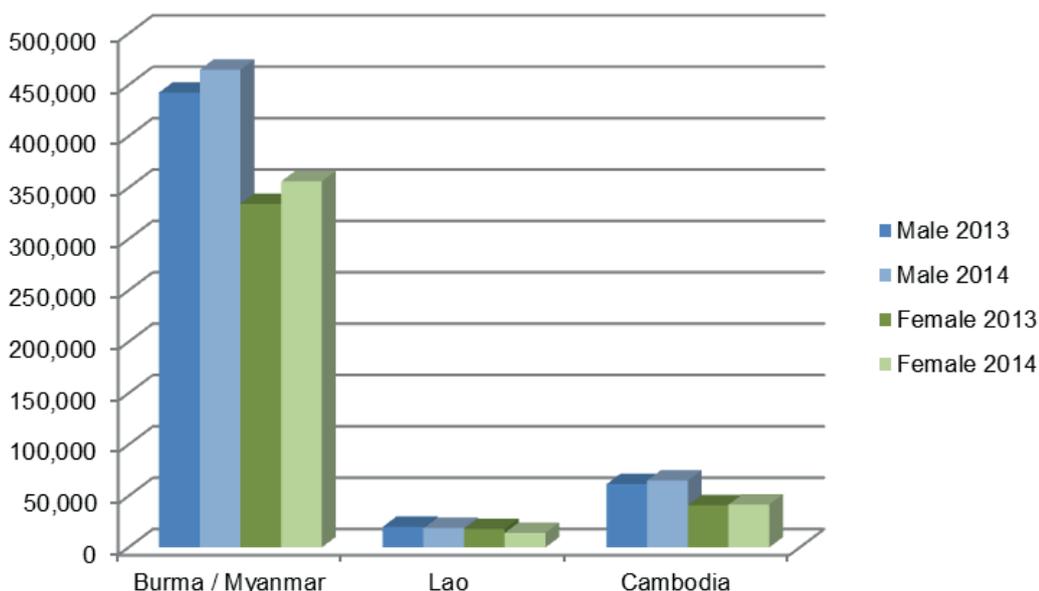
NATIONALITY VERIFICATION (NV)

In 2007, four years after the MOUs were signed but still not fully functional, the Thai government announced that all migrants who were registered with temporary IDs (known as Toh Roh 38/1) and work permits would have to enter a process called Nationality Verification by the end of the year. This was a process where governments of the country of origin would come into Thailand and set up stations to “verify” the nationality of migrants through a process and issue them a temporary passport, which would allow them to remain in Thailand legally. Due to the lack of progress by the Myanmar government, a Cabinet Resolution in 2008 extended the period by two years for migrants to enter and complete the Nationality Verification process, with the new deadline being set at February 28, 2010. In 2009, the Burmese government set up three Nationality Verification centers at the border areas of Tachilek, Myawaddy and Kawthaung (later moved to Ranong). But with such a late start, only 142,000 Burmese migrants had completed the process by February 28, 2010 (MAP Foundation, 2012). To speed up the process, five new NV registration centers were set up inside Thailand. As of February 2013, a total of eleven temporary One Stop Service Centers (OSSCs) had been established in Thailand to facilitate the NV process in: Kanchanaburi, Khon Kaen, Chiang Mai, Chiang Rai, Pathumthani, Ranong, Songkhla, Samut Sakorn, Samut Prakarn, Surat Thani, Rayong, and Tak (IOM Thailand, 2013a).

The NV deadline was first extended to February 28, 2012, then to June 14, 2012, and then again to December 14, 2012.¹ Setting of deadlines followed by extensions is a common practice of Thai migration policy. The Thai government continued to extend the deadline for completing the NV process until it reached August 2014 (IOM Thailand, 2013b), but it was then derailed by the military takeover. Migrant workers whose employers submitted documents for regularization, but who have not yet received a Temporary Passport, are allowed to temporarily stay and work in Thailand until the deadline, provided that they have a civil registration document (Tor Ror 38/1), colloquially known as the Migrant Workers' Card from the Ministry of Interior, and apply for a work permit with the Ministry of Labour. Just as with previous local registrations, migrants holding such Migrant Workers' Cards would still be considered irregular and awaiting deportation until they completed the regularization process and received a Temporary Passport from their country of origin (IOM Thailand, 2013b).

As of July 2013, there were 778,258 Burmese migrant workers (along with 89,618 from Cambodia and 31,782 from Lao PDR) who had completed the NV process and possessed a valid work permit (IOM Thailand, 2013b). By November 2014, the number of Burmese migrants who had completed the NV stood at 820,811 (Office of Foreign Workers Administration, Nov. 2014). The Nationality Verification process involves a number of steps for migrants. While the official total cost should be 3,100 THB (approx. 100 USD), in actuality, according to MAP's Phase Two research, the overall NV process costs migrants approximately 12,000 THB (approx. 370 USD) when calculating fees charged by brokers. This system, however, is still cheaper than recruitment costs under the MOU between the Thai and Myanmar governments, which costs approximately 24,000 THB, as mentioned earlier.

Chart 3: Number of Migrant Workers Documented through the Nationality Verification System by Nationality and Sex, as reported Aug. 2013 and Nov. 2014



¹ On January 15, 2013, the Thai Cabinet approved a new resolution providing an extra 120 days (by April 13th 2013) for undocumented migrants and their children already in the country to complete the regularization process. On April 9, the Cabinet passed a resolution extending the deadline for completion by a further 120 days to August 11, 2013. Then on August 6, 2013, the Cabinet made provisions for migrants to obtain a temporary residence ID card (Tor Ror 38/1) for one year while they were still in the process of getting a passport from their country of origin. There were 252,019 migrants (113,228 Cambodians; 62,697 Laotians; 76,094 Burmese) who were eligible to apply for this ID at the time.

PART I: WORKING CONDITIONS AND MIGRATION STATUS

PROFILE OF RESPONDENTS

For the first set of questionnaires under this research which focused on the difference in working conditions by documentation status and type and was collected in Nov.-Dec. 2013, there were 139 Burmese migrant respondents (71 women and 68 men). Of this group, 75 migrants (34 women and 41 men) were undocumented; 57 migrants (37 women and 20 men) were registered under the Nationality Verification Temporary Passport (NV); and 7 migrants (all men) were registered under the MOU Temporary Passport (MOU). Only a limited number of MOU respondents were available, indicative of the MOU's limited uptake.

The median age of respondents was between 25-30 years for all three documentation groups. Among undocumented respondents, 47% were married, 41% were single, and 12% were divorced. Most noticeable was that the majority of NV respondents were married (86%), with only 14% single. Among the seven MOU respondents, three were married and four were single. Construction was the predominant occupation among respondents, with all MOU respondents hired in this occupation, followed by factory work, domestic work, and agricultural work.

