

UNDERSTANDING THE GAPS BETWEEN THE BILATERAL REGULARIZATION OF MIGRATION AND WORKERS' RIGHTS: THE CASE OF AGRICULTURAL MIGRANT WORKERS IN THAILAND

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ASEAN agricultural workers represent one of the most vulnerable groups of workers regardless of citizenship. While bilateral agreements focus on general migration governance mechanisms, the specifics of agricultural workers' rights and protections fall outside their scope. Due to the seasonal nature of cross-border agriculture, these are flexible precarious workers readily available to employers in the borderlands that often do not invest in worker health and social security. The Article reveals how foreign migrant agricultural workers with and without work permits continue to fall between the gaps of national labor protection laws, due to both legal structural exclusions as well as the particular vulnerabilities of being noncitizen workers in remote, unsafe workplaces. This Article documents some of the developments during 2017-2019 in migrant employment in export cash crops. The next challenge for the future is developing mechanisms for bilateralism to lower migration costs, with a commitment to genuinely safe migration, as well as the establishment of long-term equitable working conditions for all migrant workers. The major findings demonstrate how the two main reasons for the discrepancies between the BLA and labor protections have to do with the noninterventionist approach of ASEAN and a series of technical exclusions in Thailand's labor law and regulation.

INTRODUCTION

The agricultural sector is where foreign migrant workers' economic contribution is one of the most significant, but also the lowest in wages earned. The case of agricultural sector employment of foreign migrant workers sheds light on the limitations and challenges of using bilateralism to ensure the safety and labor rights of workers. This is mainly because the security and economic priorities of the Association of Southeast Asian Nations (ASEAN)'s bilateralism eclipse the enforcement of human

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and labor rights (see Part II.B). Exceptions, sector exclusions, and loopholes in the sector-based implementation of migrant labor rights and protections allow for a flexible and exploitable workforce that operates legally outside the regular labor standards. Agriculture is considered temporary seasonal labor. And in some cash-crops, agricultural work is categorized as independent self-employed labor with compensation based on a percentage of sales. Three sets of evidence are used to explain the contexts and gaps between regulation and practice: 1) the contexts of socioeconomic structural inequalities and the politics of ASEAN summits, both of which reveal economic and security priorities; 2) the language and framing of bilateral agreements relevant to migrant labor, which appear to reflect worker protections; and 3) the state of affairs in the agricultural sector, based on a survey, interviews, and field research data, which confirms the current limitations for bilateralism in labor protections and rights in Southeast Asia.

In particular, there are many regulations in place for documentation, but enforcement proves difficult, especially when even on the local level there are local border crossing practices that operate in a grey zone. In December 2020, after the COVID-19 lockdown no more Section 64 temporary border passes were issued, but additional Vietnamese construction and seafaring workers entered the country.¹ At the time, there were 2,063,561 migrant workers from Thailand's four neighboring countries.² According to the International Organization for Migration (IOM), there were 3.63 million migrants in-country in 2020. Such statistics suggest that many migrant workers in Thailand continue to be undocumented.³ The efforts to legalize the undocumented during 2017-2018 through the One Stop Service (OSS) and amnesty from deportations could not be sustained indefinitely. The OSS was a carrot and stick measure: high fines and penalties were posted for both workers and employers, local OSS centers were opened in order to accommodate an influx of registrations, and an amnesty was issued with a 2018 deadline for registration of the undocumented who were already in the country.⁴ After 2018, the operation of the OSS was uneven and left to provincial mandates.⁵ As regards Thailand's in-country migrants, one of the unique aspects of their situation is that due to Thailand's being a landlocked nation with porous borders, it is impossible to control family migration.

1 Section 64 allowed for employers in 11 bordering provinces to temporarily hire workers residing along the border in 90-day durations (with possible renewals), but without providing full social security and benefits.

2 DEP'T OF EMP. OF THAI., STOCK STATISTICS OF ALIEN WORKERS RECEIVING PERMITS TO WORK IN THE KINGDOM: MONTH OF DECEMBER 2020 (2020), https://www.doe.go.th/prd/assets/upload/files/alien_th/aobf3232bdb42f5fe6dbe66cfa75b02c.pdf (last visited Mar. 11, 2022).

3 INT'L ORG. MIGRATION, WORLD MIGRATION REPORT (2020), <https://worldmigrationreport.iom.int/wmr-2020-interactive>.

4 *It's Closed!! OSS Center Chiang Mai More than 67,908 Foreign Workers Entered the Center*, CHIANG MAI NEWS (Apr. 3, 2018), <https://www.chiangmainews.co.th/page/archives/688921>.

5 For example, unlike other provinces, Samut Sakhon province, which is the heart of the country's seafood ports and processing industry, utilized the OSS to continue migrant worker registrations, allowing permit renewals without requiring country return for workers whose permits were about to expire in Sept 2019 to June 2020. *Ready to open "OSS Service Center for Labor Registration of 3 Nationalities 16 December—31 March 2020"*, SIAM RATH (Dec. 15, 2019), <https://siamrath.co.th/n/121280>.

According to the 2015-2018 ASEAN Protection of Migrant Workers' Rights, Article 44, the agreements allow for family members (migrant workers already living in the ASEAN member state) to be acknowledged and offered minimal human rights.⁶ Hence, per policy reaction, the 2017 Royal Decree of the Management of Foreign Workers allows registered migrant workers to bring accompanying family members. In the agricultural sector, family migration has meant that one worker, typically the male worker, is registered and brings his spouse, child or children, and possibly elderly parents as well. Accompanying family members are legally not allowed to work, but in fact do work in the agricultural sector as undocumented workers. The survey data in this study shows that over half of the agricultural migrants work as family units, a majority of them migrating with spouses, and a third with small children and grandparents often providing childcare. In the agricultural sector, then, family migration is a unique challenge.

The challenges regarding the growing number of undocumented migrant workers who resist registration suggest that it is necessary to take a closer look at the 2017-2018 period in order to study the implementation of the 2017 Royal Decree of the Management of Foreign Workers, particularly in the agricultural sector. This study relies on data collected by the author and research team for a 2022 ILO Report on agricultural migrant workers in Thailand, conducted during 2017-2018, hence much of the statistical information is linked to this time period. As the agricultural sector is legally excluded from the vast majority of workers' protections, due to the sector's exclusions in legal regulations that do little to protect temporary seasonal irregular workers and independent contractors, it must be used as a case study to examine how exceptions to law compound the difficulty in ensuring migrant workers' rights and social protections. Despite sending and receiving countries' signatory agreements, bilateralism does not protect all migrant workers due to the limitations, weaknesses, and pre-existing legal exclusions from full labor protections.

This Article will discuss the following detailed background information: political economic contexts of Thailand and sending countries in brief, describe the current nine legal categories in documentation (official and unofficial), Thailand's and the region's legal frameworks for their regulation and bilateral labor MOUs, the issue of document brokering, and safe and fair migration as a compact for governing migration. The Article proceeds with the methodology and follows with the findings which are focused on the challenges of categorical limits, wage and hour, official contracts, quality housing, and health and social benefits. Lastly, the Article concludes that the challenges in enforcing bilateral agreements for safe and fair migration for migrant workers in the region need to be met with both international economic pressures and political diplomacy.

6 The 2015 ASEAN Summit meeting resulted in the Consensus on the Protection and Promotion of Migrant Workers' Rights, ASEAN Secretariat, *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers*, ASEAN.ORG (Nov. 14, 2017), <https://asean.org/book/asean-consensus-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-2>.

I. BACKGROUND

A. Significance of the Agricultural Sector and Employment of Foreign Farm Workers

Thailand's agricultural exports have increased by 75% since 2005-2007, a value of 280 million Baht. In 2018, agriculture (excluding forestry and fishing) exports amounted to USD 44,224 million, representing 7% of exports.⁷ Thai nationals have gradually been largely replaced by foreign workers in temporary seasonal agricultural labor. In 2003, the Thai agricultural sector accounted for 10% of GDP, and its workforce consisted of 40% Thais. Additionally, in 2001 130,000 (23%) of 568,249 migrants were documented and registered with work permits by agricultural employers, but in 2004 180,000 (21%) of 849,552 were registered, suggesting that a little over 20% of all registered migrants were in agriculture during the early 2000s.⁸ However, unlike most industrial countries, Thailand has fewer plantations owned by corporate agriculture, and more high land tenureship by small and medium-size farmers in the sector; about 90% of Thais working in agriculture are local farmers and unpaid family workers working on their own or sharecropped land. In contrast, the overwhelming majority of migrants are all hired workers, often hired by both large plantations and small to medium-size farmers.⁹

Demographically, with the combination of Thai farmworkers aging out, working-aged farmworkers finding better job prospects abroad (in ranking order from 2019 data from Thailand's Department of Employment: Taiwan, South Korea, Japan, Israel, Malaysia, and Singapore are the leading destination countries), and younger workers opting for higher education or entry into the service sector or factory jobs—the number of foreign migrant workers in agriculture has grown exponentially in Thailand.¹⁰ In an effort to regularize the undocumented workers from bordering Myanmar, Cambodia, and Laos, Thailand underwent radical bilateral migration governance reform from 2014 to 2017. The memorandum of understanding (MOU) was a mechanism that was developed for the regularization of migrant workers' migration in ASEAN after the ILO recommendations in the late 1990s.¹¹ The term "MOU" in the Thailand-ASEAN context has come to mean the specific entry and work-permit visa type based on 1-2 years of full-time employment, with particular labor standard protections and employer contributions to health and social security benefits. According to the ILO, over 2.6 million migrants have used the MOU,

7 *Country Profile Thailand: Merchandise Exports by Product Group*, WTO STATS, <https://stats.wto.org/> (last visited Mar. 11, 2022).

8 PHILIP MARTIN, *THE ECONOMIC CONTRIBUTION OF MIGRANT WORKERS TO THAILAND: TOWARDS POLICY DEVELOPMENT 20* (2007). Data on total migrants include all countries, all occupations.

9 *Id.*

10 Yongyuth Chalamwong & Raphaella Prugsamat, *The Economic Role of Migration: Labor Migration in Thailand Recent Trends and Implications for Development*, TDRI Q. REV., Sept. 2009, at 3; Supang Chantavanich & Pairin Makcharoen, *Thailand*, 17 *ASIAN & PAC. MIGRATION J.* 391 (2008).

11 Pruek Taotawin & Sutee Satrakom, *MOU for Transnational Labours Employment Neoliberalism, Labour Protection and Adjustment of State's Regulation Strategy*, 7 *J. MEKONG SOCIETIES*, Sept. 2011, at 1 (2013).

nationality verification procedures, and/or registration at the temporary One Stop Service (OSS) Centers. The OSS combined immigration, labor, and health services in one location in select provinces.¹² Aside from the OSS centers, the government also implemented fast-track temporary labor migration confined to 11 border provinces. With these newer regulations allowing border passes for temporary foreign migrant workers, more migrant workers in agriculture have come to work in border zones.

