



Thailand Social Protection Diagnostic Review

Social protection for migrant workers and their families in Thailand



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Table of contents

List of contents	ii
List of tables and figures	iv
List of abbreviations	v
Foreword	vi
Acknowledgements	viii
Executive summary	ix
Key findings	x
Recommendations	xii
1 Introduction	1
1.1 Roadmap to the report	1
2 Approach	3
2.1 Definitions	3
2.2 Scope and methodology	5
3 Needs: characteristics and social protection entitlements	9
3.1 Channels for regular migration	9
3.2 Overview of migrant workers in Thailand	12
3.3 Legislation and entitlements for regular migrant workers	14
3.4 Social protection arrangements by countries of origin (Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam)	22
4 Coverage of social protection	25
4.1 Coverage gaps of eligible migrant workers	25
4.2 Informal and non-governmental social protection provision	30
5 Effectiveness: barriers to enrolment and accessing benefits	33
5.1 Barriers to registration and enrolment for eligible migrant workers	33
5.2 Barriers to accessing benefits when registered	37
5.3 Challenges and responses to COVID-19	42
6 Social protection provisions by ASEAN countries of destination and countries of origin	47
6.1 Social protection provisions in countries of destination	47
6.2 Innovative social protection provisions by countries of origin	50
7 Conclusions and implications for policy	53
7.1 Conclusions	53
7.2 Recommendations for policy	58

Annex A	List of key informants	63
Annex B	Migrant demographics, 2019	64
Annex C	Numbers of migrant workers by sector of employment	65
C.1	Permitted sectors of employment	65
Annex D	Social protection legislation relevant for migrant workers	68
D.1	The Social Security Act B.E. 2533 (1990)	68
D.2	The Workmen’s Compensation Act B.E. 2537 (1994)	69
D.3	Health Examination and Health Insurance of Foreign Workers (No. 2) B.E. 2562 (2019)	70
Bibliography		71

List of tables and figures

Table 1: Social protection entitlements for regular migrant workers	ix
Table 2: Overview of type and number of respondents	5
Figure 1: Border pass locations in Thailand, Myanmar and Cambodia	11
Table 3: Overview of migrant workers by status and sex	13
Table 4: Numbers of migrant workers from Cambodia, Lao People's Democratic Republic by type of work permit	14
Table 5: Social protection entitlements (contributory and non-contributory) for regular migrant workers	17
Table 6: Social protection entitlements for dependents of regular migrant workers	18
Table 7: Social protection programmes including migrant workers	19
Table 8: Social protection programmes for migrant workers by benefit type and age group	21
Table 9: Legal and bilateral provisions for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam	22
Table 10: Insured migrant workers for SSF and WCF by country and sex in 2019 and 2020	25
Table 11: Coverage rates for and claims made by migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam in 2019	26
Table 12: Coverage rates for men and women migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam in 2020	27
Table 13: Migrant workers insured under the SSF who requested social security benefits in 2019 and 2020	27
Table 14: Gender split of migrant workers insured under the SSF who requested social security benefits in 2019 and 2020	28
Table 15: Claims by migrant workers insured under the WCF in 2019 and 2020	29
Table 16: Migrant workers with active MHIS as at 30 September 2019	29
Table 17: Fees for regular migration status for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam between 2019 and 2020	34
Table 18: Estimated cost of migration	35
Table 19: Minimum contribution periods to receive benefits	40
Table 20: Social protection arrangements for migrant workers in Singapore	48
Table 21: Social protection arrangements for migrant workers in Malaysia	49
Table 22: Fees for regular migration status for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Name between 2019 and 2020	55
Table 23: Numbers of migrant workers from Cambodia, Laos People's Democratic Republic, Myanmar and Viet Nam categorized by type of work permit (December 2019)	64
Table 24: Migrant workers by sector and status (December 2019)	65
Table 25: Number of social security insured migrant workers by business type	67
Table 26: Health examination and health insurance fees for migrant workers by age and sector	70