Chart 4: Marital Status of Respondents by Registration Type

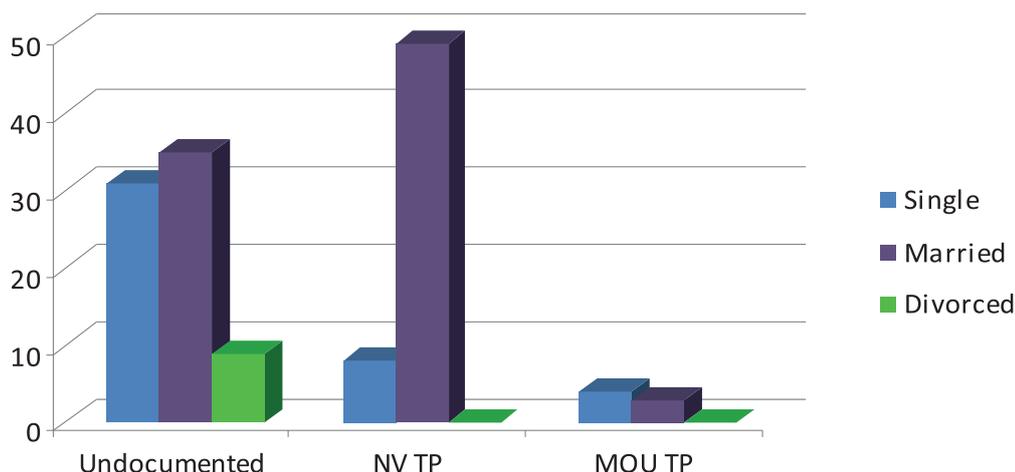


Chart 5: Documentation Status of Respondents

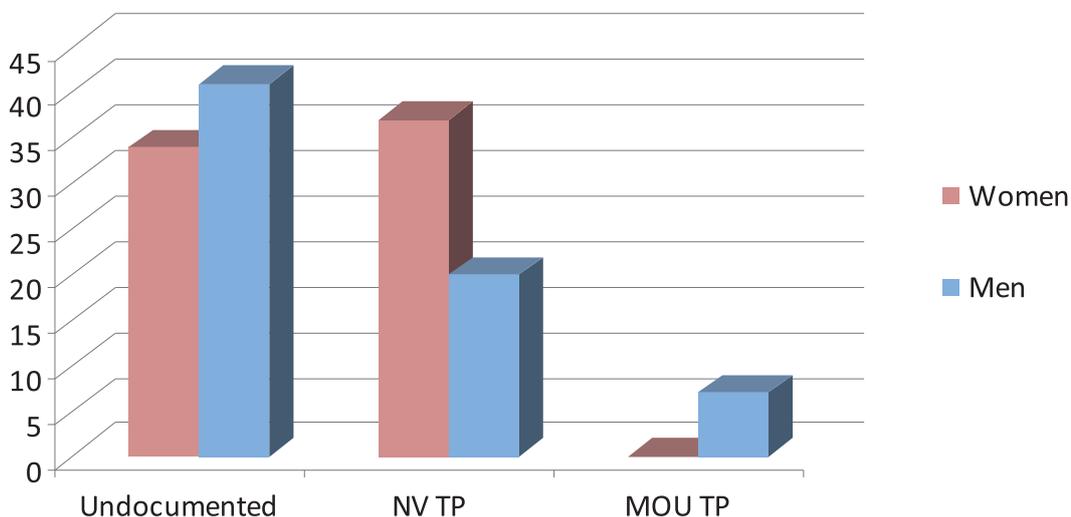
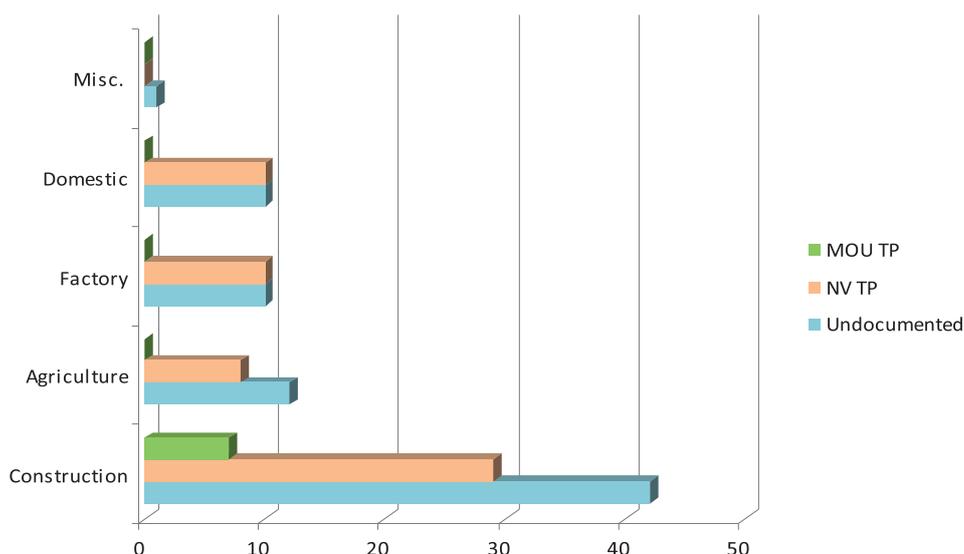


Chart 6: Type of Work by Registration Status



WAGES

In January 2013, Thailand raised its minimum wage across the country to 300 Baht (THB), or approximately 9 USD a day. Previously, each province in Thailand set its own minimum wage according to the calculated cost of living in that locality. The new standard minimum wage, introduced by the Prime Minister at the time, Yingluck Shinawatra, was unusual in that it raised the minimum wage uniformly nationwide and was to apply to every employee in Thailand, regardless of age, sex, industry, or nationality. Employers that failed to comply with the law were supposed to face six months in jail and/or a 100,000 THB (3,076 USD) fine. However, enforcement of such penalties has been essentially nonexistent in cases that involve migrant workers.

The majority of migrant workers surveyed in this research received less—often far less—than the legal minimum wage. For the 66 undocumented respondents who were paid on a daily basis, which was 88% of the undocumented respondents, the average pay was 198 THB (6.20 USD). For the 51 NV respondents paid on a daily basis (89% of NV respondents) the average wage was 242 THB (or 7.50 USD), with the median wage at 250 THB. The seven respondents from the MOU category reported daily wages averaging 225 THB, with the median wage at 250 THB. Apparently, migrants who were registered were likely to be paid more. However, there was very little difference between wages received by those registered under the NV and the MOU, meaning that improved wages was not a clear benefit of entering Thailand under the MOU.

Chart 7: Wages Paid Daily to Respondents, by Documentation Status

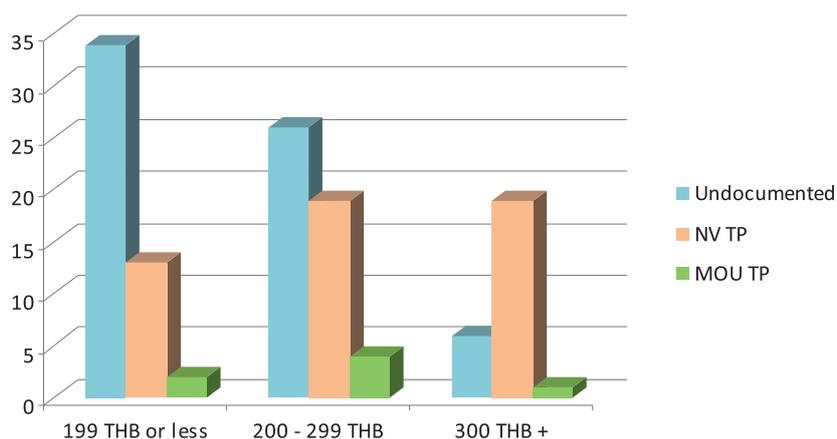
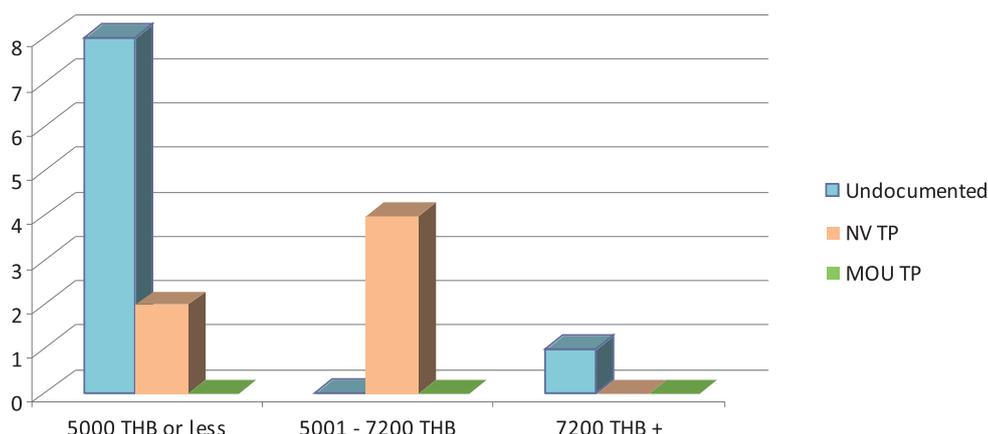


Chart 8: Wages Paid Monthly to Respondents, by Documentation Status



Overall, registration/documentation type did not guarantee that migrants received the minimum wage. In fact, 62% of NV respondents received below the minimum wage, and only one MOU respondent received the minimum wage or higher.

Another clear trend was that women, on average, earned less than men in the same type of work. This was notable in construction, where women made less than men by a difference ranging between 30-100 THB (1-3 USD) per day. Undocumented migrant women earned an average of 174 THB (5.35 USD), while undocumented migrant men earned an average of 214 THB (6.60 USD). Among the NV respondents, women earned an average of 221 THB (6.90 USD) per day while men earned 269 THB (8.30 USD) per day. According to Section 53 of the Labour Protection Act (LPA), “where the work to be performed is of the same nature, quality and quantity, the basic pay, overtime pay, holiday pay and holiday overtime pay shall be fixed [equally] by the employer regardless of whether the employee is male or female.” From MAP’s experience, both women and men are typically performing the same work in construction and factory settings, meaning that this wage differential is discriminatory.

Pay level related most closely to occupation. In fact, in each occupation wages varied minimally based on documentation type. In terms of occupation, domestic workers and agricultural workers earned the least, regardless of their legal status. Some agricultural workers reported earning as low as 120 THB (3.70 USD) per day, less than half of the legal minimum wage, with a difference of only about 30 Baht per day between undocumented and NV respondents.

“Now everything is expensive so it’s more difficult than before.” - Nang Ba, female agriculture worker, Pong Yang, Chiang Mai

Among the 75 undocumented respondents, only nine (12%) were paid monthly. Eight of those were domestic workers, one was a billboard installer. The billboard installer typically worked an 8-hour day and received 8000 THB per month.

Among the 20 domestic workers surveyed, 14 were being paid monthly, and eight of them were undocumented (there were 10 undocumented domestic workers in all); the other six being paid monthly were under the NV. The Labour Protection Act stipulates an eight-hour workday with no less than one day off per week. According to this and a minimum wage of 300 Baht per day, a worker should be receiving a monthly salary of at least 7200 THB (221 USD). However, the majority of the domestic workers being paid monthly were receiving only 4,300-5,000 THB. All the domestic workers who were being paid monthly, except for one, were working 13-14 hours per day.

Only two out of the ten undocumented domestic workers were being paid daily. These two individuals reported working 8-9 hours a day and received 200-300 THB. Only four of the ten domestic workers under the NV were paid daily, three received around 200 THB per day and one received 400 THB. They, too, worked 8-9 hours per day, compared to the 13-14 hour workdays for those under the NV receiving monthly wages.

Unfortunately, domestic work remains beyond the purview of Thailand's labour laws, as it is not classified as formal work. As a result, there are no labour protections for domestic workers, such as minimum wage guarantees. Recently, the Ministry of Labour signed into force Ministerial Regulation No. 14. This amendment to the Labour Protection Act (LPA) establishes regulations for days off and sick leave for domestic workers, and requires monthly payment of wages, but establishes no minimum wage.² Generally, there is no monitoring system to check work conditions of domestic workers and no clear repercussions for employers who fail to provide their domestic workers with a living wage or proper days off.