Migrant workers contribute to Thailand's economy as low-wage workers, constituting over 10 % of the Thai workforce. Dominant fields in which they are allowed by the government include agriculture, seafaring, seafood processing, manufacturing, construction, and domestic workers that work in the home, including child/elder/disabled care. "The number of non-Thai residents within the country has increased from an estimated 3.7 million in 2014 to 4.9 million in 2018, of which approximately 3.9 million are migrant workers from Cambodia, the Lao People's Democratic Republic, Myanmar and Vietnam."¹³ However, even with increasing numbers of non-Thais, migration scholars and economists have noted that the Thai government's migrant worker policy remains short-term, reactionary, and contradictory. All the while, trade unions and government officials have been unable to prioritize a migrant worker agenda or mitigate discrimination in their own organizations, leaving NGOs as the primary social actor advocating for migrant workers' rights.¹⁴

According to a Mekong Migration Network Agricultural Report, "official statistics show that as of November 2018 a total of 2,214,298 work permits had been issued to migrants from Myanmar, Cambodia, & Lao, who have completed the registration process."¹⁵ If the IOM's figure is 4.9 million migrants working in Thailand in 2018, this suggests that only a little over half of all the migrant workers in-country are documented.¹⁶ Assuming that the approximation by Martin (2007) is correct that 20% indeed work in the agricultural sector, that would indicate over 400,000 migrants in agriculture.¹⁷

12 ASEAN Secretariat, *supra* note 6.

13 U.N. THEMATIC WORKING GRP. ON MIGRATION IN THAI., THAILAND MIGRATION REPORT 2019 xi, 187 (2019).

14 Yongyuth Chalamwong et al., *Management of Cross-border Migration: Thailand as a Case of Net Immigration*, 40 ASIAN J. SOC. SCI. 447, 452 (2012). Taotawin & Satrakom, *supra* note 11. KRITAYA ARCHVANITKUL & PANTIP K. SAISUNTHON, QUESTION AND CHALLENGE TO THAILAND MANAGEMENT POLICY ON HEALTHY AND TRANSNATIONAL LABORS' RIGHTS (2005) (Thai.). KRITAYA ARCHVANITKUL & PHILLIP GUEST, MANAGING THE FLOW OF MIGRATION: REGIONAL APPROACHES (1999).

15 This includes migrants registered during the round ending on 30 June 2018 (1,187,803), fisheries workers granted permission to remain until 30 June 2019 (6,082), and those who had previously completed NV (1,020,413). MEKONG MIGRATION NETWORK, MIGRANT AGRICULTURAL WORKERS IN THAILAND (2020). Thai government statistics reported in U.N. THEMATIC WORKING GRP. ON MIGRATION IN THAI., *supra* note 13, at 12.

16 THAILAND MIGRATION REPORT (Benjamin Harkins ed., 2019).

17 MARTIN, *supra* note 8.

B. Categorizations and Legal Framework in Migrant Worker Management

Since 2017, in the agricultural sector, migrant workers from neighboring countries may enter and receive work permits through four specific systems: 1) typically for full-time year-round workers, employers will apply for what are referred to in Thailand as MOU work permits—which require country passport + visa + work permit; 2) Section 64 border passes + temporary work permits that are 3-6 months long; 3) Country Identity/National Verification + work permit; and 4) Tor Ror 38/1 or “pink card”—a “registration card” system carried over from the 1990s that allowed border migrant workers to enter and work within the restricted border sub-districts and provinces + work permit (see Table 1).

Thailand’s documentation process and procedures change every time the country faces another migration crisis concerning low-wage foreign migrant workers. Amnesties have often afforded a specific window of time for those with partial documentation to obtain legal documents and permits to work. However, harsher penalties, increasing documentation costs, and deportation crackdowns either forced compliance or left many to decide to remain undocumented due to lack of time, employer support or allowances to take leave from work, and/or financial resources to pay for documentation, or inability to travel from remote workplaces. Workers in the agricultural sector often crossed the border without documentation (without passports and country identification, border passes, and work permits) or with full or partial documentation.

For a long time, the realities of undocumented worker entry and access to work in the informal/seasonal agricultural sector have been in noncompliance with the legal procedures and requirements. In 2017-2019, there were nine different categories under which both documented and undocumented agricultural migrant workers could be categorized and targeted toward eventual full documentation.

What follows is an explanation of the complexity of documentation and procedures, followed by a discussion of the contextual challenges of protecting migrant workers under ASEAN and national labor regulations.

Table 1: Process and Procedures of Migration Documentation

Documentation	Process and Procedure
1) Passport + visa + work permit (MOU arrangement)	Requires contracts and documentation pre-migration for full-time year-round employment. Collected documents are used to apply for work visas with immigration.
2) Temporary passport/ Country Identification/ National Verification + work permit	During amnesty, in-country undocumented migrants apply for a passport in Thailand with origin country consulates, then for work permits using written contracts, and a health check. These documents are used to apply for work visas with immigration.
3) Border pass + work permit	Intended for cross-border trade and seasonal temporary agricultural work only. Valid for three months with renewals in the border provinces only. Workers still need to apply for work permits. Many undocumented utilized the border pass while waiting for passports or CI/NV.
4) Border pass only	Applied for the border pass, but did not apply for the required work permit.
5) Passport + visa only	Holding passport + tourist visa
6) Registration pink card	Previous system restricted Myanmar workers to work and live only in particular border sub-districts.
7) Stateless card	Application at the border provincial district offices for refugees
8) No documents	Remaining completely undocumented
9) Other unofficial undocumented forms (village card or unofficial border-crossing card)	Myanmar crossings: "village card" fees are paid at natural border crossings. Cambodian crossings: border military on both sides charged fees daily at unofficial borders.

The central government is seeking to phase out the preexisting systems. Prior to 2017, the border provinces with Myanmar utilized the registration pink card, which restricted work in particular border sub-districts. Under the new system, border provinces may restrict work to a border pass permit. Applicants need to apply at the provincial district office with their country identity document, visa, work permit or Thailand house registration. The border areas have continued to pose a challenge to migration management. Noteworthy, are particular preexisting unofficial systems, which include the village card and day border-crossing card. Along the Myanmar border, there are natural crossings across rivers and streams in which the Thai village side organized their own "village card" that allows living and working for a fee at the crossing (often 200 Baht, about USD 6). Along the Cambodian side, the militaries on both sides of the border organized daily fees and cards for day labor (each side often charging 50 Baht, about USD 1.5). These practices are not unknown to the authorities in the province and exist in a grey zone. These fees are neither illegal nor

discouraged, but they represent local practices that exist outside the framework of the central government's immigration regulation enforcement (Field observations, 2018). These are the mechanisms for temporary border employment that the central government is seeking to phase out with the border pass work permit.

C. Document Brokers

When broker agencies are involved, they typically extract rent from migrant workers more than they do from employers. These placement fees cover their services (travel costs, temporary en route room and board, and documentation: contract translations, government procedural forms and applications, health checks, etc.). Agricultural migrant workers, however, often self-migrate. To get the correct immigration and work permit documents, workers and their employers typically do not use registered broker employment agencies, but rather turn to something they call "document brokers." While the MOU bilateral trade agreements and the 2017 Royal Decree on the Management of Foreign Workers specify that all labor recruitment agencies and individual brokers need to register with the Department of Employment,¹⁸ these document brokers are part of the unregulated and invisible economy that has emerged due to the complex documentation procedures. Ultimately, document brokers inflate the cost of migration, and that cost is more often than not passed onto workers (Interviews with Employers and Migrant Advocates).¹⁹

Nevertheless, bilateral agreements that aim to lower the cost of migration and documentation for migrant workers need to formalize document costs. These costs should be regulated as deductions per percentage share between both employers and workers. It would be in the interest of workers to use a sliding scale based on take-home salary. Employers who pay lower wages in sectors like agriculture view the investment costs for documentation as necessary. In provinces where labor demand is higher than supply, some employers even pay for all or for a certain percentage of the required documentation. Most employers however simply lower such investment costs through wage deductions.²⁰ The next step in reform may be to formalize which sectors may deduct from wages for migration costs rather than use an ad hoc system dependent on employers' benevolence and cost-benefit discretion.

18 Royal Ordinance Concerning the Management of Employment of Foreign Workers, pt. II, §§ 26-27 B.E. 2560 (2017) (Thai).

19 SUDARAT MUSIKAWONG ET AL., WORKING AND EMPLOYMENT CONDITIONS IN THE AGRICULTURE SECTOR IN THAILAND: A SURVEY OF MIGRANTS WORKING ON THAI SUGARCANE, RUBBER, PALM OIL AND MAIZE FARMS (2022), https://www.ilo.org/asia/publications/WCMS_844317/lang--en/index.htm (last visited June 29, 2022).

20 *Id.*

II. WHY ASEAN BILATERALISM DOES NOT ENSURE MIGRANT WORKERS' RIGHTS

A. Structural Inequality

Foreign migrant workers face institutionalized structural inequalities because the worker is completely dependent on the employer and/or broker agencies, not only for their right to work, but also for their ability to legally migrate and reside in Thailand. When one's right to be in a country's territory is bound to work, the ability to quit or change jobs with ease is taken away in the face of deportation. This is a major reason why migrant workers endure poor conditions, rather than attempt to negotiate better terms for higher wages or better food, living, or working conditions. Such structural inequalities often subject foreign low-wage migrant workers to fear of deportation and loss of legal status, and hyper-insecurity (including food insecurity). Studies reveal that foreign migrant workers in the region have experienced depression, suicide, and drug addiction. For example, while a Singaporean study that examined suicide notes demonstrated that foreign workers committed suicide from 2011 to 2014 due to problems of physical drug addiction and mental health, as well as workplace stressors and conflict, another study revealed that Lao migrant workers in Thailand suffered from discrimination in work, living, and in access to citizenship (denial of citizenship despite marriage to a Thai national), and workplace stress, such that many workers reported low self-care, homesickness, smoking and alcohol addiction.²¹ Due to these structural conditions, many foreign migrant workers experience precariousness on an everyday level with few opportunities to seek help or change their conditions. This points to the urgency of using all mechanisms possible to ensure migrant workers' rights and protections.

However, in Thailand's particular case, there are two main reasons for the discrepancy between the realities versus the legal claim of labor protections for migrant workers from ASEAN. One is the policy framework, namely the heightened security state mentality that was inherited from the Cold War period and remains in bilateral agreement infrastructures. The other is a series of technical exclusions: present in Thailand's own labor regulations. What follows is a discussion to demonstrate how these two problematic aspects limit the ability to truly ensure ASEAN transnational migrant worker labor protections in the region.