List of abbreviations

CSO	Civil society organization
HRDF	Human Rights and Development Foundation
IDP	Internally displaced people
ILO	International Labour Organization
IOM	International Organization for Migration
KII	Key informant interview
M-Fund	Migrant Fund
MHIS	Migrant Health Insurance Scheme
MHV	Migrant Health Volunteer
MIS	Management Information System
MLO	Migrant Liaison Officer
MoL	Ministry of Labour
MoPH	Ministry of Public Health
MoU	Memorandum of Understanding
NGO	Non-governmental organization
NHRCT	National Human Rights Commission of Thailand
NV	Nationality Verification
OPM	Oxford Policy Management
OWWA	Overseas Workers Welfare Association
SDGs	Sustainable Development Goals
SEZ	Special Economic Zone
SGD	Singapore dollars
SPDR	Social Protection Diagnostic Review
SSC	Social Security Committee
SSF	Social Security Fund
SSO	Social Security Office
THB	Thai Baht
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WCF	Workmen's Compensation Fund
WCFC	Workmen's Compensation Fund Committee

Foreword

The global COVID-19 pandemic has brought to the fore the critical role of social protection in addressing vulnerabilities across the population, especially with regards to children, informal workers, the elderly, women, and migrant workers. Current social protection systems do not provide adequate coverage for people in these groups, with many having fallen into poverty. Thailand's 20-Year National Strategy (2018-2037) envisions becoming a developed country that provides opportunities for all and social equality. The Royal Thai Government and the United Nations acknowledge the importance of a robust, integrated and modernized social protection system as a key development priority. Incorporating social protection elements into the country's national development plans is essential as it promotes social development, stability and inclusive growth. Thailand's current social protection system is relatively well developed; however, the implementation of programmes and schemes involves multiple ministries and various entities at the national and subnational levels. There is an urgent need to conduct a study and set guidelines for a more coordinated approach among these entities to achieve higher levels of integration and synergy.

The strengthening of the social protection system will increase the recognition of inclusiveness and adequacy to reduce poverty as well as ensure sustainable financing. The Royal Thai Government, Ministry of Social Development and Human Security and the United Nations, represented by the International Labour Organization (ILO), International Organization for Migration (IOM), United Nations Children's Fund (UNICEF), and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), collaborated under the "United Nations Joint Programme on Social Protection for All in Thailand – Accelerating Progress Towards an Integrated and Modernized Social Protection System for All in Thailand" to develop the Social Protection Diagnostic Review. The review focuses on policy recommendations on social protection with a life-cycle approach and consists of the following background papers presenting the backbone for a forthcoming policy dialogue: (i) Thailand social protection mapping and vulnerability analysis, (ii) Child-sensitive social protection in Thailand, (iii) Expanding access to social security for all workers in Thailand (focused particularly on the extension of coverage to workers in informal employment), (iv) Review of the pension system in Thailand, (v) Social protection for migrant workers and their families in Thailand, and (vi) Social protection gender-impact assessment. A series of consultations took place between March and September 2021 where the findings of the Diagnostic Review were presented, reviewed and discussed among experts from government agencies, academia and non-governmental stakeholders.

This background report presents the findings and recommendations on social protection for migrant workers and their families in Thailand, which is an important contribution to the Social Protection Diagnostic Review. This report benefited from the essential contributions of technical experts from the Ministry of Social Development and Human Security, Ministry of Labour (Social Security Office), Ministry of Public Health, Ministry of Education, Office of National Economic and Social Development Council.

We sincerely hope that these reports will contribute to a common understanding among related entities of the current and emerging vulnerabilities across the population and how an integrated and comprehensive social protection system can support Thailand's vision for resilient and sustainable social and economic development, leaving no one behind.



Gita Sabharwal
United Nations Resident Coordinator in Thailand



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Permanent Secretary
Ministry of Social Development and Human Security

Foreword

Thailand is a key regional migration hub and destination country for estimated 3.9 million migrant workers, representing more than 10 per cent of the total employed population in the country. Despite their significant contribution to the Thai economy, migrant workers are often at risk of abuse, exploitation and exclusion with limited to no access to social protection.

Demand for migrant workers has continued throughout the COVID-19 pandemic and related economic slowdown and is expected to continue to grow over the years due to labour market demands and demographic shifts in Thailand. As key drivers of the economy, it is essential that migrant workers have equal access to social protection.