“They kept me in the house and did not allow me to make friends with others. I had to stand by all the time to serve them. If they wanted to eat and drink at night, I had to wait until they finished as I had to clean and wash, even it was very late at night and I was very sleepy. I could not say no.” - Nong Dao, domestic worker, Chiang Mai

WORK HOURS AND OVERTIME

According to Section 23 of the Labour Protection Act (LPA), employees are entitled to an average workday of no more than eight hours and a maximum of 48 hours per week.³ However, according to MAP's research, only 67% of undocumented respondents and 72% of NV respondents reported working eight hours or less in accordance with the legal working day. Of those working hours in excess of a regular work day, 39% of undocumented respondents and 76% of NV reported receiving payment for working overtime. None of the seven MOU respondents reported working over eight hours per day, although they also reported not having a day off.

According to Section 61 of the LPA, “...the employer shall pay overtime at the rate of not less than one and a half times the rate of the hourly basic pay earned in normal working hours for the hours of overtime, or not less than one and a half times the rate for each unit of output on a working day for employees who receive basic pay based upon output.” According to the minimum wage of 300 THB and the legal workday of eight hours, workers should be receiving at least 56 THB for each hour of overtime.

Among the 61% of undocumented respondents (46 out of 75 respondents) reporting payment for overtime, none received 56 THB per hour of overtime (OT). The average amount paid to undocumented migrants for OT was 30 THB. Four undocumented respondents reported earning 50 THB per hour of overtime, all of them in construction jobs. Meanwhile undocumented workers in agriculture and factories had the lowest OT rates of around 15-20 THB per hour.

Among the NV respondents, three individuals reported receiving over 56 THB per hour for overtime, two in construction and one in domestic work. The domestic worker who received

²Ministerial regulation no. 14 was signed into force on 30 October 2012. This regulation confirmed a set of standard benefits for domestic workers, including: a day off each week, days off on 13 national holidays, and overtime for working on a holiday, among others.

³According to Sections 24 & 31 of the LPA, employers are prohibited from requiring an employee to work overtime on a normal working day unless they have prior consent from the employee, or it is an emergency. An employer is prohibited from requiring an employee to work overtime where the work may be harmful to the health or safety of the employee.

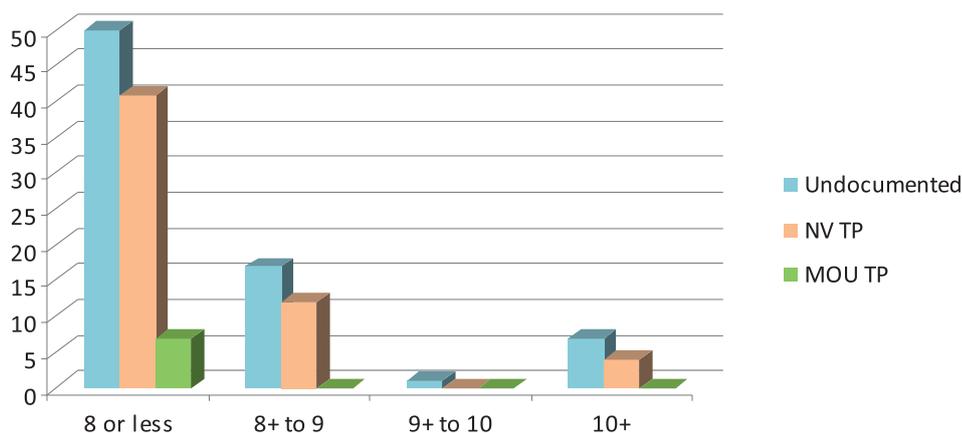
overtime pay was a bit of an anomaly: she was paid daily, unlike most domestic workers interviewed, and received the most out of the 20 domestic workers interviewed at 400 THB per day. The overtime pay rates for the rest of the NV respondents were the same as those for the undocumented workers, with an average of 29 THB, and, again, the smallest rates earned were by agricultural and factory workers, at around 15-20 THB.

Section 28 of the LPA also states that employees are entitled to no less than one day off per week. However, out of the 69 responses among undocumented respondents, only 19 (28%) were receiving any days off at all: eight of those were receiving the stipulated one-day off per week, and the others were receiving two days off per month. Among the NV respondents, only 12 out of 54 (22%) got any days off at all: six of these respondents got one day off per week in accordance with the law, while the other six only got two days off per month.

“I want to have a paid day off at least 1 day per week. Now if I want to take holiday, my wage will be deducted” - **Nang La, domestic worker, Chiang Mai**

Meanwhile, none of the seven MOU respondents received any days off, insinuating that employers who are participating in the MOU process are not necessarily compelled to abide by the law. Migrants’ testimony also clearly indicates that labour laws are failing to protect migrant workers’ rights to proper rest and to compensation for overtime, even when migrants are regularized with all the official documents.

Chart 9: Regular Hours Worked per Day



OCCUPATIONAL HEALTH AND SAFETY

In terms of occupational safety, it appears that there is little relation between workplace safety and the migrants’ registration status. Among undocumented and NV respondents, 12% and 11% reported accidents at the workplace, respectively. These injuries included falling from a ladder, stepping on a nail, skin irritations because of chemical use, and even a scorpion sting from working in the fields. Among the MOU respondents, all of whom performed construction work, three of the seven (42%) had had an accident at the workplace.

Regardless of documentation type, workers expressed similar safety concerns about their workplace. In the case of construction, these concerns included falling objects, protruding nails, shards of glass, and falling from high structures. In factories, the use of large and heavy machinery was commonly voiced as a concern. Out of the 20 respondents doing agricultural work, among both the undocumented and NV groups, at least half expressed health concerns about the chemicals they had to use in the fields. Only 57% of undocumented respondents and 68% of NV respondents reported that they felt safe in their workplace, while only 14% of the MOU respondents (1 out of the 7) felt safe at their construction job. Regardless of documentation status or type, the majority of those expressing concerns about their safety came from those working in construction, followed by agriculture.

Among the undocumented respondents, 17% (eight construction workers and five factory workers) had received at least one occupational health and safety training and 14% of the NV respondents (one agricultural worker, two construction, and 5 factory workers) had received such training. None of the MOU respondents had undergone such training. The percentages of respondents having received fire safety trainings were similarly low, at 13%, 11%, and 0% for undocumented, NV, and MOU respondents, respectively. Meanwhile, only 19% of undocumented respondents had a fire hydrant at the workplace and 32% of NV respondents reported having one. None of the MOU construction workers were aware of a fire hydrant on their worksites. Although it is difficult to conclude from the survey that workplace safety conditions are directly linked to migrant workers' documentation status, or vice versa; it is evident that at migrants' workplaces there is a lack of attention placed on occupational health and safety.

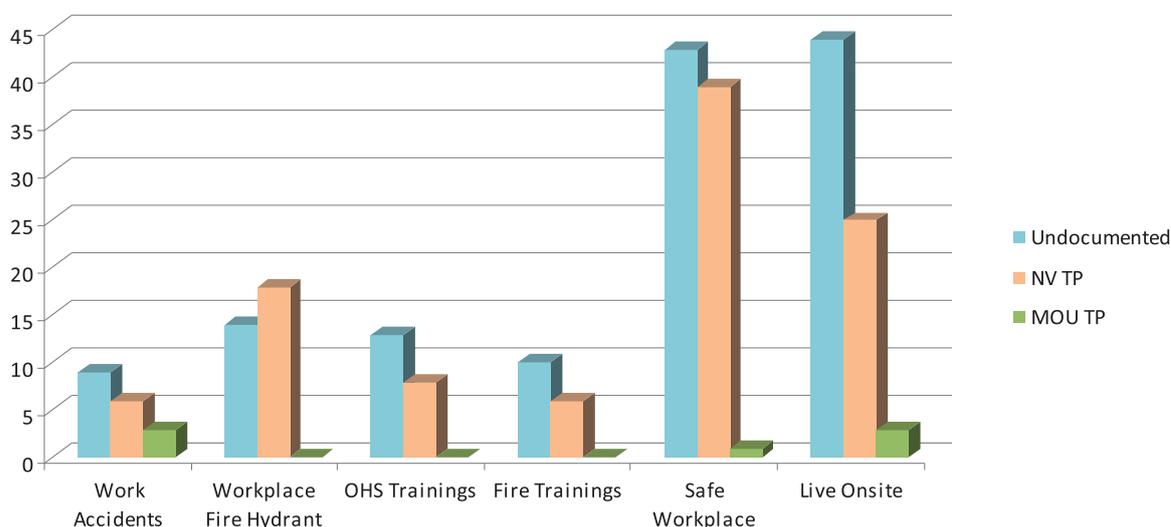
“Construction work is dangerous all the time, everywhere on the site. We have to be careful all the time we are working. Accident and injury can happen very easily. I feel that our lives are at risk here. ...there are falling objects, dangerous machines (like for cutting tile), step on nails and falling from building. There are always broken legs and arms from accident in construction site.” - Jai Jai, construction worker, Chiang Mai

“There is danger from mixing cement without boots and gloves, danger from cutting steel, climbing up to high place, no helmet, and risk from falling down and break our legs and hands.” - Yu Yu Jin, female construction worker, Chiang Mai

It is common for migrant workers to live directly on their worksites or for the employer to provide communal housing nearby. Among the undocumented respondents, 59% reported living onsite. This percentage was smaller for NV and MOU respondents, among whom 44% and 43% reported living on site, respectively. Among all three groups, those who lived offsite nevertheless noted that their employers provided transportation for them to and from work each day. There were concerns raised about living both on and off site, though. For those living on site, the quarters can be cramped, clean water (or running water in general) limited, and bathrooms can be incredibly unsanitary. For those living offsite, the living situation may be quite similar; however, migrants living offsite also reported concerns about the transportation provided by employers to commute back and forth to work. These commutes are characterized by workers commonly being crammed into the back of trucks and forced to stand or crouch with little safety protection, and commonly being transported in heavy traffic during peak hours of the day.