B. The Security State, Technical Exclusions, and Neglecting ASEAN's Undocumented

The main mechanism for the region's bilateral agreements in trade and security is the Association of Southeast Asian Nations. ASEAN was signed in 1967, after the

21 Marcus Yu Lung Chiu et al., *Dying in a Foreign Land: A Study of Completed Suicides among Foreign Workers in Singapore*, 59 *TRANSCULTURAL PSYCHIATRY* 63 (2022); Kessarawan Nilvarangkul et al., *Enhancing a Health-Related Quality-of-Life Model for Laotian Migrant Workers in Thailand*, 21 *QUALITATIVE HEALTH RSCH.* 312, 316 (2011).

end of the Southeast Asian Treaty Organization SEATO (1955-1965), to continue with anti-communist counterinsurgency and economic cooperation. Since the late 1990s, socialist countries like Cambodia, Laos, Myanmar, and Vietnam have signed economic normalization and security agreements. With international pressure, human rights agendas came much later.²²

While the 2015 27th ASEAN summit meetings in Kuala Lumpur developed a consensus on the promotion and protection of migrant workers, the mutual economic development benefits, and the challenges in ensuring worker safety and rights in accordance with ASEAN laws and principles (using international standard tools dependent on individual member-state signatory obligations), the subsequent 2018 Consensus Agreement stated that ASEAN signatories would pursue “constructive non-confrontational cooperative approaches to enhance migrant workers’ protection and promotion of rights” (particularly of women), but it excludes the undocumented.²³ Although its rhetoric has promoted regional integration, ASEAN has privileged national security, economic interests, noninterference, and sovereignty because its foundation is still rooted in a “Cold War architecture” of national security priorities.²⁴ Individual ASEAN member-states are questionable as regards abiding by international labor and human rights standards even for their own people, let alone noncitizen migrant workers. As demonstrated by the recent Rohingya crisis, Myanmar’s continual military violence against its ethnic minorities and pro-democracy groups, as well as illegal pushbacks by ASEAN member-states, ASEAN may be more concerned with policing its borders and merely the appearance of international legitimacy. ASEAN may have consensus documents on human rights’ awareness promotion as a legitimization practice, yet it chooses not to engage in monitoring or intervention.²⁵ Additionally, bilateral agreements do not fully specify efforts to monitor and evaluate labor rights’ enforcement, transnational

22 Ass’n of Southeast Asian Nations, *The Founding of ASEAN*, ASEAN.ORG, <https://asean.org/about-asean/the-founding-of-asean> (last visited Mar. 11, 2022). In the sidebar there is information about member states and annual summit declarations and agreements.

23 The 8 Fundamental ILO Conventions: Convention (No. 87) concerning freedom of association and protection of the right to organise, July 9, 1948, 68 U.N.T.S. 17; Convention (No. 98) concerning the application of the principles of the right to organise and to bargain collectively, July 1, 1949, 96 U.N.T.S. 257; Convention (No. 105) concerning the abolition of forced labour, June 25, 1957, 320 U.N.T.S. 291; Convention (No. 29) concerning forced or compulsory labour, June 28, 1930, 39 U.N.T.S. 55; Convention (No. 138) concerning minimum age for admission to employment, June 26, 1973, 1015 U.N.T.S. 297; Convention (No. 182) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, June 17, 1999, 2133 U.N.T.S. 161; Convention (No. 100) concerning equal remuneration for men and women workers for work of equal value, June 29, 1951, 165 U.N.T.S. 303; Convention (No. 111) concerning discrimination in respect of employment and occupation, June 25, 1958, 362 U.N.T.S. 31. Note: Thailand had not ratified the first three conventions in this list. Of the conventions for rights of migrant workers, Thailand is only signatory to Convention (No. 19) concerning equality of treatment for national and foreign workers as regards workmen’s compensation for accidents, June 5, 1925, 38 U.N.T.S. 257.

24 Andreas Stensland et al., *ASEAN: The Nexus between the Human Rights and Security Architectures*, in REGIONAL SECURITY AND HUMAN RIGHTS INTERVENTIONS: A GLOBAL GOVERNANCE PERSPECTIVE ON THE AU AND ASEAN 45 (Andreas Stensland et al. eds., 2012).

25 Mathew Davies, *An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia*, 33 J. CURRENT SE. ASIAN AFF. 107 (2014); Avery Poole, “The World

justice for repatriated and deported workers, nor does it address legal reforms. From the point of view of the security state, the undocumented are security risks because they cannot be tracked nor can their mobility be controlled. But most importantly, many agricultural migrant workers are a subgroup that is systematically excluded from ASEAN's commitment to labor protections because they are also most likely to be undocumented.

Thailand's GDP per capita continued to grow from 2006 to 2020 (COVID-19).²⁶ Thailand remains a politically volatile and repressive authoritarian country with apparent economic stability, which suffers slowing growth and increased military spending.²⁷ Migrant workers from neighboring countries were working in Thailand before the 1970s, with historical cross-border trade, and by the 1980s refugee and labor migration also existed. However, it was not until 1992 that Thailand formalized its allowances for Myanmar cross-border labor migration into the country, followed by Cambodian and Lao migration in 1996.²⁸ Migrant workers often were restricted to border sub-districts and denied entry into the interior areas. Politically, since the early 1990s, Thailand has endured three of its total 13 military coups—in 1992, 2006, and 2014—with the last resulting in the current military government.²⁹ Some argue that having a military government has led to the convenience of fast-tracking legislation through Royal Decrees.³⁰ The circumvention of democratic processes, however, has also meant that economic and humanitarian concerns advanced by social civil society groups are marginalized. In contrast, anachronistic border control (not necessarily anti-corruption), immigration restrictions, and internal security priorities rooted in 1970s anti-communist suspicion, surveillance, and deportation of unregistered foreigners appear to be almost institutionalized. For example, since the 1970s, many anti-labor regulations have been put in place.³¹ Particularly relevant for

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- is Outraged*?: *Legitimacy in the Making of the ASEAN Human Rights Body*, 37 CONTEMP. SE. ASIA 355 (2015).
- 26 GDP per capita (current USD)—Thailand, WBG, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2020&locations=TH&start=2006> (last visited Mar. 11, 2022).
- 27 *Thailand: Internal Security Act Threatens Democracy and Human Rights*, HUM. RTS. WATCH (Nov 5, 2007), <https://www.hrw.org/news/2007/11/05/thailand-internal-security-act-threatens-democracy-and-human-rights>; *Thailand: Supreme Court Enshrines Impunity for 2010 Violence*, HUM. RTS. WATCH (Sept. 1, 2017), <https://www.hrw.org/news/2017/09/01/thailand-supreme-court-enshrines-impunity-2010-violence>; Hum. Rts. Watch N.Y., *Thai Supreme Court 'Enshrines Impunity for 2010 Violence'*: HRW, THE NATION (Sept. 1 2017), <http://www.nationmultimedia.com/detail/opinion/30325564> (Note: the author is Human Rights Watch contributing to the Thailand English language daily newspaper The Nation—which is now no longer in circulation); Bhanupong Nidhiprabha, *Lessons from Thailand's Fiscal Policy*, 14 ASIAN ECON. PAPERS 110 (2015).
- 28 Dennis Arnold & Kevin Hewison, *Exploitation in Global Supply Chains: Burmese Migrant Workers in Mae Sot, Thailand*, in TRANSNATIONAL MIGRATION AND WORK IN ASIA 165 (Kevin Hewison & Ken Young eds., 2006); ARCHVANITKUL & GUEST, *supra* note 14. Maniemaï Thongyou & Dusadee Ayuwat, *Lao Migrant Workers in Thailand*, in TRANSNATIONAL MIGRATION, *supra*, at 57; ELAINE PEARSON, THE MEKONG CHALLENGE: UNDERPAID, OVERWORKED, AND OVERLOOKED (2006).
- 29 Amie Tsang, *Timeline: Thailand's Coups*, FINANCIAL TIMES (May 23, 2014), <https://www.ft.com/content/88970d60-e1b0-11e3-9999-00144feabdc0>.
- 30 Penchan Charoensuthipan, *770,000 Migrant Workers Being 'Legalised'*, BANGKOK POST (Aug. 21, 2017), <https://www.bangkokpost.com/thailand/general/1309919/770-000-migrant-workers-being-legalised>.
- 31 SAKDINA CHATRAKUL NA AYUDHYA, THE THAI LABOUR MOVEMENT: STRENGTH THROUGH UNITY CHALLENGES AND RECOMMENDATIONS (2010).

migrant workers are regulations that prohibit them from being leaders or members of a trade union. This restriction, a leftover from anti-communist paranoia, has endured, in that today foreigners are allowed to be trade union members, but not leaders. Hence, foreign migrant workers cannot form trade unions of their own.³²

In the ASEAN context, migrant healthcare cooperation affords a more optimistic prospect. Thailand's health coverage for migrant workers regardless of legal status has been lauded as the most inclusive, investing the most budgetary resources.³³ However, detailed research has demonstrated the discrepancy between regulation and access to healthcare in practice, as well as rules of exception due to workers' categorization.³⁴ More particularly, for full-time MOU work permit workers health coverage is compulsory through the social security scheme, which is part of Thailand's universal health coverage scheme regardless of citizenship; and through the Ministry of Health insurance card scheme, which is used during the three-month waiting period for social security to take effect.

But while the MOU agreements between countries specify labor rights in terms of nondiscrimination and equal treatment under Thailand's labor laws and regulations, there is, of course, a gap regarding practice and enforcement. This Article considers labor rights to include wage and hour regulations, the right to contract, and housing rights. According to bilateral MOUs, migrant workers are afforded the same rights. Moreover, upon close examination of the 2015 ASEAN Summit Consensus on the Protection and Promotion of Migrant Workers' Rights, the bilateral MOU agreements appear to be carbon copies of the summit consensus document in several regards, with no mention of commitment to implementation.³⁵ This is problematic insofar as ASEAN only promotes awareness of labor and human rights, but not necessarily regional or cross-border monitoring and intervention.³⁶ While there may be some coordination with regard to human trafficking as an anti-crime agenda, there is no transnational inter-agency coordination to monitor and ensure workers' protections between sending countries and Thailand as a destination country for low-wage migrant labor. Labor violations are treated as being within the jurisdiction of the receiving country to enforce its labor laws. Furthermore, such agreements do not acknowledge the contradiction in how labor standards are not equally regulated and enforced across sectors. Being excluded from national labor law leaves sectors like

32 *Id.*; *Time for a Sea Change: Why Union Rights for Migrant Workers are Needed to Prevent Forced Labor in the Thai Seafood Industry*, INT'L LAB. RTS. F. (Mar. 19, 2020), <https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai>.

33 Ramon Lorenzo Luis R. Guinto et al., *Universal Health Coverage in 'One ASEAN': Are Migrants Included?*, 8 GLOB. HEALTH ACTION, Jan. 2015, at 1.