The inclusion of migrant workers in social protection is central to the United Nations 2030 Agenda for Sustainable Development and its overarching Sustainable Development Goals (SDGs) to leave no one behind. Whereas several SDGs and their targets are devoted specifically to migration issues, others will not be fully achieved if migration and migrant workers are not included. Ensuring access to social protection for migrant workers is therefore integral to realize all SDGs in particular to SDG 1 on poverty reduction and SDG 10 to promote equality through “implementing nationally appropriate social protection systems and measures for all, including floors” (Target 1.3) and to “adopt policies, especially fiscal, wage and social protection policies and progressively achieve greater equality” (Target 10.4). It also contributes to SDG 3 to promote healthy lives and well-being for all at all ages as well as the mean to attain gender equality (SDG 5), decent work and economic growth (SDG 8).

With this in mind, the background study on social protection for migrant workers and their families in Thailand represents a significant step towards meeting these goals. The study provides the most recent and comprehensive picture of the social protection status of migrant workers in Thailand, including analysis on level of coverage, key challenges and barriers found on interconnected dimensions from labour migration management to associated policy and legal framework. With evidence-based findings, the study provides an important set of recommendations that are intended to be considered by government counterparts and relevant partners to improve social protection coverage for migrant workers for the sustainable benefits of all.

Building on the commitment and effort of the United Nations Joint Programme on Social Protection for All in Thailand, the findings and recommendations derived from this study provide evidence of the benefits in mainstreaming migration and aim to influence social dialogue on the future of social protection in Thailand.

I sincerely hope that this study will inform the wider discussion that serves to improve access to social protection for migrant workers and accelerate progress towards an integrated, equitable and sustainable social protection for all.



Géraldine Ansart

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Executive summary

Thailand has an estimated non-Thai population of 4.9 million people, which includes 2.5 million regular migrant workers, an estimated 2.3 million irregular migrant workers, and over 90,000 refugees (UNMWG, 2019; United Nations High Commissioner for Refugees (UNHCR), 2020). The social protection arrangements for migrant workers in Thailand can be considered generous compared to its neighbouring countries, and the Royal Thai Government has made a concerted effort to expand the access to comprehensive social protection coverage and fill the gap in lack of access to health-care services for those migrant workers who are not eligible for the main social protection programmes. Social protection for migrant workers does remain characterized by important challenges. Coverage remains relatively low and excludes many irregular and regular migrant workers alike, indicating that there is space for improving the access to social protection benefits for migrant workers.

This is a background paper to the Social Protection Diagnostic Review (SPDR). The primary objective of the SPDR is to facilitate the generation of a policy reform agenda for a more inclusive, integrated, and coherent social protection system in Thailand. This study assesses the current situation of social protection for migrant workers and their families in Thailand, including the level of access to the existing social protection programmes and their benefits, as well as key challenges, barriers, and gaps at policy and implementation levels.

The paper focuses on regular migration¹ from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. Thailand has two official channels for regular migration from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam: (1) Memorandum of Understanding (MoU) and (2) border pass migrant workers. Irregular migrant workers can periodically regularize their status through a nationality verification (NV) process, which is provided by the Thai Government on an ad hoc basis.

Thailand has three social protection programmes available for regular migrant workers, with differential access depending on the type of regular status the migrant worker has. These are the Social Security Fund (SSF) Article 33, the Workmen's Compensation Fund (WCF), and the Migrant Health Insurance Scheme (MHIS). The entitlements are summarized in Table 1 below. The SSF and WCF are mandatory for eligible migrant workers whereas the MHIS is a voluntary scheme.

Table 1: Social protection entitlements for regular migrant workers

Migration status	Sector of employment	SSF (A33)	WCF	MHIS
MoU migrant workers	Temporary and seasonal work	X	✓	✓
	Street vending and domestic work	X	X	✓
	All other sectors defined by the MoL ¹	✓	✓	X ²
Regularized migrant workers (NV process)	Temporary and seasonal work	X	✓	✓
	Street vending and domestic work	X	X	✓
	All other sectors	✓	✓	X ³
Border pass migrant workers	Temporary employment and domestic work	X	X	✓
	Working for a business establishment in year-round employment	✓	✓	✓
Irregular status	All sectors of employment	X	X	X

Notes: (1) Migrant workers are allowed to work in 25 occupations as defined by the Ministry of Labour. A full list of permitted occupations is provided in Annex C. (2) Migrant workers eligible for registration with the SSF are expected to register with the MHIS for the first three months of their SSF registration, during which they cannot yet access the benefits of the SSF. (3) Migrant workers eligible for registration with the SSF are expected to register with the MHIS for the first three months before the SSF coverage starts.