“We have to race to get the good seat on the truck where there will be something to grab onto to secure our lives.” - Construction worker, Chiang Mai

Chart 10: Conditions Related to Occupational Health and Safety



Undocumented N= 75 NV N= 57 MOU N= 7

PART II: COMPARING COSTS OF THE MOU AND NV

THE MOU PROCESS AND ASSOCIATED COSTS

The second element of this research focused on comparing the steps and costs associated with being regularized by entering Thailand legally through the MOU process, and by going through the Nationality Verification process (NV). As mentioned earlier, in 2003 Thailand and Myanmar established an MOU which outlined each country's responsibilities regarding migrant workers. However, it was not until 2009 that the MOU came into effect between Thailand and Myanmar, with the uptake of migrant workers through the MOU process being very slow. As a result, the Nationality Verification process was introduced to regularize those migrant workers already in the country.

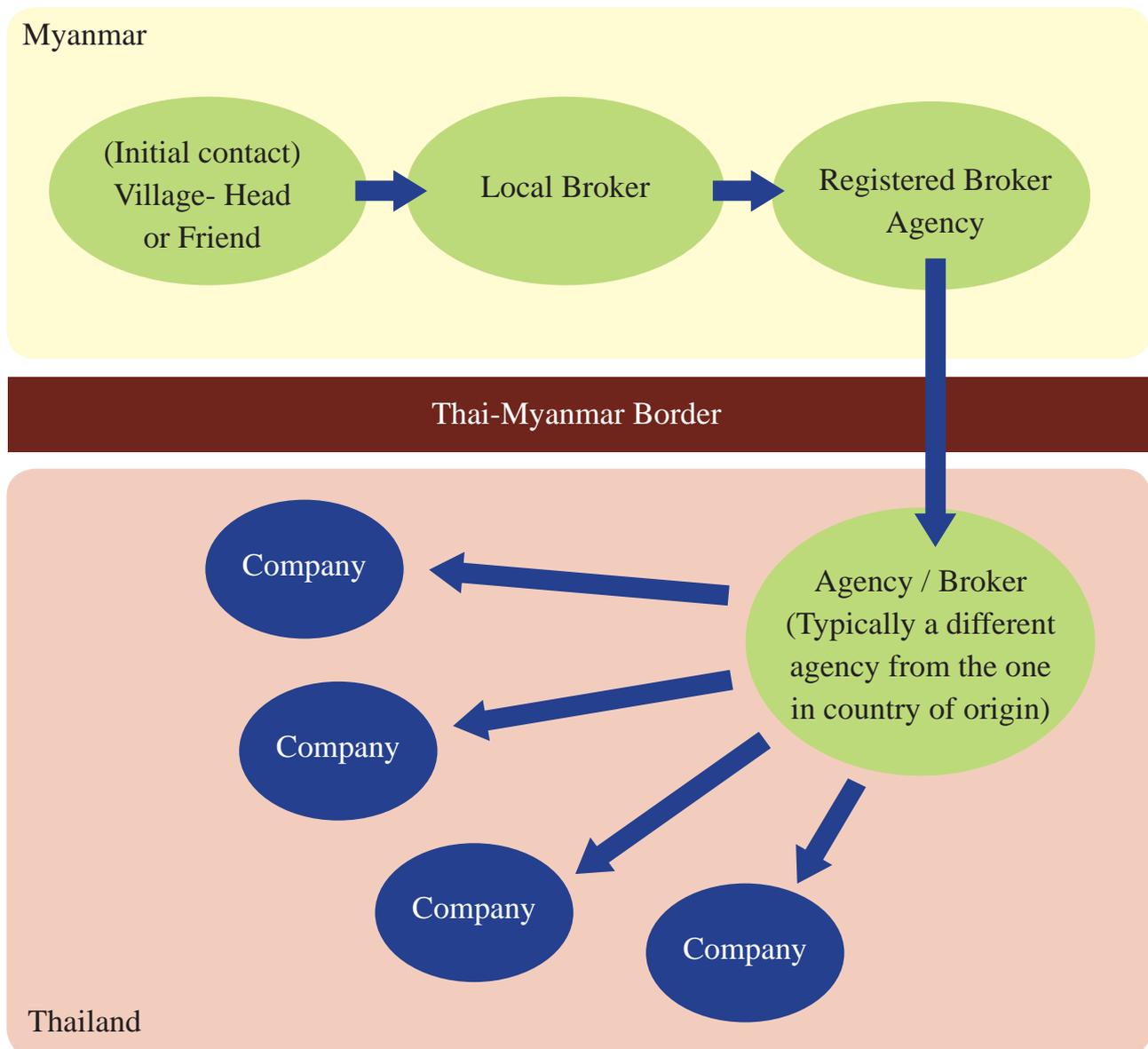
Aside from entering the country legally and being “promised” a job, there are few incentives for migrants to enter Thailand through the MOU process, as gleaned through MAP's interviews with migrant workers. The expense, lack of clarity about work placement, and lack of guaranteed benefits under the MOU process have resulted in reluctance among the migrant community from Myanmar to enter this system. While the wages a migrant worker may receive are sometimes slightly higher than those registered under the Nationality Verification, the MOU process is considerably more expensive than entering Thailand informally and waiting for the opportunity to undergo the Nationality Verification (NV) process. There also seems to be only a nominal difference in labour conditions or related protections.

A caveat to this research is that it was difficult to find a significant pool of interviewees to assess the MOU process due to the low numbers of migrants with that status in the research area. In addition, since there are numerous steps involved in the MOU process, which has been pervaded by brokers and other intermediaries seemingly at each step, the process for entering Thailand through the MOU seems to differ from one migrant to the next. Nevertheless, trends were evident from MAP's interviews with migrants registered through the MOU (30) and the NV (54) for this section of the research.

The first issue that came to light was how a migrant typically goes about entering Thailand under the terms of the MOU. (See Diagram 1) Since it is not a government-to-government recruitment system, brokers are allowed to intervene at almost every step.

Although the process is different for everyone, Burmese migrant workers typically begin the MOU process by asking a friend or village head in their local community about finding work in Thailand. That person then puts them in touch with a local broker who in turn has connections to an “authorized” broker with connections to a particular broker agency in Thailand. These brokers on the Thai side are private employment agencies that are often licensed. The broker agencies in Thailand have connections to particular companies (construction, factories, agriculture) seeking migrant labour. The Thai broker agency will indicate to the broker on the Myanmar side of the border that there is a company in need of migrant workers. These Thai broker agencies commonly operate in Mae Sot, just across from the Burmese town of Myawaddy, in Mae Sai, across the border from the Burmese town of Tachileik, and in Bangkok. All of the brokers that a migrant may go through during the MOU process rarely work for the same agency; so, many different entities are involved in the MOU process, diluting accountability and adding expense at each level.

Diagram 1: Chain of Brokers to Enter into Thailand under the MOU



Beyond registering as a business with a license, there is very little regulation or oversight of broker agencies in Thailand. In fact, they are not even termed “recruitment agencies”; they are officially termed “Thai private employment agencies,” and have no authorized role under the MOU. The only policy related to monitoring of recruitment agencies is the *1985 Recruitment and Job Seekers Protection Act*, which does not cover agencies placing non-Thai workers. Without proper regulation, broker agencies commonly make significant profit by the service fees they charge, which are supposed to be paid by employers but are invariably paid by migrants.

As mentioned, a number of these brokers who place migrants in jobs throughout Thailand are located in Mae Sot. The broker agencies—in concert with the employer wishing to hire the migrant—arrange for temporary passports, work permits and visas for the migrant workers. The migrant workers therefore cross the border already having legal documents. However, the documents are never actually in the migrants’ hands; rather, the brokers and employers typically hold on to them.

Since the employers and/or brokers are the ones who front the money for these documents, they do not allow the migrants to possess their own documents until they have paid back

the costs in full. The cost of these documents accumulates over the numerous broker fees that migrants have to pay along the way. From MAP's research, migrants reported having to repay employers between 15,000 THB (470 USD) and 30,000 THB (940 USD), with an average of 24,000 THB (750 USD). This sum is twice as much as the sum reported by those registering through the NV process. Moreover, MOU respondents reported having to pay back their employers approximately 2,000-3,000 THB (62-94 USD) per month over a shorter period of time (6 months or less), whereas NV respondents reported paying 500-1,000 THB (15-30 USD) per month over a longer period of time, incurring less of a financial burden upon first starting a job. Without clear explanation of these conditions of re-payment, some migrants may fear they have been trafficked and, ironically, will run away.

Commonly, even after migrants have repaid the cost of the documents, employers still hold on to legal documents such as passports and work permits so that migrant workers will not leave their jobs and seek employment somewhere else. Sometimes employers provide migrant workers with a copy of their documents, but police and immigration officials typically do not accept these as legitimate documents for proof of identification or legal status. Migrant workers can therefore be arrested and possibly even deported if an employer fails to come forward to show the original documents when a migrant is caught in this predicament. The same issue of not possessing one's legal documents exists for those who are registered through the Nationality Verification process.