34 Rapeepong Suphanchaimat et al., *The Devil is in the Detail—Understanding Divergence Between Intention and Implementation of Health Policy for Undocumented Migrants in Thailand*, INT'L J. ENV'T RES. PUB. HEALTH, Mar. 2019, at 1; Rapeepong Suphanchaimat, "Health Insurance Card Scheme" for cross-border migrants in Thailand: Responses in policy implementation & outcome evaluation (26 Oct. 2016) (Ph.D. thesis, London School of Hygiene & Tropical Medicine), <https://core.ac.uk/download/pdf/81674883.pdf>.

35 ASEAN Secretariat, *supra* note 6.

36 Stensland et al., *supra* note 24.

agriculture, fishing and seafaring, and domestic/elder homecare the most vulnerable to legal exclusion from regular labor standards.

C. Sending Countries

To arrive at a more accurate analysis, the sending country contexts require closer examination. While agricultural workers from Myanmar are both men and women, sometimes from impoverished conflict zones, Cambodian workers are mostly men from rural households with medical and agricultural debts. Both Cambodian and Lao workers come from landless farming households. Only Lao workers utilize circular migration, returning to their homes to work their own farms and using remittances to pay for their own agricultural activities.

1. Myanmar

In Myanmar, the lack of documentation, low income based on subsistence farming, and household debt remain important factors contributing to particular vulnerabilities. In 2014 Myanmar historically attempted to conduct a modern census, as many ethnic minorities in the country remain unregistered due to long-term contentious politics and violent conflict.³⁷ Thailand's 2017-2018 national verification process was the first accounting of Myanmar citizens in Thailand, leading to approximately 1.7 million of them being issued a National Verification/NV document (or Country Identity/CI document), the first step toward becoming a documented foreign worker. The procedure created a "zone of temporary legality" fraught with anxiety and financial burdens for paying brokers willing to assist in the extreme bureaucratic procedures for registration and work permits.³⁸

While procedures for documentation were put in place, several job sectors with high participation by women were excluded from the 1998 Labor Protection Act (i.e., domestic work, sex and entertainment work, and agriculture). Additionally, because these women migrant workers also represent a majority who remain undocumented, they are entirely unprotected by MOU bilateral agreements stipulating supposed equal treatment in work.³⁹ According to a 2021 ILO Myanmar country report, while most of the population is employed in agriculture, only 58% of agricultural workers earn at least the minimum wage with no social security (the minimum wage in Myanmar in 2020 was 4,800 kyats per day (USD3.26)),⁴⁰ as compared to 75% in

37 Jane M. Ferguson, *Who's Counting? Ethnicity, Belonging, and the National Census in Burma/Myanmar*, 171 *BIJDRAGEN TOT DE TAAL-, LAND- EN VOLKENKUNDE* 1 (2015).

38 Inga Gruß, *The Emergence of the Temporary Migrant: Bureaucracies, Legality and Myanmar Migrants in Thailand*, 32 *J. SOC. ISSUES SE. ASIA* 1 (2017).

39 Reena Arora, *Female Migration and Labor in Thailand: When Law and Society Continue to Exclude You*, 21 *UCLA J. INT'L L. & FOREIGN AFF.* 70 (2017). Agriculture, sea fishing, loading or unloading marine cargoes, homework, transport work and other work as provided in the Royal Decree may be prescribed in the Ministerial Regulations for the protection of labor differently from the protection under this Act. Labor Protection Act, B.E. 2541, § 22 (1998) (Thai.).

40 BENJAMIN HARKINS ET AL., *FROM THE RICE PADDY TO THE INDUSTRIAL PARK: WORKING CONDITIONS AND FORCED LABOUR IN MYANMAR'S RAPIDLY SHIFTING LABOUR MARKET* 37-38, 53 (2021). The Thailand minimum daily wage is USD 9.

manufacturing with some receiving social security, and 90% in construction with no social security. This may be in part due to the use of unpaid family members, but also because the sector is vastly unregulated. All sectors have suffered years of military rule with utter disregard of labor rights' enforcement.⁴¹

2. Cambodia

While most Myanmar migrant workers come to Thailand to work, leave behind poverty and ethnic conflict, and send remittances home, Cambodian migrants to Thailand predominantly come from households with medical and farming debts from crop failures, in the range of USD 1,000-4,000, and remit approximately 40% of their earnings home.⁴² In 2012, 67% of the Cambodian workforce was in agriculture (mostly rice) and the government has historically initiated several policies to support the rice export sector. However, most rice farmers continue to produce little for profit, let alone export, with many becoming impoverished low-income subsistence farmers that rely on rainfall. And for those households that produce enough for the market, with few market controls as to when to sell, rice commodities flood the domestic market at lower prices. Furthermore, there are problems with export logistics, and deficiencies in milling technologies. Overall, exporting rice has not led to an overall increase in agricultural household income.⁴³ Aside from the low revenues in rice farming, privatization and land grabs have led to the eviction of many farmers and increased the number of landless farmers.⁴⁴ Landless farmers are sharecroppers who rent land to farm or are allowed to continue to farm and live on the land for a share of the crop sales, sometimes working the same land that they previously owned.

Similar to agricultural workers from Myanmar, workers from Cambodia are often undocumented, from indebted households with low earnings. Even with the bilateral MOU procedures for regular migration, most Cambodian workers remain undocumented. Workers may hire Cambodian-side smugglers or labor brokers, who then hire document brokers inside Thailand to complete their registration. Most often workers borrow additional loans of up to 7,750 Baht (USD 250) to 22,000 Baht (USD 709) to pay for migration and registration costs, simply because the procedures in Cambodia take too long and Thai registration procedures are too difficult and complicated.⁴⁵ According to the Department of Employment's regulated maximum allowance, employers, employment agencies, and brokers may charge workers the following: 20,000 Baht for a work permit, 1,000 Baht application fee, and specific

41 *Id.* at 20.

42 Teeranong Sakulsri et al., *Exploring the Experiences of Cambodian Labor Migrants: The Journey to Thailand under the Framework for Bilateral Agreements*, J. MEKONG SOCIETIES, Jan.-Apr. 2020, at 1; Kaewkwan Tangtipongkul & Virak Khiev, *The Effect of Remittance on Economic Growth in Cambodia*, 27 J. POPULATION & SOC. STUD. 232 (2019).

43 Mark Turner et al., *Government Policy and Private Sector Development in Post-conflict States: Growing Cambodia's Rice Production and Export Industries*, 28 ECON. LAB. REL. REV. 252 (2017).

44 Jean-Christophe Diepart et al., *Struggles for Life: Smallholder Farmers' Resistance and State Land Relations in Contemporary Cambodia*, 38 J. CURRENT SE. ASIAN AFF. 10 (2019).

45 Sakulsri et al., *supra* note 42, at 13-4.

fees for certified copies, certificates, and translation of contracts and documents. By the author's estimate, in 2017 total registration and permit costs may have been approximately 20,000-30,000 Baht/USD 645-968.⁴⁶ Most agricultural workers in Thailand earn monthly salaries of 6,000-9,000 Baht/USD 194-290.⁴⁷ Hypothetically, it should take 6-7 months to pay off the debt if 50% of the income is used toward repayment. In all three countries, agricultural workers are subsistence farmers who are in debt or make little to no profit from their crops.

As global South-to-South migration constitutes the most indebted and impoverished, with a higher tendency to avoid migration costs and pursue undocumented migration and work, Cambodians have come to represent the second largest stream of undocumented workers who arrive with the greatest accumulated debt (both before and after migration) in Thailand.⁴⁸ Additionally, as compared to Cambodian migrants bound for Malaysia that are predominantly women domestic workers, migrants to Thailand tend to be male and from the most impoverished households.⁴⁹ At the moment there are no regulatory MOU bilateral agreements on controlling predatory lending and debt migration. Furthermore, in 2012, according to Chalamwong et al., Cambodia prohibited those over 35 years of age from acquiring a passport for the purpose of seeking work abroad, even if they have been working in Thailand for years.⁵⁰ This age restriction has since been lifted, but the true obstacle is the cost of passports, which can range from USD 135 (55 days) to almost USD 500 (same day). The Laissez Passer temporary passports are free and only issued for voluntary departures to return to Cambodia; they cannot be used for work permit registrations.⁵¹

3. Lao PDR

Lastly, Lao PDR migrants from agricultural households not only suffer poverty, but also as in Cambodia, experience land evictions due to illegal land grabs by the private sector. Land evictions have led to an increase in landless farmers.⁵² However, especially along the Thai-Lao border, agricultural areas often have had generations of relations, cross-border trade, labor sharing, and labor migration that predate the

46 Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E. 2560 (2017) (Thai.). App. 1 list on legal fee allowances.

47 Calculated from the dataset from MUSIKAWONG ET AL., *supra* note 19, at 46-9.

48 Maryann Bylander, *Poor and on the Move: South-South Migration and Poverty in Cambodia*, 5 *MIGRATION STUD.* 237, 243 (2017).

49 *Id.*

50 Chalamwong et al., *supra* note 14, at 459.

51 CAMBODIAN EMBASSY IN THAILAND, <https://cambodiaembassyinthailand.wordpress.com> (last visited Mar. 11, 2022). Relevant information appears in Khmer; the author used Google translator. For passport costs, see *Cambodia—Apply for a new passport*, WIKIPROCEDURE, https://www.wikiprocedure.com/index.php/Cambodia_-_Apply_for_a_new_passport (last visited Mar. 11, 2022); Suong Sokpheap, *Passport will be Valid for 10 Years from 2014 Onwards*, RADIO FR. INT'L (Nov. 6, 2013), <https://www.rfi.fr/km/passeport-10years-available> (relevant information appears in Khmer).

52 Ian G. Baird, *Resistance and Contingent Contestations to Large-Scale Land Concessions in Southern Laos and Northeastern Cambodia*, 6 *LAND*, Feb. 2017, at 1.

colonial borders that were drawn.⁵³ Even in the early 2000s, Laos remained one of the poorest countries in Asia due to long drawn out civil wars and poor infrastructure, but some exceptions can be argued for the provinces bordering Thailand in which cross-border labor migration and trade have bettered people's rural livelihoods. During this period, 1% to 20% of border villagers crossed to work in Thailand. Economics is a primary determining factor for migration. For these agricultural households, remittances from Thailand among all sectors serve to support agricultural production, as well as leaving agriculture the primary economic activity in Laos.⁵⁴ And much as in Myanmar and Cambodia, agricultural households are primarily engaged in subsistence farming. According to the ILO, "Thailand is the largest destination country for Lao migrants, primarily driven by wage differentials—the current monthly minimum wage in Lao is 900,000 Kip (around USD 110), and the Thai minimum is more than double this amount."⁵⁵

In sum, these three neighboring countries share a context of abject rural poverty, with households in debt and dependent on remittances from Thailand for supporting agricultural livelihoods. Debt migration occurs not only due to paying for border crossings, but also because of the cost of the documents required—passports charged by the origin country and permits on the Thailand side.