¹ Regular migrant workers are non-Thai people who have a work permit, visa, or other documents which provide legal approval for their stay in Thailand. Their presence in the country is considered legal. These migrant workers have regular migration status.

Key findings

1. Coverage and access to benefits

Just under a million regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam are enrolled in both the SSF and the WCF. This represents 39 per cent of regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. Migrant workers in short-term work or certain professions are excluded from the SSF and WCF. Excluding them from the eligible population yields a coverage rate of 60 per cent for both. More men than women migrant workers are insured under both the SSF and the WCF (43% of men compared to 40% of women).

Of insured migrant workers, 9 per cent made a claim to the SSF and only 2 per cent of insured migrant workers claimed benefits from the WCF. This is higher than the proportion of Thai nationals making a claim to the SSF and can reflect the high proportion of migrant workers employed in sectors with high workplace risks. For both the SSF and the WCF, sick leave was the most frequently claimed benefit.

Women migrant workers make up about two thirds of SSF claims made by migrant workers. This is because women are eligible for maternity leave, and they are more likely to make claims for child benefits. In contrast, men migrant workers make most work-related death or injury claims under the WCF (82%). Out of the 69 claims made in 2020, 64 were made by men, indicating that they work in more life-threatening professions than women.

Following the COVID-19 pandemic, the number of claims made to the SSF increased by more than 50 per cent between 2019 and 2020. To a large extent this increase is likely driven by the increase in unemployment claims, which increased 30-fold, from 2 per cent to nearly half of all claims made to the SSF.

In 2019, there were 823,420 migrant workers and dependents with an active MHIS status. As a proportion of the total regular migrant worker from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam, 29 per cent of regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam had purchased the migrant health insurance. In terms of claims, 13 per cent of MHIS-insured migrant workers were treated in hospitals.

2. Reasons for coverage gaps and lack of access to benefits

While Thailand has several social protection programmes in place under which regular migrant workers are entitled to benefits, and while these benefits are adequate to their needs, being relatively comprehensive and equal in principle to those of Thai nationals, three key shortcomings undermine the system of social protection for regular migrant workers:

- ▶ First, the policy framework in place determines that eligibility for social protection programmes depends substantially on the type and sector of employment.
- ▶ Second, even when migrant workers are eligible for social protection programmes, lack of compliance means they may not be able to receive their entitlements.
- ▶ Third, even where migrant workers should be eligible for benefits, a variety of barriers prevent them from receiving the benefits. These barriers include lack of compliance, cumbersome, lengthy and costly processes, and incoherence in the policy framework.

Policy framework

The SSF provides the most comprehensive social protection coverage but is not accessible to regular migrant workers employed in domestic or temporary work, such as seasonal agriculture, forestry and temporary livestock, even if these workers have the required work and residence permits. Many Thai nationals are similarly excluded from enrolment in the SSF and the WCF due to categories of workers being legally excluded from SSF, a lack of compliance in the formal sector and the high proportion of Thai nationals working in the informal sector (Merttens et al., 2021b).

The same eligibility criteria apply to the WCF, as workers insured under SSF should automatically be registered under WCF. However, workers in some sectors such as agriculture, forestry and livestock, are nominally eligible for the WCF whereas they are excluded from the SSF if they are on a seasonal or temporary employment. When eligible migrant workers are enrolled in and can access the benefits available through the SSF and WCF, they enjoy a similar level of social protection entitlements as Thai citizens who are enrolled in these programmes.

While it is compulsory for NV and MoU workers to be enrolled in the SSF, this is not the case for border pass holders, since the border pass is intended for temporary workers. Border pass holders are rarely enrolled in the SSF. The Royal Thai Government addressed the gap in health-care coverage for migrant workers not eligible to contribute to the SSF by setting up the MHIS, for which border pass holders are eligible.

Women face specific barriers to accessing social protection services due to the exclusion of specific sectors and types of employment, for example, due to the exclusion of domestic workers from SSF Article 33 who are predominantly women. This is a structural form of gender discrimination both for Thai nationals and migrant workers.