Another potential pitfall in the MOU process is that although migrants are promised a job prior to arriving in Thailand, not all migrants may have jobs procured upon arrival. If a migrant does not have a job immediately upon arrival, the agency in Thailand lets the migrant remain in the country for one week, confined to a building provided by the broker agency, because migrants are only allowed to be unemployed in Thailand for one week before they have to be repatriated in accordance with Thai migration policy. In that time, the agency tries to pair the migrant with a company. Although there were no reports of this, there seems to be the possibility that a migrant could pay the many fees to make his or her way to Thailand, only to find that there is no job in the end and he or she must return home. (It is also unclear whether there is any refund of fees paid or if they are simply forfeited.)

If a migrant is placed with a company but is later dismissed or leaves the job, the migrant technically must return to his or her home country because the MOU agreement is tied to one specific employer. The only case where a migrant is technically allowed to remain in the country and seek a new employer is when the employer has died, gone bankrupt, or moved, or the employer has broken labour laws. However, the Thai broker agency is in some cases able to find the migrant another job, albeit technically illegally. In this case, the migrant generally returns to the broker agency's "office," through which the migrant passed when entering Thailand, and again has only seven days to be placed in another job before being deported. If the migrant is fortunate enough to be placed in another job, it must fall under the same type of work as the previous job (i.e. former construction workers must remain in construction work) as per the terms of placement under the MOU. The worker must then get a new work permit. If after seven days the worker is not placed in a new position and is sent back to Myanmar, the worker must restart the MOU process all over again if he or she wants to return to Thailand for work, meaning the time-consuming and expensive process must be done anew.

A concerning gap is the fact that there is no clear complaint mechanism to report problems with recruitment agencies or placements. Most commonly, complaints about the placement must go back to the agency, which raises conflict-of-interest issues. It is unclear if the Provincial Employment Offices are prepared to assist migrants with complaints relating to placement under the MOU (ILO, 2013). Migrants can also contact Labour Attaches from

their consulates or embassies, but the Myanmar delegation is under-resourced and has a history of inactivity.

Migrants entering Thailand under the MOU are also required to contribute to Social Security for their healthcare coverage. This is because they usually take jobs considered to be in the formal sector, such as factories. Yet, while those in the NV may have a choice between Social Security and the Migrant Health Insurance, those entering through the MOU do not. In essence, migrants under the MOU are required to take the more expensive healthcare option – Social Security. There are two main issues with migrants entering Social Security: 1) employers are the ones responsible for enrolling their workers under Social Security, including providing a matching contribution to the employee’s 5%, and, 2) Social Security contributions amount to a greater expense than the alternative Migrant Health Insurance Plan, with a number of extra benefits that migrants are uncertain of receiving. These concerns are explained in further detail in the following section on Social Security.

The conditions related to going through the formal MOU system have created some important demographic distinctions between migrants who have entered Thailand through the MOU versus those who were regularized under the NV. Those migrants who enter through the MOU are typically single, in part due to the numerous costs and the arrangements of the two-year contract linked to a single employer and a single-entry visa. Out of the 30 individuals MAP was able to interview who entered through the MOU process, all were male, average age 29, and working in construction in Chiang Mai. Of particular significance was the fact that most all of the migrant workers encountered in Chiang Mai who came through the MOU are ethnic Burmese. On the other hand, most of those regularized through the NV process in the Chiang Mai area are of Shan ethnicity, mostly came with their families and already had a social network of friends or relatives who had migrated ahead of them.

THE NV PROCESS AND ASSOCIATED COSTS

For the 54 NV individuals interviewed for this section of the report, 19 (35%) were female, and the average age among all interviewed was 34. In terms of occupation, 25 (46%) worked in factories; 4 were market sellers (7%); 1 performed construction work (2%); 2 did mechanical repairs (4%); 3 were domestic workers (6%); 10 (19%) worked in agriculture; and 9 (17%) did not specify an occupation. Ten respondents were interviewed in Chiang Mai Province, and the rest were interviewed in the Mae Sot area.

The process of registration under the Nationality Verification (NV) had comparatively clearer steps and is more direct than the MOU process. Nevertheless, the NV process is bureaucratic and time-consuming [Diagram 2].

Often facilitated by a broker, the first step in the NV process involves securing a temporary passport. A temporary passport from Myanmar costs 1,600 THB; however, with broker fees it ends up costing migrants between 4,500-5,000 THB (138.50-153.85 USD).

“The employer did not pay attention to our registration; they let broker do everything.”
- **Nang Son, domestic worker, Chiang Mai**

Workers often pay a portion of the costs in advance (1,500 THB) and then the rest of the sum after securing the passport. The next step is securing health insurance. As explained in the next section, in 2013 the total annual fee for the Migrant Health Insurance was increased to 2,800 THB (600 THB for a required health examination and 2,200 THB for insurance), amounting to approximately 86 USD; in June of 2014 it was adjusted down to an annual sum

of 2,100 THB (500 THB for a check-up and 1,600 THB for insurance), or approximately 65 USD. Out of the 54 individuals registered under NV interviewed for this section, which was during the period of the higher fee, only seven (13%) had purchased health insurance.

Upon securing a passport, completion of the health exam and purchasing health insurance, workers then must register for a work permit. As of the end of 2014, the policy includes the following steps and related fees: 100 THB for submitting the work permit application, 500 THB (15 USD) for a visa, and 1,800 THB (55 USD) for a 2-year work permit (one year costs 900 THB). While the actual costs for securing official status under the Nationality Verification process should only cost 3,100 THB plus the health insurance costs of 2,100 THB, for a total of 5,200 THB, after paying associated costs, including broker fees to assist in the process and transportation costs, in reality, migrant workers paid 12,000 THB (369 USD) on average for going through the full NV process, or more than double the official costs. Workers reported that employers then deducted approximately 500-1,000 THB (15.38-30.76 USD) per month in order to pay back fees for the documents.

Once registered, migrant workers must report to immigration every 90 days to confirm they are still working in the area where they registered. Migrants must pay 20 THB (0.62 THB) to fill out this 90-day form and receive a stamp (although there have been reports of excessive charges of 100 Baht being collected per person at the Chiang Mai immigration office for unspecified fees). These visits to immigration incur transportation costs and loss of income from a day of missed work, such that sometimes workers elect to use brokers to secure the 90-day stamps for them, incurring additional expenses. The location for 90-day notification for migrant workers under the NV is separate from the primary immigration office for internationals with passports. Conditions are often overcrowded and exposed to the elements, as there is not enough room inside to accommodate the 600 people on average queued each day. There is a fine of 200 THB per day for not reporting on time, with a maximum fine of 5,000 THB.

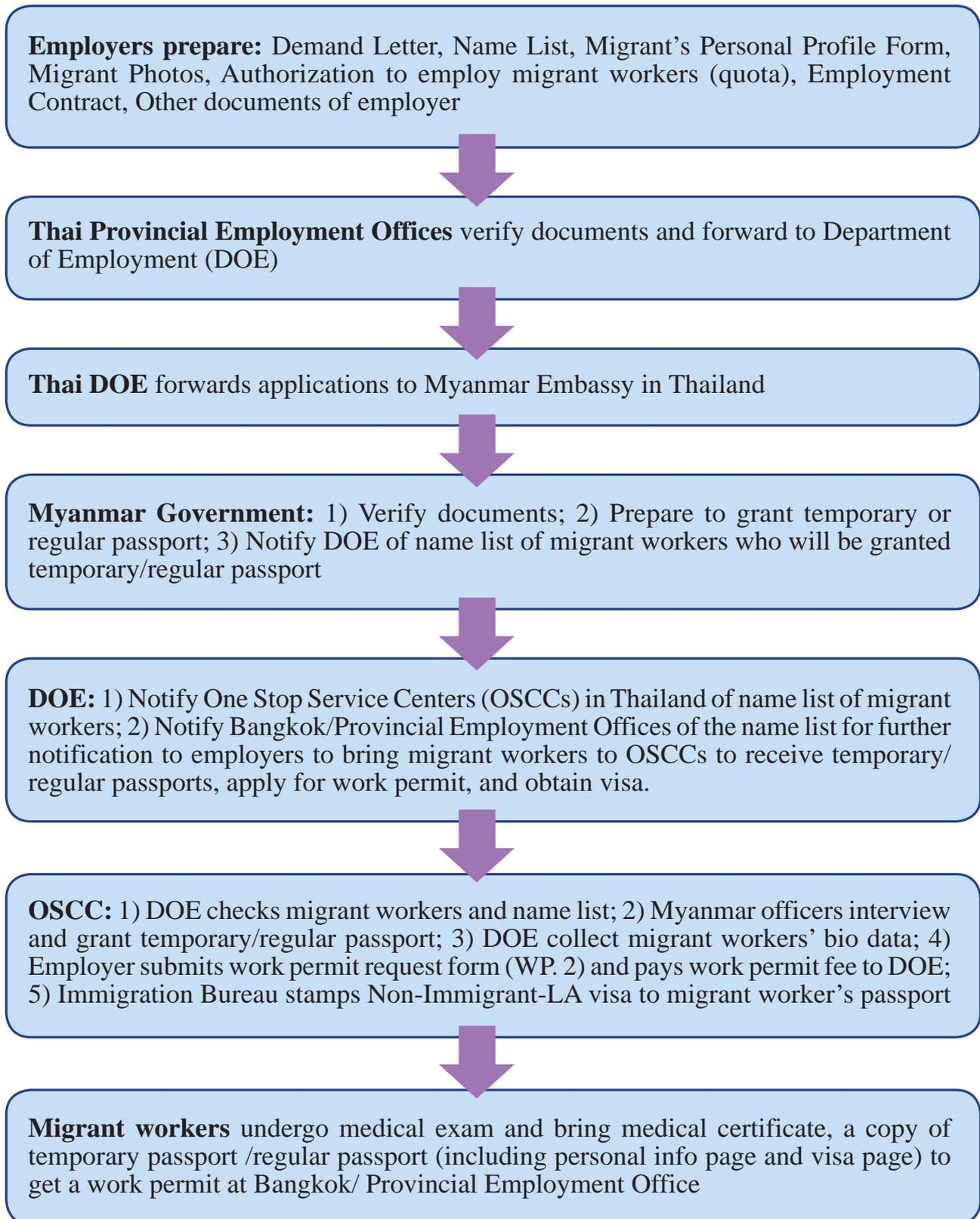
“I tried to do reporting (every 90 days) by myself. I rode the motorbike to the venue. It was very far and it was very risky to get accident because the cars drive very fast. There is also risk of being stopped by the police as well. I felt very scared. My boss deducted my wage for 1 day for being absent to do reporting. It was not convenient at all to do reporting. As a migrant worker, we don’t receive information on what and how to do for reporting; we don’t understand it. These are reasons why many migrant workers use services from brokers”-