D. Safe and Fair Migration

The legal framework and document broker situation make safe and fair migration into Thailand for low-wage migrant workers challenging. A major agenda for the UN is to enact the Global Compact for Safe, Orderly, and Regular Migration to establish "safe and fair migration." As Bylander notes, legalizing migration has not meant that it is economically safer for migrants and in fact has increased the processing time and costs.⁵⁶ Another criticism of such UN framing is in terms of countries' various antihumanitarian deportation regimes, which do not address the issue of changing immigration residency laws to include low-wage foreign workers. Rather, the agenda of "safe and fair," has focused on international migration entry and exit costs and procedures, as well as cracking down on human trafficking, corruption, and black-market opportunities. The issue of comprehensive immigration reform being connected to the demand for low-wage foreign workers is sensitive because it infringes on issues of national sovereignty. For Thailand, national security priorities still trump both economic development and humanitarian concerns. As can be seen in Appendix 1, workers' contracts are limited to two years, with a possible two-year

53 Ronald Skeldon, *Interlinkages Between Internal and International Migration and Development in the Asian Region*, 12 *POPULATION, SPACE & PLACE* 15, 19 (2006).

54 Jonathan Rigg, *Moving Lives: Migration and Livelihoods in the Lao PDR*, 13 *POPULATION, SPACE & PLACE* 163 (2007).

55 ILO, *TRIANGLE IN ASEAN QUARTERLY BRIEFING NOTE: APRIL-JUNE 2021* (2021).

56 Maryann Bylander, *Is Regular Migration Safer Migration? Insights from Thailand*, 7 *J. MIGRATION & HUM. SEC.* 1 (2019).

renewal.⁵⁷ Initially, sending countries' regulations were different. For example, while workers from Cambodia and Laos must return home for 30 days after their 2-4 year work contract (for year-round job sectors), workers from Myanmar previously had to return to their home country for at least three years. In the interest of fairness, Thailand now requires all nationalities to return to their home country for 30 days. At present, then, while Thailand remains a military government keen on restrictive immigration, the UN agenda on safer and fairer migration may be more possible to achieve than any demand for immigration and residency reform for low-wage migrant workers. Even considering the efforts toward ASEAN regional integration, residency rights for low-wage migrant workers seem necessary, but far from sight.

III. METHODOLOGY

In order to understand the legal interpretations and mechanisms for the importation of foreign migrant workers, this study uses a qualitative content analysis of the 2017 Royal Decree of the Management of Foreign Workers and compares the MOU bilateral labor agreements on migrant workers between Thailand and Myanmar, Cambodia, and Laos to examine how national security and restrictive immigration priorities override workers' rights and social protections. Utilizing survey data as a measure of implementation of such legal mechanisms and regulations, the analysis reveals the gaps between the intention of workers' protection policies and actual practice.⁵⁸ Field research utilizing the survey and interviews provides an accurate assessment of the degree of worker's protections and rights.

Regarding the sampling for the survey data, four export crops were selected: rubber, sugar, palm oil, and corn/maize. Each crop is associated with different methods of paying workers, occupational hazards, and working hours. Hence, sampling workers according to each targeted crop assisted in revealing the details of different working conditions and pay. While corn/maize and palm oil, were paid least, sugar varied depending on the province, and higher rubber prices contributed to higher pay. In 2015-2019, as regards export crops, rice ranked no. 1 and no. 2 was raw rubber. Palm oil was 17th and corn/maize was the 20th export crop.⁵⁹ Thailand is ranked second as an exporter of sugar, behind Brazil. Sugar from Thailand is exported as agro-processed products, as well as raw and processed sugar.⁶⁰ A 71-question survey

57 Sudarat Musikawong, *Full Appendix 1—Content Analysis of MOU Bilateral Relations & the 2017 Royal Decree on the Management of Foreign Workers*, GOOGLE DOCS, <https://docs.google.com/spreadsheets/d/1o1vWXh-li6a12Vic5EKnqHkFjeXosOlp/edit?usp=sharing&ouid=108642893717926343185&rtfpof=true&sd=true> (last visited Mar. 11, 2022).

58 *See id.*

59 Rice was excluded due to the rice subsidy scandal in previous years skewing real migrant wages. *The main export products of Thailand according to the structure of export products* (2019), INFO. & COMMC'N TECH. CTR. DATABASE WITH COOP. OF THE CUSTOMS DEP'T IN THE OFFICE OF THE PERMANENT SEC'Y OF THE MINISTRY OF COM. OF THAI., [http://tradereport.moc.go.th/\(X\(1\)S\(kohc4k1ydv454fypb530dfxh\)\)/Report/Default.aspx?Report=MenucomRecode&ImExType=1&Lang=Th](http://tradereport.moc.go.th/(X(1)S(kohc4k1ydv454fypb530dfxh))/Report/Default.aspx?Report=MenucomRecode&ImExType=1&Lang=Th) (last visited Mar. 11, 2022)

60 OFFICE OF THE PERMANENT SEC'Y OF THE MINISTRY OF COM. OF THAI., FOREIGN TRADE STATISTICS OF THAILAND 2017 (2018); *Dataset on Export Trade* (2022), INFO. & COMMC'N TECH. CTR. DATABASE

designed by the ILO was administered. The dataset included 528 respondents (44% men, 55% women, and 6% other gender) across four different provinces: 20% Surat Thani (southern), 38% Tak (western border Myanmar), 16% Sa Kaeo (eastern border Cambodia), and 25% Loei (northern border Laos). The distribution of crop sectors was 19% rubber, 5% palm oil, 29% corn/maize, and 48% sugarcane.

Additionally, the study was limited to the December 2017-March 2018 seasonal harvest schedules and reliant on an NGO collaborative partner and employer access for data collection, given the challenges of variation in migrant ethnic minority languages. Data collection took place during the amnesty period, so we believe that the workers' answers about their documents were for the most part truthful. The data collection procedure also asked workers to show their documents if they carried them on their person; of course many did not.

Table 2: Documentation held by migrant workers, by country of origin (%)

Type of document	Cambodia (n=83)	Lao PDR (n=133)	Myanmar (n=309)	Total (n=525) ¹
Documented				
Passport, visa + work permit (MOU arrangement)	–	43.6	6.5	14.9
Temporary passport/CI/ NV + work permit	–	37.6	42.1	34.3
Border pass + work permit	41.0	–	11.3	13.1
Registration pink card	6.0	–	5.8	4.4
Documented, but not working legally				
Border pass only	43.4	6.0	1.0	9.0
Passport + visa only	–	12.0	2.6	4.6
Undocumented				
No documents	3.6	–	17.5	10.9
Other unofficial documents (village card or unofficial border- crossing card)	6.0	–	8.1	5.7
Stateless card holders				
Stateless card	–	0.8	5.2	3.2

Source: ILO (2022); = nil; CI = certificate of identity. ¹ Three migrant workers declined to respond about their documents.

WITH COOP. OF THE CUSTOMS DEP'T IN THE OFFICE OF THE PERMANENT SEC'Y OF THE MINISTRY OF COM. OF THAI., [https://traderreport.moc.go.th/\(X\(1\)S\(kohc4k1ydv454fypb53odfxh\)\)/Report/ReportEng.aspx?Report=MenucomTopNCountry&Option=1&Lang=Eng&ImExType=1](https://traderreport.moc.go.th/(X(1)S(kohc4k1ydv454fypb53odfxh))/Report/ReportEng.aspx?Report=MenucomTopNCountry&Option=1&Lang=Eng&ImExType=1) (last visited June 18, 2022) (“The main export products of Thailand according to the structure of export products,” trans. from Thai by author).

Additionally, 44 key informants were interviewed. For this Article, however, the main focus is on the survey data as evidence and the key informant interviews used to provide some policy, socioeconomic, and cultural contexts.

Table 3: Breakdown of key informants interviewed

Key informants	Male	Female	Total
Staff of Provincial Labor Offices	2	1	3
Center for Border Employment	2	1	3
Local staff of Ministry of Public Health	2	1	3
NGOs' work related to migrant rights (advocates and trade unions)	1	3	4
Owners of plantations/farms/processing plants	3	1	4
Relevant business/industry associations	2	1	3
Individual recruitment agents or brokers	–	1	1
Local police and anti-trafficking unit/ immigration police	3	–	3
Area village leaders	1	1	2
Migrant workers, adults and young workers (relatively evenly distributed between the three nationalities)	7	11	18
Total	23	21	44

There was no overlap between survey respondents and the individual migrant workers who provided in-depth interviews.⁶¹

IV. FINDINGS

A. Limitations in Labor Rights and Social Protections

One of the biggest limitations toward ensuring labor rights for agricultural migrant workers in Thailand is that regardless of citizenship, agricultural work is excluded from regular labor laws because, like seafaring and fishing, it is legally categorized as either seasonal or temporary (under 6 months), and the hours are dependent on environmental factors. Unique to the sector, however, is that for some crops the workers are categorized as independent contractors receiving a percentage of the crop sales. It bears emphasis that independent contractors that are paid by a percentage of crop sales are not legally categorized as employees, hence not protected by employer-employee regulations. This loophole demonstrates the need for a new framework of sectors and worker categorizations that takes into consideration the issue of work security vs. precarity. At the moment, the mis-categorization of

61 The Certificate of the Mahidol University Institutional Review Board Approval (COA) number is 2017/12-293. The author would also like to acknowledge and thank the International Labour Organization for allowing the use of the research data.

agricultural workers creates rules of exception in migrant worker-dominated fields (agricultural, domestic, and fishery workers). The exclusion of entire job sectors makes allowances for lower wages and longer work hours, ominously for occupational safety. Additionally, there are no regulations for housing quality inspections, or even measures to guarantee equal access to legal rights and the labor complaint systems within the Department of Labor Protection and Welfare. This highly detailed exclusion of sector-based workers produces a cascading effect of limited access to workers' rights, protections, and justice.

B. Wage and Hour

With the exception of rubber workers during high season, agricultural workers often earn below the minimum wage. In 2018, Thailand was the second most expensive place to live in Southeast Asia, with a 45% cost of living index and an individual's monthly costs averaging 17,955 Baht without rent.⁶² Comparatively, the median individual agricultural migrant's monthly income of 6,000 Baht is significantly less (Table 5). Agricultural workers depend on their wages for their livelihoods and remittances, yet they have little control over how much they are paid, or their working hours. Regardless of citizenship, agricultural workers typically earn less than full-time Thai factory workers. The issue of wage depression is further compounded by migrant workers' foreigner status, which limits their capacity to negotiate for higher wages. According to the field research, local employers in each province and sub-district establish an acceptable wage, often below the minimum wage set by the provincial government, to pay agricultural migrant workers. The minimum daily wage is approximately 300 Baht [USD 9] per day. The table shows the difference by province because each province has a different daily minimum wage. Employers interviewed noted that because housing was provided, payment below the minimum wage was justified.⁶³

Table 4: Difference from daily minimum wage; n=496

Province	Mean	SD	Min	Max
Surat Thani, n=107	+84.0	230.7	-272.3	1942.0
Tak, n=200	-116.3	75.2	-251.4	445.0
Sa Kaeo, n=79	-27.1	158.5	-171.7	766.4
Loei, n=110	+224.7	409.3	-19.3	1823.6

Note: Legal minimum wage is determined by province. Mean measures the average differences from that minimum wage. Source: Augmented from ILO (2022).