The cost and time required to regularize their status (especially for MoU and NV migrant workers) discourages migrant workers from regularizing, which means they cannot access social protection. The complexity involved also encourages the use of recruitment agencies, which charge additional fees and thus raises the cost. The total cost for a regular migrant worker to enter and work in Thailand is nominally around USD 500 but can be a lot higher. Obtaining a border pass is simpler (less costly) than obtaining NV or MoU documents. Employers in border provinces and Special Economic Zones (SEZs) therefore prefer to register migrant workers under the border pass scheme, even when their business operations do not involve seasonal or temporary work.

Compliance

Employers may choose a migration status that limits migrant workers' access to social protection. Employers have some discretion to choose their preferred way to regularize their workers, whether border pass or MoU. This can be used as a tool to avoid paying social security contributions, since those are not obligatory for border pass holders.

Enforcement and monitoring of social security legislation is weak. Both the SSF and the WCF require the employer to register the migrant worker into the social protection system. If an employer does not comply with their legal obligations to pay contributions, there is no monitoring by government agencies to ensure that migrant workers' social security status remains active and/or the worker's contribution is being made. The Social Security Act threatens fines and/or custodial sentences for employers who fail to meet the Act's legal requirements, but this is effectively not enforced for migrant workers.

Slow claims processes and weak enforcement mean few claims under the WCF are successful. When claims are made to the WCF, the employer tends to avoid reporting the incidents to the Social Security Office (SSO) because such reports will influence the level of the employer's contribution in the future. However, despite these provisions, the number of actual inspectors and inspections are few, and existing protections and provisions for migrant workers are poorly enforced.

Accessibility

Lack of coordination or shared processes between agencies mean migrant workers cannot easily track entitlements, and service providers struggle to deliver services effectively. Migrant workers do not have ID documents that are interoperable with the Thai social protection system across agencies. Each government agency dealing with migrant workers tends to develop their own Management Information System (MIS) to manage their own registration of migrant workers and issue their own IDs, including the Department of Employment, the SSO, the Immigration Office, and the Ministry of Public Health (MoPH).

Migrant workers have little awareness of the social protection services to which they may be entitled. Employers have no obligation to alert or inform their migrant workers of their rights. MoU workers receive inductions when entering Thailand, which include briefings on social protection, and the SSO does provide guidance documents and public materials on social protection. However, their reach is unclear.

Recommendations

1. Policy framework

Revise the regulations for social protection programmes to make inclusion of short-term migrant workers mandatory, including those types of employment currently excluded from the SSF. This is in line with recommendations to improve access to comprehensive social protection for Thai workers in the formal and informal sector (Merttens et al., 2021a, 2021b). The border pass should only be used for the specific purpose of seasonal and temporary labour migration. It should not be possible for employers to hire migrant workers through the border pass on a regular basis.

Reduce the up-front costs of regularization. Apply the ILO principle that recruitment costs and related fees should not be borne by the worker. The Royal Thai Government should comply with and enforce existing national and international commitments.

Support ongoing efforts to ensure the portability of benefits between Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam through advisory and advocacy efforts by ILO and IOM. It will be important to consider the nature of the portability agreements and ensure the right systems are set up to make the agreements operational.

Conduct a review of the MHIS in terms of both sustainability and affordability to ensure the scheme is affordable for families and sustainable financially.