Domestic worker, Chiang Mai

For those already in the country who did not enter through the MOU, the Nationality Verification process was the only other option to become documented at the time of this survey. Accordingly, all respondents provided similar answers as to why they had gone through the NV process: the employer would not hire the workers otherwise; the documents would provide greater mobility; they wanted to work legally in the country, et cetera.

“I would like to have no document because the more documents we have the more money we have to pay... We have to work just for applying legal document, no money left to survive... When we don’t have any document, we just need to pay for the police about 500 per month and it was done for everything.” - Yu Yu Jin, female construction worker, Chiang Mai

Diagram 2: Process for Regularization of Migrant Workers under the Nationality Verification Process



Reference: IOM Thailand, 2013a

PART III:

SOCIAL SECURITY AND ACCESS TO HEALTH SERVICES

SOCIAL SECURITY AND MIGRANT HEALTH INSURANCE POLICIES

Migrant workers who secure a Temporary Passport and work in certain formally recognized types of work are supposed to be eligible to enroll in Social Security and receive the entitled benefits: (1) Injury or illness; (2) Disability; (3) Death; (4) Child delivery; (5) Child welfare; (6) Conditions of aging; and (7) Unemployment. However, many migrants work in occupations which are excluded from Social Security coverage, including fisheries, agro-industry, and domestic work, or are not employed continuously through the year, such as sub-contracted or seasonal workers. While the numbers registering with Temporary Passports through the MOU and Nationality Verification have increased, the commensurate numbers enrolling in Social Security have been significantly lower, with estimates of less than half those who are eligible actually enrolled as of 2013 (Kantayaporn, T. 2013). While the Social Security policy indicates that migrants are eligible to enroll and receive the benefits of Social Security, they face a number of limitations in both enrolling and in receiving the full package of promised benefits, especially maternity leave, unemployment and retirement benefits.

To subscribe an employee to Social Security, each month the employer is supposed to send the equivalent of ten percent of the monthly wage of the employee to the Social Security Office of the Ministry of Labour. Five-percent of the contribution comes from the worker's monthly salary (there was a temporary special rate of four percent which has now expired), with employers contributing a matching amount. Supposedly, failure to enroll eligible workers in the Social Security program is punishable under Thai law. Regardless, many employers do not want to spend the money or deal with the bureaucracy, so they do not tell their migrant employees about the system. There are also concerns that employers may be deducting from migrants' wages but not enrolling the migrants in Social Security, often without the migrants' knowledge until they try to access the benefits. Complicating matters and adding expense, the rules state that workers are only eligible to begin receiving benefits after contributing to Social Security for three months, so migrants are required to purchase three months of health insurance to cover the gap, most recently at a cost of 1,000 THB (500 THB for health exam and 500 THB for three months coverage).

Although a health insurance program for registered migrant workers (Migrant Health Insurance) has been in place since 1997, it was not until a Cabinet Resolution in January 2013 that any significant changes were made. In the Cabinet Resolution, the Ministry of Public Health (MoPH) was recognized as the lead agency to ensure healthcare coverage for migrants who were not able to access the Social Security system (IOM Thailand, 2013b). Soon after, an announcement in August 2013 marked the first time that migrants regardless of documentation status – meaning all migrants – were eligible for health insurance. This new policy supposedly included: undocumented migrants, migrants who work in the informal sector (including agriculture and domestic work), migrants paying into Social Security but waiting for three months before being eligible to access the benefits, and dependents of migrants, especially children.

In 2013, the MoPH also issued details of the health examination, clarifying the deportation process for migrants who did not pass, and increasing insurance fees of the annual health insurance for adult migrants from THB 1,300 (40 USD) to 2,200 THB (67 USD). This fee, plus the medical examination of 600 THB (18 USD) would amount to an expenditure of 2,800 THB (86 USD) per migrant. (Children under 8 years of age would only be charged

365 THB, but children 8 years and older had to pay adult rates.) While most of the benefits of the newly priced insurance remained the same, the new scheme would also include antiretroviral (ARV) provision for those infected with HIV. Soon after, there were reports that this policy was not being implemented consistently, and many healthy migrants found the costs prohibitive resulting in low coverage rates. The next year, in 26 June 2014, there was an announcement by the National Council for Peace and Order under the military government, which took over in May 2014, instructing the Ministry of Health to reduce fees for Migrant Health Insurance to 2,100 THB for a full year's coverage, with the health exam costing 500 THB and the insurance reduced to 1,600 THB.

There has been confusion over whether migrants who are eligible for Social Security can choose between the two competing health coverage schemes for migrant workers: the Migrant Health Insurance Plan and Social Security. Under the current Social Security program, for those migrants with a Temporary Passport who work in what is considered the "formal sector," it seems that employers do not have a choice and must enroll the migrant worker with the Social Security Office of the Ministry of Labour. Not having a choice may be problematic though.

Since migrant workers must pay five-percent of their monthly wage to the Social Security fund for as long as they work, this typically exceeds the fees that migrant workers pay to enroll in the Migrant Health Insurance annually. For example, a worker making only 5,000 THB (153 USD) per month, which is much lower than the legal minimum wage but is a wage commonly earned by garment factory workers, would still be required to pay 3,000 THB (92 USD) per year for Social Security. This is 50% higher than the cost of the Migrant Health Insurance, which currently costs 2,100 THB per year. If the worker made more than 5,000 THB per month, the worker would be paying even more, as the Social Security payment is a percentage. Moreover, due to the short-term nature of workers' contracts, ostensibly with an initial limit of two to four years, and the restriction allowing migrant workers to stay in the country unemployed for only seven days, migrant workers cannot access the long-term benefits of Social Security or unemployment benefits. Currently there is no system for transferring benefits across countries and, as such, there are few long-term incentives to participate in the Social Security system. (Note – at the time of this writing, there was no guarantee that if a migrant stopped contributing to the Social Security fund and went home and re-applied, whether they would be able to re-enter the system and access accrued benefits.)

Recognizing the disparities migrants face in accessing Social Security benefits, on 28 May 2013, Mr. Somkiat Chawatsriwong, Permanent Secretary to the Ministry of Labour announced that he believed a separate Social Security system with fewer benefits should be set up for migrant workers. Migrant women in particular were to be targeted for restricted rights. While women would still be able to claim the costs of birthing, they would not receive benefits for maternity leave or child allowance. Mr. Somkiat said that migrants should know that they are only allowed in Thailand to work temporarily and not 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 also proposed giving a lump sum instead of monthly pensions (MAP Foundation, 2013).

While this separate Social Security system has not been enacted, the thinking behind it reflects the Thai government's disregard for women's sexual and reproductive health and rights within migrant policy. At the same time, the idea to include migrants under Social Security may have been well intentioned; however, the reality is that migrants are unable to access many of the benefits of the national Social Security system they otherwise are entitled to.

INTERVIEW RESULTS

For this section of the research, MAP did a survey, interviewing 101 migrant workers from Myanmar (35 from Chiang Mai Province and 66 from Mae Sot in Tak Province) about their understanding of Social Security and its benefits. Fifty-three (53) were women and forty-eight (48) were men. Among the respondents, 59% were factory workers, 33% were in construction; 5% were domestic workers; 2% were cooks; one respondent was a driver; and one respondent was a shopkeeper. Only one worker, working in construction, reported entering Thailand through the MOU. The rest had registered through the Nationality Verification process.

According to government policy, most of those surveyed were eligible for Social Security, but only eight (8%) knew that they were eligible to enroll for Social Security, and the same 8% also indicated that they were contributing monthly to the Social Security fund. However, only one of these indicated receiving and using the Social Security card for health services. Almost all the other respondents indicated that they were not contributing to Social Security because their employers had not started the process. Only one respondent (1%) reported having neither the migrant health insurance plan nor Social Security.

Out of the eight workers contributing to Social Security, five of them were uncertain as to whether they were actually eligible for benefits and two of them thought that they were not entitled to any benefits at all because they are not Thai. Therefore, ironically, the few contributing to the Social Security system were uncertain as to whether they were actually eligible to receive any benefits, while the rest were not even aware of their eligibility, in part because of their employers' reluctance to enroll them.