62 South-Eastern Asia: Cost of Living Index by Country 2018 Mid-Year, NUMBEO, https://www.numbeo.com/cost-of-living/rankings_by_country.jsp?title=2018-mid®ion=035 (last visited Mar. 11, 2022); Cost of Living in Thailand, NUMBEO, https://www.numbeo.com/cost-of-living/country_result.jsp?country=Thailand (last visited Mar. 11, 2022). Numbeo is an open-source database used to compare and calculate global costs of living.

63 MUSIKAWONG ET AL., *supra* note 19, at 48.

Table 5: Percentage of Workers' Income Difference from Minimum Wage by Crop Sector; n=496

Minimum Wage	1. Rubber	2. Palm oil	3. Maize	4. Sugar Cane	Total
Below Min Wage	30.92	84.61	94.04	41.9	57.87
Above Min Wage	69.07	15.39	5.95	58.1	42.13
Total	97	26	151	222	496

Note: 32 workers did not know how much they would be paid. No workers were paid exactly the minimum wage. Source: ILO (2022)

Table 6: Percentage of Workers' Method of Payment by Monthly Income; n=489

How are your wages determined?	Monthly Income in Baht				Total
	1. ≤2999	2. 3000-5999	3. 6000-8999	4. ≥9000	
1. Daily wage flat rate	86	64.33	18.02	4.68	35.17
2. Monthly wage flat rate	0	5.1	4.5	2.92	3.68
3. Piece rate (flat rate by amount or weight)	2	13.38	27.93	67.25	34.36
4. Mixed rate daily/monthly and piece rate	4	10.83	1.8	3.51	5.52
5. Percentage share of crop sales	8	6.37	47.75	21.64	21.27
Total	50	157	111	171	489

Note: 39 workers did not know how they were paid or did not know the amount of their final payment because they receive payment only at the end of the season. Source: Created from ILO (2022) dataset.

One might assume that wages are determined only by province, nationality, or local norms, but this is true only to an extent. Specific norms in crop methods of payment and amounts of compensation are also a major determining factor (Tables 5 & 6). While the central government may struggle with enforcing the minimum wage in agriculture, the agricultural industry itself could also consider crop sector reform. Achieving wage equity across crop sectors is important for reform toward fair labor and supply chain responsibility strategies. For example, in Surat Thani province migrant workers typically are rubber tappers. Rubber workers are paid by 40% of sales, and the take-home pay depends on market prices, which in 2017-2018 were particularly low. In contrast, most workers in Tak province (bordering Myanmar) worked in corn/maize and were typically paid by the day or the bushel (piece), while in Sa Kaeo province bordering Cambodia many worked in sugarcane and were paid

also by piece (by the bundle), but the price per bundle was typically determined by the global pricing, measured quality of sugar sweetness and local pricing of labor. In contrast, Loei (bordering Laos) sugarcane workers tended to make the highest wages of the three migrant groups due to demand and true labor shortages in Loei province (Interview with employers in Loei sugarcane). In Tak province, where many workers were paid per day, interviews with employers revealed that each sub-district village area predetermined the daily wage at approximately 150-200 Baht (USD 4.84-6.45) per day, which was about half of the legal minimum wage.

While 69% of rubber workers earned above the minimum wage, 94% of maize workers earned less than that (Table 5). As noted above, however, wages in the sugarcane sector appear to be affected by national and ethnic factors. The 46% of sugarcane workers who earned above the minimum wage were mostly Lao workers in Loei (survey data not shown; calculated from ILO 2022 dataset). The agricultural sector's wages are particularly difficult to control without government regulatory inspections and enforcements. Additionally, wages are sensitive to methods of payment. While utilizing a percentage share of crop sales offers more opportunities for increasing wages, this is highly dependent on number of hours worked. In rubber tapping, working hours can vary. Many high earners start at 3 am, with workers staying in the fields and taking rest, but not returning home until the early evening hours.

Furthermore, the agricultural sector is considered seasonal and dependent on the weather and environmental conditions, and hence exempt from regular wage and hour labor standards. However, this does not have to be the case. There were no major differences between men's and women's cumulative working hours, but a gender wage gap definitely exists. While among the category of undocumented workers paid the least (under USD 94 per month) women represent 71%, men represent 29% (calculated from the ILO 2022 Report dataset). It could be argued that women may work similar hours to men but get paid less due to both gender discrimination and their legal status (Tables 7 & 8).

Migrant wage devaluation has a direct impact on remittances. The case of Cambodian workers is compounded due to pre-migration debt and migration debt itself. As mentioned above, there are no bilateral regulatory measures to control borrowing and debt migration. Among the workers surveyed, Cambodian workers fared the worst in terms of debt. Approximately 69.9% of Cambodians had borrowed money, followed by 56% of Lao workers, while only 26.4% of workers from Myanmar were in debt (survey data not shown; calculated from ILO 2022 Report dataset).

Table 7: Monthly income of migrant worker respondents, by gender (%)

Monthly income (Thai Baht)	Male (n=221)	Female (n=274)	Other (n=3)	Total (n=498) ¹
<3 000	5.4	14.6	–	10.4
3 000–5 999	32.7	32.5	33.3	32.6
6 000–8 999	19.0	25.2	33.3	22.4
>9 000	42.2	27.7	33.3	34.2
Mean monthly income	8 301	7 305	7 867	7 750
Median monthly income	7 000	6 000	8 000	6 000

Source: ILO (2022); = nil.1 Note: Thirty migrant worker respondents could not be classified in an income group due to irregularity of pay. Among these 30, most were paid at the end of the season based on the sale of the harvested crop and therefore were not sure how much they would be paid. 2017 exchange rate 31 Baht = USD 1.

Table 8: Hours of work per day, by crop sector and gender (%)

No. of work hours/day	Rubber			Palm oil			Maize			Sugarcane			All Crops
	M n=46	F n=51	All n= 97	M n= 11	F n= 15	All n= 26	M n=59	F n=94	All n= 153	M n=117	F n=132	All n=249	
Less than 8.5	6.5	17.7	12.4	18.2	20	19.2	47.5	56.4	52.9	69.2	64.4	66.7	50.3
8.5–12	50	43.1	46.4	63.6	73.3	69.2	52.5	43.6	47.1	29.1	35.6	32.5	41.1
12+	43.5	39.2	41.2	18.2	6.7	11.5	–	–	–	1.7	–	0.8	8.6

Source: ILO (2022); – = nil. 1 The three respondents who answered “other” for gender are not included in this table, N=525.

C. Legal Deductions from Wages and Access to Complaint Justice Mechanisms

Migrant workers have even less control over their take-home salary due to legal deductions. A minimum of 10% is legally deducted from their monthly salary over time to pay for the employers’ or employment agency’s investment costs. Regulations state that deductible costs include “[. . .] passports, health check, work permit or other relevant costs as prescribed by the Director-General, in which the employer may deduct from the wages, over time, holiday wages or over time holiday wages.”⁶⁴

While there are penalties in place for over-deduction, this would require workers to be aware of and vigilant about their deductions. While this may be possible for more educated workers or factory workers that receive pay-slips, often less educated workers may not be made aware. And even if workers are aware, they may lack the technical language skills to lodge a complaint. Many may fear employer retaliation for lodging complaints, until they are ready to return to their home country. This suggests the necessity of worker rights’ education, as well as labor court and judiciary

64 Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E. 2560, § 49 (2017) (Thai.).

reform to deal with complaints of wage theft, illegal deductions, and debt-bondage enforcement. Another challenge as regards legal justice for migrant workers is that they are often subjected by their employers or employment agencies to deportation or pressured to go back to their home country when facing difficulties. This particularly makes transnational justice difficult, but bilateralism could possibly address procedures to this effect, if there is political will.

Table 9: Duration of wage deductions

Duration of Deduction	Surat Thani	Tak	Sa Kaeo	.Loei	Total
No deduction	20.4	74.4	20.5	53.0	49.4
1 month	3.7	1.0	41.0	1.5	8.0
2 month+	10.2	7.9	6.0	2.0	6.4
As long as employed	65.7	16.3	30.1	43.3	35.4
Do not know	0	0.5	2.4	0.8	0.8
Total	108	203	83	134	528

Note: Many workers do not know the amounts of their deductions. Source: ILO (2022)

What all this means is that workers do not control their wages because there are legal deductions that guarantee they must pay their own costs in getting a job abroad. As compared to agriculture, deductions are common in the formal sectors such as manufacturing, and, manufacturing work contracts sometimes state the amount of deductions. While almost half of the workers experience deductions, the other half report no deductions (Table 9). Of the 528 agricultural migrant workers surveyed, only 11.6% experienced wage deductions the amounts of which they knew; the majority were from Laos (74%), 25% were from Myanmar, and only one worker came from Cambodia (survey data not shown). There are two reasons why the survey presented different levels of awareness of the deduction amounts: 1) Lao workers speak the same Isan dialect as their employers, making communication and knowledge about the terms of employment easier; and 2) in most cases the knowledge is limited, and workers only know the duration of their deductions (Table 9). According to interviews with both employers and migrant worker advocates, deductions are made from agricultural workers' wages until the employer is able to pay off all the expenses for migration, health exams, and documentation.

E. Right of the Work Contract

The bilateral MOU agreements overtly mention that for a work permit to be issued, it is necessary to have a written contract (signed by the employer and the worker) submitted to the Department of Employment. In practice, however, agricultural employers follow the procedures and file a written contract with the Thai government, but the workers themselves often have no knowledge of it, even if they signed one with a thumbprint, due to their illiteracy.

Migrant worker survey respondents were asked about the type of contract they drew up with their employer prior to migrating to Thailand for employment. Prior to migrating to Thailand, 56.6% of all surveyed agricultural migrant workers who had secured employment in Thailand had crossed the border with no contract whatsoever, while 33.5% only had a verbal agreement.⁶⁵ Only 31 workers (5.9%) had a written contract, almost all of whom were seasonal workers. This is notable, as all MOU arrangement workers, who are subject to a more stringent process and make up 14.8% of the respondents, are supposed to sign a written contract before leaving their home country. The highest degree of formalized contracts was found in the sugarcane sector among workers from Laos. Lao agricultural migrant workers do not have access to the border pass arrangement because of the bilateral agreements. Some may argue that MOU arrangements offer more social protections, as workers are more formalized and employers must participate in social security. In Thailand, social security covers both health and retirement. There is workers' compensation, and the workers typically qualify for the Foreign Workers' Benefit Fund.