2. Compliance

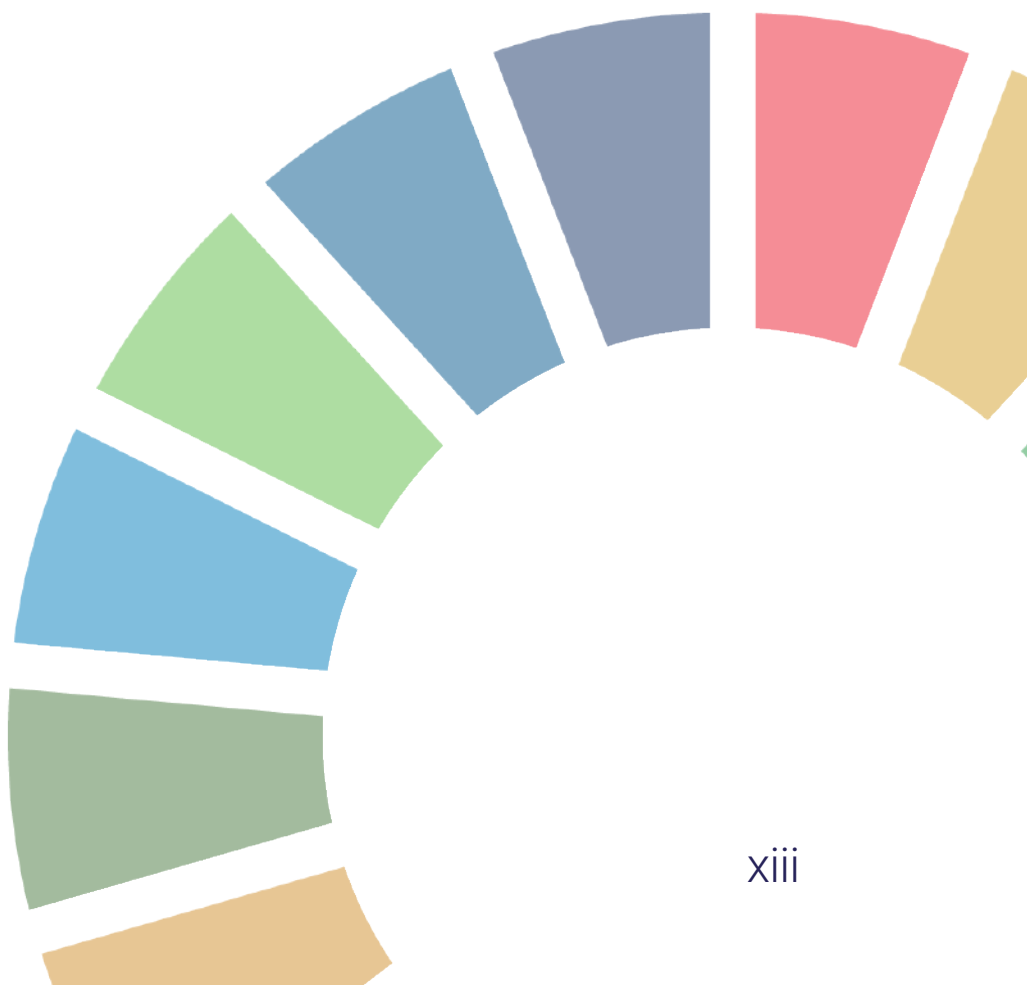
Strengthen monitoring and enforcement of employer compliance with existing SSF and WCF legislation. Enrolment of migrant workers in both the SSF and WCF needs to be improved and contributions by employers and employees monitored. The need to strengthen compliance and enforcement of social protection regulation is not limited to compliance for the enrolment and access of migrant workers but necessary for the Thai social protection sector at large (Merttens et al., 2021a, 2021b).

Claims processes for both programmes should be sped up and simplified. The grievance system should be strengthened. Similarly, the compliance of employers to hire migrant workers through the correct migration channel could be enforced more strongly, particularly the inappropriate use of border pass scheme.

3. Accessibility

Improve the coordination and interoperability of processes and MIS for migrant workers across ministries and agencies. Streamline processes to ensure government agencies deal with migrant workers in a coordinated manner and without duplication of effort.

Improve communication to migrant workers about processes, rights, and entitlements to social protection in their own language and with trained staff at key contact locations.





1 Introduction

This is a background paper to the SPDR. The primary objective of the SPDR is to facilitate the generation of a policy reform agenda for a more inclusive, integrated, and coherent social protection system in Thailand. The SPDR will include an analysis of the fiscal dimension and budgeting for social protection,² as well as findings on (1) Thailand social protection mapping and vulnerability analysis, (2) child-sensitive social protection in Thailand, (3) expanding access to social security for all workers in Thailand (focus particularly on the extension of coverage to workers in the informal employment), (4) gender impact assessment of the social protection system in Thailand, (5) review of the pension system in Thailand,³ and (6) access to social protection for migrant workers and their families in Thailand.