“Social Security, I know only that workers have to pay every month, but I don't know what benefits workers will get.” - **Construction worker, Chiang Mai**

In at least three cases out of the eight, it appeared that although they were contributing to the Social Security fund, they had also recently paid 1900 THB (approx. 60 USD) to enter into the one-year migrant health insurance plan, with the timing of coverage for the two programs overlapping. Out of the 101 migrants interviewed, seven (7%) had entered the new health insurance plan that was announced at the time, having paid 2,800 THB.

All respondents—not including the one possessing a Social Security card and the one without any health insurance—said that if they were to get sick or injured, they would just use the Migrant Health Insurance Plan, which involves a 30 THB copay at medical facilities. But even then, there was not uniform confidence in whether the treatment was effective.

“Now I have a card, I feel very glad because I have not to be worry if I got sick or got an accident” - **Nang La, domestic worker, Chiang Mai**

“I went to the state hospital and used the health insurance card but I did not get well. So I went to see a doctor in private clinic.” - **Jai, male agriculture worker, Pong Yang, Chiang Mai**

“I use the health insurance card (30 Baht scheme) but I felt that the hospital did not pay attention to me and I did not get better. So I went to the clinic and paid by myself and then I got well.” - **Nang Son, domestic worker, Chiang Mai**

Only two respondents (2%) answered that the employer should pay for the expenses if they were injured on the job. Nineteen (19%) responded that they did not know because

they had never been injured. The rest indicated that they assumed they could use their health insurance plan, provided that the injuries were not too serious. Out of the 101 respondents, only 14 (14%) indicated that the employer or Workmen's Compensation Fund should pay if a work-related injury resulted in a disability. The rest were unsure who would be responsible. None of the respondents knew whether they could receive unemployment benefits or retirement benefits, in part reflecting a lack of awareness about Social Security benefits.

“Just last month, a male worker fell from the roof and died. I don't know anything about compensation for his death!” - Aanon, construction worker, Chiang Mai

ANALYSIS

There are two main conditions that limit migrant workers from enrolling in Social Security: 1) Only migrants working in the “formal” sector are eligible for Social Security, thus excluding a considerable number of migrants hired as domestic workers, in agriculture, in the seafood industry, and those hired through sub-contractors or short-term or seasonal arrangements. 2) Employers are the ones responsible for enrolling migrant employees and contributing monthly payments, which includes making co-payments. Social Security is more expensive and complicated than the alternative Migrant Health Insurance Plan, which discourages employers from pursuing this option.

If considering only migrants hired in categories of work which fall under the definition of work in the “formal” sector, the major obstacle is that there are employers who do not inform their employees of the program and who do not take the initiative to enroll their workers for Social Security. As is reflected in the survey results, only eight percent were aware of whether they were eligible for Social Security, and those were the ones who were already enrolled. Since there is no enforcement system to hold employers accountable if they do not enroll migrant employees in the Social Security system, it leaves enrollment as optional. Anecdotal reports indicate that some migrants are being registered with the three-month interim period under the Migrant Health Insurance, which is mandatory and assumes that the employer is registering the migrant under Social Security, and then not having any coverage once that expires, as the employer fails to register the migrant under Social Security. However, another consideration is that the number of migrants in eligible categories of work is decreasing, in part because more migrants have brokers as their employer rather than direct employers, which is occurring more frequently as a result of the use of sub-contracting.

Whether migrants fully understand their status under the Migrant Health Insurance is questionable. The survey did not delve into the number holding a health insurance card, and whether they knew the duration and cost. For instance, it would be interesting to find out how many only had a card for three months but may have been unaware that they were not registered until they needed health services. Lastly, of concern is the fact that migrants generally have poor understanding of who pays for work-related injury or disability. While being enrolled in Social Security ensures compensation, all migrant workers, even if they are sub-contracted, are entitled to Workers Compensation. This lack of awareness is troubling and reflects the assumption that employers will be the one to inform migrants of their benefits under social protection schemes.

CONCLUSIONS

The survey found that migrants who enter the country registered under the MOU receive no clear benefit over those who registered under the Nationality Verification (NV) in regards to pay level, working conditions, or safety at work. In general, migrants who enter through the MOU encounter the problem of employers selectively honoring labour laws - the same as migrants registered under the NV. It seems that the type of work migrants are employed to do may have a greater impact than their documentation type on wages paid, length of work day, and days off granted. Very few respondents indicated receiving the minimum wage. Women migrant workers still suffered a wage gap, earning less than men for the same work, regardless of documentation status. Those migrants being paid monthly reported working longer hours compared to those paid daily or by the hour. Those with MOU status reported working eight-hour days without overtime, but did not have any days off. Full overtime payment was rare in general. Registration status also showed no correlation with safety conditions at work. Most workers had concerns about accidents or work-related health problems. Similarly, a very small percentage of migrants were provided with safety training or were made aware of fire safety. Quality of living conditions were also unaffected by documentation status, with all migrants indicating concerns over sanitation for both on-site and off-site accommodation, and off-site housing having the added concern of commuting safety.

Considering that entering Thailand through the MOU process provides no certainty regarding the working conditions of the job placement or access to proper benefits, but costs at least twice as much as the Nationality Verification process, it is hard to justify promoting this system. Part of the reason for inflated costs is the lack of regulation of brokers and placement agencies. Without clear lines of responsibility among agents and employers and a lack of regulation, there is no transparency in the fees being paid by migrants. Similarly, there are no clear complaint or enforcement mechanisms in place to regulate these placement agencies. Thus, the onus is on migrants to endure the conditions they are placed in, as their status is linked to a single employer and is difficult to transfer. For migrants from Myanmar, there seems to be a demographic imbalance in migrants going through the MOU that reflects the terms of work. More unmarried men seem to go through this system because of the two-year contract, and it also seems that primarily migrants of Burman ethnicity utilize the MOU, whereas other ethnicities, such as Shan, prefer the NV system. Comparatively, the NV process is less expensive but no less bureaucratic, which once again allows brokers the opportunity to intervene and gain profit. It seems that while both the NV and the MOU seemingly have the primary objective of regularizing migrants, in the end both increase costs and fail to provide guarantees of improved working conditions and benefits.

Lastly, with the increase in numbers of migrant workers from Myanmar entering the MOU and registering with the NV, there should also be greater enrollment in Social Security. However, numbers show that while enrollment is increasing, it is not commensurate with the number of workers eligible. This was reflected in the interviews: not only was there low enrollment in Social Security, there was little knowledge about the program in the first place, in part because employers were their main source of information. Most migrants still assume that they are only eligible for Migrant Health Insurance. As for Social Security, considering its higher cost, the reliance on employers to enroll workers and contribute to the fund, and limitations on accessing the full range of benefits available, this does not yet seem like the most viable option for migrants. However, creating a limited version of Social Security that likewise restricts migrants' rights is not the answer. At the same time, policies on Migrant Health Insurance for those outside of Social Security have recently been in flux, with changes in prices and uncertainty on availability of treatment for HIV, and questions as to whether undocumented migrants have access to this health insurance or not. In other words, even social protection programs for migrants are uncertain and becoming more confusing, allowing migrants to slip through the cracks until they need these benefits and discover an unpleasant reality.

RECOMMENDATIONS

Living and Working Conditions of Migrant Workers

- ✓ Ensure that all migrant workers receive proper wages according to Thai Labour Law, regardless of documentation status or occupation, and that all migrant workers receive proper days off and proper overtime payment for hours worked over standard work hours.
- ✓ Since migrant workers registered under the MOU and NV are formally recognized with identified work places, there should be increased, proactive monitoring of their working and living conditions by Labour Inspectors. This should not only include penalties for failure to follow labour laws, but should promote safety and sanitation standards as well.
- ✓ Occupational safety and health initiatives need to increasingly focus on and reach migrant workers, as employers cannot be relied on in these matters.

Recruitment Process and Registration under the MOU and the NV Systems

- ✓ Expenses for the MOU and NV processes should be clearly enumerated and regulated transparently, with fees charged by agents controlled and reduced as much as possible.
- ✓ The role of agents should be clearly delineated, and reliance on them in the placement process should be diminished. As part of this, there should be a clearer understanding of the recruitment process on the Myanmar side, including fees paid and terms of work promised.
- ✓ Agents need to be regulated and strictly monitored. Revising the *1985 Recruitment and Job Seekers Protection Act* to include agencies which place migrant workers in Thailand would be a start.
- ✓ Accessible and impartial complaint mechanisms about placement agencies should be established and publicized for migrants who come through the MOU system. Similarly, complaint mechanisms about the registration process for migrants entering the NV should be made available.
- ✓ Migrant workers should be entitled to hold their own documents once they are registered.
- ✓ The use of sub-contracting migrant workers should be clearly monitored and should not limit the ability of those migrants to properly register.
- ✓ Threats of deportation and actual deportations should not be used to coerce migrants and employers into entering the documentation processes.

Social Security for Migrant Workers

- ✓ Information should be made more widely available to migrants explaining the benefits of Social Security and how to enroll.
- ✓ The Social Security Office should find ways to enable migrants to access all the benefits available in the fund, including unemployment, maternal benefits, and retirement.
- ✓ Employer's responsibilities for enrollment and contributions should be monitored and enforced.
- ✓ Practical revisions to migrant policy, such as the length of time provided to find a new employer and proper observation of maternal leave, should be enacted to allow migrants to enter and benefit more fully from Social Security.
- ✓ Portable Social Security with long-standing membership of migrants should be promoted bilaterally.
- ✓ Restrictions on the ability to change employers should be lifted to allow migrants to choose work and to encourage employers to provide proper wages and benefits.
- ✓ Migrant Health Insurance should have a clear policy and retain low costs to make it as accessible as possible to all migrants who are not covered by Social Security.