The majority of sugarcane sector workers, however only had verbal contracts. Of workers from Cambodia, 74.7% had a verbal contract with their employer prior to arrival. But migrant workers from Myanmar were much less likely to have a contract (that they know about), with 93.6% with no contract or migrating for a job without a contract, combined.

F. Housing

As regards the issue of housing, the MOUs with Myanmar, Cambodia, and Laos clearly state that it is the responsibility of employers to provide clean, sanitary housing: "For safety and health reasons, employers must provide appropriate and hygienic accommodation for workers, and workers must rest, and live in the accommodation provided."⁶⁶

Contrary to Workers Housing Recommendation no. 115, 1961, employers typically provided an area for migrant workers to build their own substandard and unsanitary work camp lodgings near the harvest location.⁶⁷ Less often, employers built lodgings adjacent to their own residential property. Most migrant housing was made of bamboo (often a roof covering without an enclosure). A number of workers noted that without locked doors there were serious concerns about safety and privacy. In the survey, 86.4% of housing was free and provided by the employer (Table 6). Again, to qualify, what "free and provided" means is that clearings were made near the harvest site and materials provided for workers to build their own temporary shelters. For most (93.9%) of the workers in the longer-term palm oil and rubber sectors in Surat Thani, housing is more permanent, with stronger building materials (often concrete and cinderblocks), access to clean water and electricity, and more

65 An additional 3.8% of respondents (n=20) crossed the border without having first secured a job, so they too did not have a contract at the time of migration, but under very different circumstances.

66 Author's translation of the MOUs in Thai with the three countries reveals the same text. See App. 1.

67 ILO, RECOMMENDATION CONCERNING WORKERS' HOUSING (No. 115) (1961).

adequate sanitation facilities with toilets. Interviews with employers and migrant workers revealed that the norm was for employers to provide materials (bamboo, thatched roofing, metal scraps) for migrant workers to construct their own housing within the farms and plantations. For their toilets, workers are required to dig and bury. Natural ponds or employer-dug ponds without filtration serve as the water source. Drinking water is purchased and brought into the housing.

I do not pay any rent. I get electricity from my boss's house and pay 250 baht per month. I bathe in this stream and buy drinking water. We do not have toilets. We cook with pond water. I made this house in just one day two years ago, it cost 200 baht, and got some bamboo from people around here. It will probably last a year. The plastic will be damaged. (Cambodian worker, sugarcane, Sa Kaeo)



Photo credit: Phasy Res

Especially in maize and sugarcane, housing of substandard quality tends to be universal. Housing is typically an open-air structure, in fields with sometimes heavy chemical spraying, as well as heavy rains and storms:

I feel dizzy depending on the kind of pesticide. Some kinds can cause harm. I have seen some people feel dizzy, and sometimes I also feel dizzy, but it also depends on the direction of the wind . . . I just harvest the corn, so I avoid dealing directly with pesticides myself. (Myanmar worker, maize/sugarcane, Tak)

Table 10: Housing situation of migrant workers, by crop sector (%)

Housing situation	Rubber (n=98)	Palm oil (n=26)	Maize (n=153)	Sugarcane (n=251)	Total (n=528)
Provided by employer	93.9	96.2	82.4	84.9	86.4
Rented room in community	6.1	–	6.5	3.6	4.7
Build own shelter	–	–	9.8	6.0	5.7
Stay with own family	–	–	1.3	2.4	1.5
Stay in home country	–	–	–	2.8	1.3
Other	–	3.9	–	.4	.4

– = nil. The categories “Build own shelter” and “Provided by employer” overlap. From field research observation during the data collection, with the exception of some rubber workers in Surat Thani Province, the majority of workers built their own shelter on the land provided by employers.

The majority of migrant workers surveyed (62%)⁶⁸ live as couples, 31% live with children (Table 5.7, ILO, 2022). Each settlement may contain two to six families, each family with two to five family members, often in a one-room bamboo hut. This situation suggests that any reforms to the sector with regard to housing or working conditions should be mindful that labor migration is often family-centered.

G. Access to Health and Social Security

The MOU bilateral relations offer only a rough guideline; the agreements stipulate that migrant workers be provided access to health insurance schemes as mandated by law, but do not clearly state that all migrant workers will have compulsory coverage regardless of worker status and sector. The creation of such loopholes leads to challenges in regulation and implementation. On a positive note, bilateral relations have established Thai-Myanmar and Thai-Cambodian cross-border government hospital cooperation with regard to public health concerns, treatment of contagious diseases like HIV, TB, and COVID-19, and technology/knowledge transfers in medicine.

However, agricultural workers are categorized as seasonal temporary workers or independent contractors, hence are expected to voluntarily purchase the Health Insurance Card Scheme out of pocket. As a practical matter, the situation of agricultural workers presents a set of problems particular to the sector:

1. Wages: while health insurance is viewed as affordable for most Thais, agricultural workers are paid less than the minimum wage (50% below the minimum wage in some provinces) and hence may opt out;
2. Worker category: even if workers are in-country or with the same employer year-round, since agricultural sector workers are categorized by law as temporary

68 With relatively large differences between the four crops: 59.2% in rubber, 38.5% in palm oil, 43.1% in Maize, and 77.3% in sugarcane, responded that they lived as a couple in Thailand. Calculated from dataset in MUSIKAWONG ET AL., *supra* note 19.

- seasonal workers or independent contractors, employers do not invest in the MOU work permit and de facto do not contribute to any social security benefits.⁶⁹
3. Hospital facility access: the Health Insurance Card Scheme requires registration with particular participating hospitals only, but in the agricultural sector in rural areas accessing the participating hospital is not practical.
 4. Mismanagement and messaging to hospital provider staff: participating hospitals' front-end staff are unaware that they are able to sell the Health Insurance Card Scheme to migrant workers' accompanying children and family members as well as the undocumented.

While the Mekong Migration Network 2020 study, which surveyed 328 migrant agricultural workers in cassava, rubber, corn, and palm oil, revealed that 72% had some form of health coverage, this study, with 528 workers in sugar, rubber, corn, and palm oil, found that overall only 34% had some form of health coverage, while 60% had none, leaving these workers more vulnerable to high out-of-pocket healthcare costs in case of injury, pregnancy, or severe illness. Speculatively, cassava is a year-round crop while sugar is not, hence contributing to shorter stays and less employer investment in workers' benefits. In the ILO survey, workers often had overlapping coverage, with only 29% registered with the Health Insurance Card Scheme, others having enrolled in social security (4%), workers' compensation (2%), and private health insurance (8%).⁷⁰ Again, while social security has employer contributions, the Health Insurance Card Scheme is paid out of pocket by the worker.

V. THE UNDOCUMENTED WORKER

While governments and advocates may agree that becoming documented guarantees less fettered access to workers' rights and protections, documentation has become costly. In this survey, 168 (about 32%) of the workers were undocumented. Most likely, these are inclusive of accompanying family members and daily border-crossers. While many who are fully documented with passports and work visas report expenditures of over 10,000 Baht, border pass holders usually pay in the range of 5,000-9,000 Baht. The undocumented report little to no costs for migration documentation (Table 11).

69 The Royal Decree categorizing employees in accordance with section 4 of the Social Security Act, B.E. 2533 (1990) (Thai.) excludes employees in agricultural activities, fisheries, forestry and livestock whose employers do not hire employees for the whole year.

70 6% of migrant workers had no idea about their health coverage enrolment. Note: The percentages do not add up to 100% because the same worker may have multiple sources.

Table 11: Documentation held by migrant workers, by cost of migration (%)

Type of document	No cost	<1,000 baht	1 000– 4 999 baht	5 000– 9 999 baht	10 000+ baht	Do not know cost
Passport, visa + work permit (MOU arrangement) n=78	8.3	2.1	8.6	29.1	25.5	–
Temporary passport/CI/ NV + work permit n=180	4.2	26.3	30.9	29.1	56.0	30.8
Border pass + work permit n=69	18.8	12.6	24.3	6.3	2.1	23.1
Border pass only n=47	2.1	10.5	13.2	6.3	7.1	7.7
Passport + visa only n=24	2.1	2.1	1.3	16.5	4.3	–
Registration card n=23	8.3	4.2	2.6	7.6	2.1	15.4
Stateless card n=17	12.5	5.3	2.6	2.5	–	–
No documents at all n=57	37.5	16.8	11.2	2.5	2.1	7.7

Source: ILO (2022); Note: = nil; CI = certificate of identity. ¹ Cost of migration includes all in-transit and transportation costs, broker and agency fees, travel and work documentation, health examination and required healthcare coverage, but not work permit and registration costs; Three workers did not answer about documentation.

While Section 64 of the 2017 Royal Decree on the Management of Foreign Workers allows for the nationally recognized border pass in certain border provinces, like Tak and Sa Kaeo, there are also official daily border-crossing areas. These border crossings are agreed upon at the provincial and sub-district levels by sister provinces or cities. This is the case for Maesot, Thailand's Tak Province and Myawaddy, Myanmar and Aranyaprathet, and for Thailand's Sa Kaeo Province and Poipet, Cambodia. Consequently, grey zone practices are established whereby workers may either hold a border pass or elect to cross and pay daily. While at the Cambodia border, workers pay the armed border patrol or military patrol on both sides of the border, at the Myanmar border, daily unofficial crossings are more typical during the dry season, when workers walk across the riverbed and pay the village head for what is called a "village card." From ethnographic observations and conversations with workers and Thailand-based patrollers, the author found that while Cambodian workers pay both sides approximately 100 Baht to cross the border daily, workers from Myanmar pay about 200 Baht monthly for a village card or document, managed by the village headman. In both cases, these daily border crossings operate in this grey zone. In practice, those who cross work only in the sub-district or village and cannot leave that area. Along the Myanmar border, workers can stay in the village for short periods of time; along the Cambodia border, workers must return by the end of the day or face penalties, including deportation, detention and/or fines. While the Section 64 Border Pass+ temporary work permit lowers migration costs, it has become, indelibly, a system of legalized exploitation that restricts foreign workers' rights and mobility, confining them to regional sub-districts that have normalized migrant pay well below the minimum wage.