The aim of this study is to assess the current situation of social protection for migrant workers and their families in Thailand, including the level of access to the existing social protection programmes and their benefits, as well as key challenges, barriers, and gaps at policy and implementation levels, while suggesting feasible reform options based on an extensive review and analysis of the national context and international good practices.⁴ The paper covers four main questions:

1. What social protection programmes are nominally available to different types of migrant workers?
2. How difficult or easy is it to practically access these services?
3. Do these social protection services cover all migrant workers in Thailand and are they adequate to meet the needs of those migrant workers (i.e. what is the quality and quantity of provision)?
4. How can existing social protection provisions for migrant workers and their families be improved?

1.1 Roadmap to the report

This paper is organized in seven sections. Following this introduction, the next section (section 2) presents the approach and methodology of the paper, including a discussion of key definitions. Then, section 3 focuses on the characteristics of migrant workers and their social protection entitlements. Section 4 considers to what extent migrant workers are covered by social protection programmes and what the existing gaps are.

The subsequent section (section 5) turns to the effectiveness of social protection programmes and the barriers to registration, enrolment, and accessing benefits. Section 6 considers social protection provisions by sending and receiving ASEAN countries, focusing on several case studies. Lastly, the report concludes with section 7 by providing an overview of conclusions and recommendations for policy.

2 Undertaken through the delivery of a training course in "social budgeting" being delivered by the ILO to the Royal Thai Government. A key hoped-for output from the course will be the development of a social budgeting model for use by the Government.

3 This latter study is being commissioned by ILO separately to the work conducted by the SPDR team.

4 See the IOM terms of reference for the background paper on "Access to social protection for migrant workers and their families in Thailand".



2 Approach

This section outlines the approach of the paper. It first discusses key definitions in section 2.1, focusing on social protection and key distinctions between migrant worker characteristics. Section 2.2 outlines the scope and methodology, including the analytical framework, data sources and limitations.

2.1 Definitions

2.1.1 Social protection

There is currently no official definition of social protection in Thailand, nor yet a unified policy framework defining the sector as a whole (Merttens et al., 2021a; OPM, 2020). However, the National Economic and Social Development Council (NESDC) (2002) defines social protection as a system or a set of schemes to protect the rights of all people as stated in the Constitution of Thailand.⁵ These include social services, social security, and social assistance programmes. This is broadly consistent with the ILO definition (2017), which defines social protection as:

The set of policies and programmes designed to reduce and prevent poverty and vulnerability across the life cycle. It includes nine main areas: child and family benefits, maternity protection, unemployment support, employment injury benefits, sickness benefits, health protection, old-age benefits, disability benefits and survivors' benefits. Social protection systems address all these policy areas by a mix of contributory schemes (social insurance) and non-contributory tax-financed social assistance.

Social protection includes different types of programmes, including non-contributory programmes, contributory programmes, active labour market programmes, government employees' programmes, and informal services. We focus on the services available for migrant workers.

- ▶ **Contributory programmes** are schemes which provide benefits on condition that financial contributions are made by and/or on behalf of beneficiaries, for example by their employer and/or through subsidies from the State. The most common type of contributory social protection is social insurance, where contributions are made by beneficiaries and/or employers to a collective fund for the purpose of pooling risk among beneficiaries (and their dependents). In Thailand, the main social insurance scheme is the SSF.
- ▶ **Non-contributory programmes** are schemes which provide benefits to participants without any requirement for a financial contribution. They can be universal (provided to all citizens or residents), categorically targeted (for example a child grant), and/or means tested (for example based on the income level of a beneficiary). They are usually financed from general taxation.

This paper takes a holistic view of the Thailand social protection landscape and focuses on both non-contributory programmes and contributory "social security" programmes available to migrant workers and their dependents in Thailand. Three out of four programmes available for migrant workers are contributory programmes. These are the SSF, WCF, and MHIS. The right to free basic education is a universal non-contributory scheme and available to migrant workers. The schemes are discussed in more detail in section 3.3.

5 In 2017 the Constitution of Thailand was amended. The NESDC is currently in the process of redefining social protection.

2.1.2 Different characteristics of migrant workers

Migrant workers in Thailand are heterogeneous in terms of their legal immigration status, their eligibility and access to contributory and non-contributory programmes, and the level of formality characterizing their employment. This paper distinguishes between regular and irregular migrant workers based on their immigration status and between their de jure right to access social protection and de facto access to it.