REFERENCES

Hall, A. (6 May 2012) “Experiences Of Myanmar Migrant Workers In Thailand With The Mou Import Process.” Mahidol Migration Center, Institute for Population and Social Research, Mahidol University. Thailand.

International Labour Organization (ILO) (2013). “Regulating Recruitment of Migrant Workers: An Assessment of Complaint Mechanisms in Thailand.” Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE Project); Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University.

International Organization for Migration (IOM) Thailand. (2013a). Migrant Information Note, Issue #18, January 2013.

International Organization for Migration (IOM) Thailand. (2013b). Migrant Information Note, Issue #21, September 2013.

International Organization for Migration (IOM) Thailand. (2014a). Migrant Information Note, Issue #23, April 2014.

International Organization for Migration (IOM) Thailand. (2014b). Migrant Information Note, Issue #24, August 2014.

International Organization for Migration (IOM) Thailand. (2014c). Migrant Information Note, Issue #25, December 2014.

International Organization for Migration (IOM) Thailand. (2015a). Migrant Information Note, Issue #26, April 2015.

Kantayaporn, T. and Mallik, S.(2013, December). *Migration and Health Service System in Thailand: Situation, Responses and Challenges in a Context of AEC in 2015* (Final Draft). World Health Organization Representative to Thailand.

MAP Foundation. (2012, December). *RegularRights: Do Documents Improve Migrants' Lives?*

Office of Foreign Workers Administration, Ministry of Labour, Department of Employment. (Nov. 2014).

Office of Foreign Workers Administration, Ministry of Labour, Department of Employment. (Aug. 2013).

APPENDIX

Table 1: Profile of Respondents (First Questionnaire on Working Conditions)

PROFILE OF RESPONDENTS			
	Undocumented	NV	MOU
Women	34	37	0
Men	41	20	7
Total	75	57	7
Age	From 16 to 49 years; Median age 25.	From 18 to 50 years; Median age 30.	From 16 to 56 years; Median age 25.
Marital status	35 married (47%) 9 divorced (12%) 31 single (41%)	49 married (86%) 8 single (14%)	3 married (43%) 4 single (57%)
Work	<u>Construction:</u> 42 (56%) <u>Agricultural Work:</u> 12 working in orange orchards (16%) <u>Factory:</u> 10 (1 specified weaving factory and 1 specified ice cream factory)(13%) <u>Domestic Worker:</u> 10 (13%) <u>Misc:</u> 1 installing billboard ads (1%)	<u>Construction:</u> 29 (78%) <u>Agricultural Work:</u> 8 working in orange orchards (22%) <u>Factory:</u> 10 (3 specified fish sauce factory) (27%) <u>Domestic Worker:</u> 10 (27%)	<u>Construction:</u> 7 (100%)

Table 2: Working Conditions (Responses to First Questionnaire)

WORKING CONDITIONS			
	Undocumented (75 Respondents)	NV (57 Respondents)	MOU (7 Respondents)
Wages			
Paid Daily?	66 respondents (88%)	51 respondents (89%)	7 respondents
199 THB or less	34 (52%)	13 (25%)	2 (29%)
200 THB-299 THB	26 (39%)	19 (37%)	4 (57%)
300 THB+	6 (9%)	19 (37%) ⁴	1 (14%)
<i>Percentage receiving less than legal minimum wage</i>	91%	62%	86%
Paid Monthly?	9 respondents (12%)	6 Respondents (11%)	0 Respondents
5000 THB or less	8 (89%)	2 (33%)	-
5001 THB-7200 THB	-	4 (67%)	-
7200+ THB	1 (11%)	-	-
<i>Percentage receiving less than legal minimum wage</i>	89%	100%	-
Work Days (not incl. overtime)			
Work 8 or less hours per day	50 (67%)	41 (72%)	7 (100%)
Work 8+ to 9 hour per day	17 (23%)	12 (21%)	-
Work 9+ to 10 hours per day	1 (1%)	-	-
Work 10+ hours per day	7 (9%)	4 (7%)	-
<i>Percentage (not including overtime) working over legal work day</i>	33%	28%	0%

⁴ Percentages do not always add up to 100% due to rounding.

Overtime (OT)			
Paid for overtime (OT)	29 of 75 (39%)	39 of 51 (76%)	3 of 7 (43%)
OT Avg. Wage/Hr	30 THB	29 THB	-
OHS			
Accidents at work	9 (12%)	6 (11%)	3 (43%)
Fire hydrant at work	14 (19%)	18 (32%)	0 (0%)
OHS trainings	13 (17%)	8 (14%)	0 (0%)
Fire trainings	10 (13%)	6 (11%)	0 (0%)
Workplace safe? (% yes)	43 (57%)	39 (68%)	1 (14%)
Live onsite? (% yes)	44 (59%)	25 (44%)	3 (43%)

**Table 3: Summary of Responses on Social Security and Health Insurance
(Responses to Questionnaire in Section 3)**

SUMMARY OF RESPONSES ABOUT SOCIAL SECURITY	
Description	Respondents (n=101) (% ⁵)
Sex	Women: 53 (53%) Men: 48 (48%)
Occupation	Factory Work: 59 (59%) Construction: 33 (33%) Domestic Workers: 5 (5%) Cooks: 2 (2%) Driver: 1 (1%) Shopkeeper: 1 (1%)
Registration Process	Nationality Verification: 100 (99%) MOU: 1 (1%)
Knew that they were eligible for Social Security	8 (8%)
Contributing to Social Security	8 (8%)
Receiving Social Security benefits	1 (1%)
Uncertain whether actually entitled to benefits	5 (5%)
Did not think were eligible for benefits	2 (2%)
Contributed to both Social Security and Migrant Health Insurance Plan	3 (3%)
Possesses Neither Social Security nor Health Insurance	1 (1%)
Who Pays for Illness	Migrant Health Insurance: 100 (100%) Social Security: 1 (1%)
Who Pays for Work-Related Injury	Migrant Health Insurance or self: 80 (80%) Uncertain: 19 (19%) Employer: 2 (2%)
Who Pays for Work-Related Disability	Uncertain: 87 (87%) Workmen's Compensation Fund/Employer: 14 (14%)

⁵ Percentages may not add up to 100% due to rounding error.

Table 4: Statistics on NV and MOU Registration (2013/14)

Source: Office of Foreign Workers Administration, Ministry of Labour, Department of Employment.
(Aug. 2013, Nov. 2014).

Statistics for All Migrants Registered or Eligible for Registration Aug. 13 / Nov. 14

	NV (Art 9)	MOU (Art 9)	Art 13 Illegal entry: Ethnic cards	In process of obtaining NV	TOTAL
August 2013	917,212	168,486	19,850	252,019	1,357,567
November 2014	960,711	254,009	21,938	1,533,675 (registered under One Stop Center but not necessarily enrolled with NV)	1,236,658 (2,770,333 including One Stop)

Migrants Documented through NV (Article 9) by Nationality and Sex, Aug. 2013 / Nov. 2014

	Male (Aug. 13)	Female (Aug. 13)	Total (Aug. 13)	Male (Nov. 14)	Female (Nov. 14)	Total (Nov. 14)
Burmese	442,577	334,257	776,834	464,765	356,046	820,811
Lao	20,049	17,909	37,958	18,890	14,205	33,095
Cambodian	61,468	40,952	102,420	65,142	41,663	106,805
Total	524,094	393,118	917,212	548,797	411,914	960,711

Migrants Documented through MOU (Article 9) by Nationality and Sex, Aug. 2013 / Nov. 2014

	Male (Aug. 13)	Female (Aug. 13)	Total (Aug. 13)	Male (Nov. 14)	Female (Nov. 14)	Total (Nov. 14)
Burmese	31,883	14,195	46,078	85,335	56,628	141,963
Lao	9,708	8,439	18,147	11,792	9,497	21,289
Cambodian	65,321	38,940	104,261	51,709	39,048	90,757
Total	106,912	61,574	168,486	148,836	105,173	254,009

Registration by Provinces included in the Study (99% from Myanmar), Aug. 2013 / Nov. 2014

Chiang Mai	Male (Aug. 13)	Female (Aug. 13)	Total (Aug. 13)	Male (Nov. 14)	Female (Nov. 14)	Total (Nov. 14)
NV	3,129	3,746	6,875	30,460	29,943	60,403
MOU	173	10	183	10,335	9,123	19,458
Total	3,302	3,756	10,360	40,795	39,066	79,861
Tak						
NV	1,846	3,520	5,372	9,709	16,870	26,579
MOU	487	15,15	2,002	18,025	20,247	38,272
Total	2,333	7,368	9,701	27,734	37,117	64,851



Supported By:
CCFD – Terre Solidaire

Chiang Mai Office

P.O.Box 7. Chiangmai University, Chiang Mai 50202.
Tel: 053 811 202 Fax: 053 271 551
E-mail: map@mapfoundationcm.org

Mae Sot Office

No. 1/5, Ameena Uthit Road, Mae Sot, Tak, 63110
Tel/Fax: 055 536 381
E-mail: map@mapfoundationcm.org

Website: www.mapfoundationcm.org listen online radio at www.mapradio.org