Vulnerability is created through loopholes and exceptions in government regulations, including unclear regulations on the undocumented and accompanying family members. The more expensive, exclusive, and restrictive the migration regulations, the more avenues for becoming undocumented are created. Why do Thailand's migration policies allow for accompanying family migration, but do not grant full health coverage for all? Policies aim to facilitate regularization through documentation, but documents are so costly that the lowest-income earners like those in agriculture may choose to avoid registration. Speculatively, Thailand's costly and needlessly complicated regularized migration, with the contradictory migrant worker situations it gives rise to, creates incentives for violations and longer over-stays in sectors to which it is deemed more difficult to recruit high-quality individual workers. Accompanied by agrarian practices of family work, a series of complex factors may make family migration for agriculture much more typical than in other sectors. However, spouses and older children who enter without a work permit also end up working in the sector, often with increased precarity, with little to no protections and no pathway toward legal permanent residency (ILO, 2022). While residency laws exclude low-wage earners through the 50,000 Baht monthly income qualification, the 2022 naturalization laws require literacy and increased application fees ranging from 5,000 to 10,000 Baht.⁷¹ Lastly, to recap, ASEAN MOUs may seek recognition of migrant workers' rights and protections, but ultimately the categorization of agricultural workers as irregular temporary seasonal workers or independent contractors makes it a contradiction in definitional terms of what an employee is. Not all work is fulltime and year-round, but that should not grant an exception to the enforcement of the regulations for national labor standards.

CONCLUSION

The tripartite relationship between the state, migrant workers and employers is rooted in structural inequalities that perpetuate exclusion and exploitation for the purpose of economic development. Regardless of sector and legal status, most migrant workers are less likely to report abuse due to fear of retaliation from employers, including wrongful termination, wages being withheld, refusal to renew work permits, or threatened deportation. Workers are vulnerable because of the unequal power relationship between migrants and employers, as previously evidenced by worker dependency on access to healthcare, national verification and work permit documentation, restricted mobility, subjection to various safety hazards, housing precarity, and vulnerability to the threat of deportation. The workers' documentation process is often facilitated by document brokers that charge and operate outside the system. Additionally, the cost of documentation is so high, it may make economic

71 Mongkol Bangprapa, *Thai Citizenship Seekers Must Pass Thai Test*, BANGKOK POST (Jan. 11, 2022), <https://www.bangkokpost.com/thailand/general/2245843/thai-citizenship-seekers-must-pass-thai-test>; *Applying for a Resident's Visa in Thailand*, ROYAL THAI POLICE IMMIGR. BUREAU, https://www.immigration.go.th/en/?page_id=1744 (last visited Mar. 11, 2022).

sense for some workers to risk deportation and remain undocumented. Even when employers and brokers pay for these documents initially, they are reimbursed through workers' wage deductions, often at rates above the legal allowances. While regulations and law require access to health benefits, most likely only half of agricultural migrants are enrolled. The border-crossings in patterns of family migration for agricultural workers also present challenges of safe and fair migration. Migrant workers in the agricultural sector experience a range of different labor rights violations, including on the most basic level—long working hours, nonpayment of minimum wages, and wage differences between men and women. Additionally, migrant workers have limited awareness of their work contracts that are filed for the work permits with the Department of Employment. Furthermore, this Article has demonstrated that agricultural seasonal migrants often live in substandard housing in the fields. Lastly, access to complaint mechanisms, labor justice, and sector enforcement remains challenging.

In sum, debt migration, discrimination, and economic exploitation are structured into the MOU bilateral labor agreements through exclusions for low-wage migrant workers and Thailand's own labor laws. According to Appendix 1, many of the grievances found in the ILO (2022) study are addressed through bilateral agreements signed before 2017. However, problems in ensuring labor rights and protections continue due to the lack of mechanisms to begin governmental monitoring and ensure compliance. Again, legal exclusions regarding the undocumented and the agricultural sector also make it difficult to ameliorate the situation through the labor MOU agreements. When bilateral labor agreements declare their recognition of labor rights but without a clear commitment to monitoring and enforcement, it suggests that ASEAN prioritizes sovereignty over intervention.

Furthermore, Thailand's legal regulations exclude the agricultural sector from standard labor protections. Contrary to their regulatory categorization as seasonal, temporary, and/or independent contractors, practices on the ground reveal that migrant workers in this sector are 100% employees regardless of how they are paid or their legal status. Reform in the legal categorization of labor is much needed.

Lastly, and perhaps most difficult, sending countries' governments, the Thai government, and migrant worker advocates need to work together to bring as many cases as possible to the attention of both national agencies and international agencies like the ILO and IOM; as well as major international trading partners concerned with fair labor like the EU, Japan, Australia, and the USA. To conclude—bilateralism for migrant workers has become a pale shadow of what it could be, reflecting Thailand's and ASEAN's history rooted in Cold War approaches to transborder national security. It is bilateralism that is aware of labor and human rights but does not enforce them. Change and reform toward true migrant workers' labor protections and rights may be motivated in the short-term by external forces in diplomacy and in requiring that international economic trade takes into account fair labor practices, corporate supply chain responsibility, and product tracing; and perhaps in the long-term in the integration of ASEAN's immigration reform.

Appendix 1: Content Analysis of MOU Bilateral Relations & 2017 Thailand Royal Decree on the Management of Foreign Workers

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
Source	2013 MOU- signatories Ministries of Foreign Affairs 2016 MOU- signatories Ministries of Labor	2015 MOU- signatories Ministries of Labor	2017 MOU signatories Ministries of Labor	Signed by General Prayut Chan-o-cha (Royal Decrees do not pass through parliament and are immediately in effect 60 days after signing.) Section 145. All by-laws or orders issued or given by virtue of the provisions of the Foreigners' Working Act, B.E. 2521 (1978), the Foreigners' Working Act, B.E. 2551 (2008) and the Royal Ordinance on the Bringing of Foreigners for Working with Employers in the Country, B.E. 2559 (2016) as in force on the date prior to the date on which this Emergency comes into force shall remain in force insofar as they are not contrary to or inconsistent with this Royal Ordinance until by-laws or orders issued under this Royal Ordinance come into force.

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
Remarks	Memorandum of understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar for the implementation of Article 5 of the Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Labor Cooperation	Memorandum of Understanding for Labor Cooperation between the Government of the Kingdom of Thailand and the Government of the Kingdom. Cambodia	Thai MOU uses the term “alien worker,” the Lao version uses the term “foreign worker”	There is a remark at the end of the legislation that acknowledges that the previous procedures were too complicated, contradictory, and violated some laws. This current law consolidates prior laws and has some additions. The penalties are noted as higher, but appropriate
Labor Rights	2013 MOU- PROTECTION ARTICLE XVII The Parties in the employing country shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country.	A worker has the legal protection provided for in the Employment Contract and the Law of the Parties;	Apply for the principles of employment. 2. Workers of the Parties shall be protected in their work in a fair and reasonable manner.	

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
non-discrimination	2013 MOU- ARTICLE XVIII Workers of both Parties are entitled to wage and other benefits due for local workers based on the principles of non-discrimination and equality of sex, race, and religion.	5 Legal Protection for Workers 1. Workers entering the territory of the host country for employment under this Agreement will be treated equally with local workers on the basis of non-discrimination. And equality regardless of gender, race and religion.	Apply for the principles of employment. 1. Ensuring that the employment of the Parties is based on the principle of equality without discrimination	
access to complaint and labor justice	2013 MOU- ARTICLE XIX Any dispute between workers and employers relating to employment shall be settled by the authorised agencies according to the laws and regulations in the employing country 2016 MOU Article 12 Settlement Any disputes arising between the employer and the employee due to employment will be suspended in accordance with the laws and regulations of the receiving country.	5. Legal Protections for workers: 4. Workers will have rights and access to procedures in the event of labor rights violations.	Apply for the principles of employment. 3. Take care of and resolve disputes in respect of labor law and benefits in accordance with the laws and regulations of the receiving country	Employer Security Deposits and Broker Agency Deposit Insurance is used to pay dispute resolution.

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
Right to change job		<p>5. Legal protections for workers:</p> <p>5. Under the circumstances in which the working conditions are exploited and exploited. Or the worker is unable to protect himself or in the event that the worker's contract is terminated prematurely and the termination of the employment contract is not due to his / her fault, the competent authority will seek to find a new employer. Provided during the remaining period of work permit in accordance with the law of the receiving country.</p>		<p>Section 50 When the licensee who is permitted to bring in foreign workers delivers the foreign workers to the employers in accordance to Section 43, in case of the following circumstances, the employer shall notify the licensee who is permitted to bring in foreign workers and the Registrar within seven days from the date of the incident, as the case may be:</p> <p>(1) the employer refuses to accept the foreign worker for employment,</p> <p>(2) the foreign worker does not consent to work with the employer</p> <p>(3) the foreign worker quits with any reason.</p> <p>In the cases of (1) or (3), that are not of the foreign worker's fault, and the foreign worker wishes to work with another employer, the licensee who is permitted to bring in foreign workers may arrange for the foreign worker to work with another employer within thirty days from the date the employer refuses to accept the foreign worker for employment, however the period of work with the new employer shall not exceed the period of the contract to bring in foreign workers to work.</p> <p>In the case of (2), that are the employer's fault, the provisions in Section 51 and Section 52 shall apply mutatis mutandis. Worker must change registered employer within 30 days of leaving the previous employer. Violations are faced with fines not exceeding 20,000 Baht</p>

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
				<p>Section 51: default allowance for job change needs to result from the fault of the employer or has paid for the damage costs to the current employer; These costs include costs to bring and register worker, which shall be calculated by the ratio of the time such foreign worker has completed work. AND—Section 52: the new incoming employer must be sure to pay the security deposit for hiring foreign worker if the work sector requires it within 15 days or else the new work permit will be null and worker will enter repatriation procedures at cost to the new incoming employer.</p> <p>Section 115/1 Any licensee who is permitted to bring in foreign workers who neglects to send a foreign worker back to the country of origin in accordance to Section 50 paragraph five or Section 55 shall be liable to a fine of not exceeding 100,000 thousand Baht per 1 foreign worker.</p> <p>Section 67. The person granted permission for working who intends to continue working shall submit an application for renewal of the work permit to the Registrar before the work permit expires.</p> <p>Upon submission of the application under paragraph one, the applicant for renewal of such work permit may work for the time being until the Registrar gives an order refusing to grant renewal of the work permit.</p>

Content Categories	Myanmar	Cambodia	Laos	2017 Royal Ordinance Concerning the Management of Employment of Migrant Workers
				Under the execution of Section 63 and Section 63/1, the extension period of the work permit shall be as requested by the applicant but not exceeding two years per extension and only as necessary.
Exceptions to right to change job				Exception to right to change job: if worker is under a renewed employment contract, they are not allowed to quit and change jobs. They can only return to their home country and re-apply under a new employer and work permit.
Right to contract	2013 MOU- Article VII: Contract of the terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorised agencies.	5. A copy of the employment contract must be provided to the workers; Article 8 Certification of employment contract documents and other documents related to the employment of workers must be made in Thai, Khmer and English.	4. Employment contract must be made in two (2) languages in Thai and Lao, both of which are of equal value. 5. Termination of the employment contract in all cases shall notify the competent authorities of the Parties as the reasons for termination. 6. The receiving agency must notify the sending agency thirty (30) days prior to the expiration of the employment contract.	Direct hiring does not specify language of contracts, but is remedied by DOE Provincial office practices of checking submitted documents.

Source: Author