Regular and irregular migrant workers

Regular migrant workers are non-Thai people who have a work permit, visa, or other documents which provide a legal right for their stay in Thailand. These migrant workers therefore have a regular migration status. The largest group of regular migrant workers in Thailand is from the neighbouring Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. Thailand has two channels for regular migration: the MoU and border pass migrant workers (see section 3.1).

Irregular migrant workers in contrast do not have documentation providing a legal right for their stay in Thailand. Formally, their presence in the country is considered illegal. These migrant workers therefore have an irregular migration status.

Regularization of migrant workers can happen periodically through the NV process (see section 3.1). Through this process irregular migrant workers can obtain regular migration status.

Informality of employment for migrant workers

There are a variety of ways in which informality has been defined and discussed in academic and policy literature. The ILO uses the term informal economy, which "refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements". Informal employment here refers to working arrangements that are in practice or by law not subject to national labour legislation, income taxation, or entitlement to social protection or certain other employment benefits (e.g. advance notice of dismissal, severance pay, or paid annual or sick leave). The ILO definition of informal employment typically differentiates three groups of workers: (i) employees; (ii) employers and own-account workers; and (iii) contributing family members.

In Thailand, there are currently two widely accepted definitions of informality. First, the National Statistical Office defines informal employment as employed persons who are not protected or have no social security from work (NSO, 2019). In contrast, formal employment refers to employed persons who are protected or have social security from work, including government officers, employees protected by labour laws, and employed persons insured under Articles 33, 39, and 40 with the SSO.⁶ Second, the Ministry of Labour (MoL) defines informal workers as individuals who work in the informal economy and do not have employee status under the Labour Protection Act B.E. 2541 (1998). Informal workers do not have legally protected job security, guaranteed minimum wages, or legally mandated occupational safety and health standards at work (Kongtip et al., 2015). According to this definition, workers insured under SSF Article 33 count as formal workers, whereas those (self-)insured under SSF Articles 39 and 40 count as informal workers.

Recognizing the diverse reasons for informality of migrant workers' employment, this paper differentiates between three different types of migrant workers: (1) migrant workers insured under the SSF; (2) migrant workers legally eligible for or insured under the SSF but excluded in practice; and (3) migrant workers legally excluded from the SSF.

In addition to regular and irregular migrant workers, Thailand also has migrant workers who fall under international protection and internal migrant workers and internally displaced people (IDPs) (see sections 3.2 and 4.2 respectively).

6 SSF Articles 33, 39, and 40 are administered by SSO under the MoL. Article 33 is mandatory for all private sector employees including regular migrant workers (with some exceptions). Article 39 is voluntary and designed for ex-employees who used to be covered under Article 33. Article 40 is also voluntary and designed for self-employed and informal-sector workers, but migrant workers are not eligible.

2.2 Scope and methodology

This study predominantly focuses on regular migrant workers from Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam. Regular migrant workers will include those who entered Thailand through the MoU and border pass employment schemes who remain regular and those who have become irregular since (e.g. because their documentation expired or if they have lost their job and did not secure a new job within 30 days). The paper uses the Organisation for Economic Co-operation and Development’s Social Protection System Review conceptual framework, in line with the overarching SPDR. The framework covers five dimensions: need, coverage, effectiveness, sustainability, and coherence. This paper does not address sustainability.

- ▶ **Needs:** this dimension considers the needs of migrant workers that require addressing through social protection. The paper analyses the vulnerabilities and risks faced by migrant workers.
- ▶ **Coverage:** the paper then highlights to what extent these needs are being met and to what extent social protection programmes cover migrant workers.
- ▶ **Effectiveness:** this dimension of the framework considers different criteria of effectiveness. This paper focuses on adequacy (the quantity and quality of services provided) and equity. This includes a discussion on the barriers to access and to what extent social protection programmes include or link to humanitarian social protection services. The paper does not discuss efficiency, which is covered in Mertens et al. (2021a).
- ▶ **Coherence:** this paper discusses some incoherence in the institutional and legal framework for social protection for regular migrant workers but does not discuss this in detail.

2.2.1 Data sources

The analysis is based on three data sources: grey literature, key informant interviews (KIIs), and administrative data from key government sources:

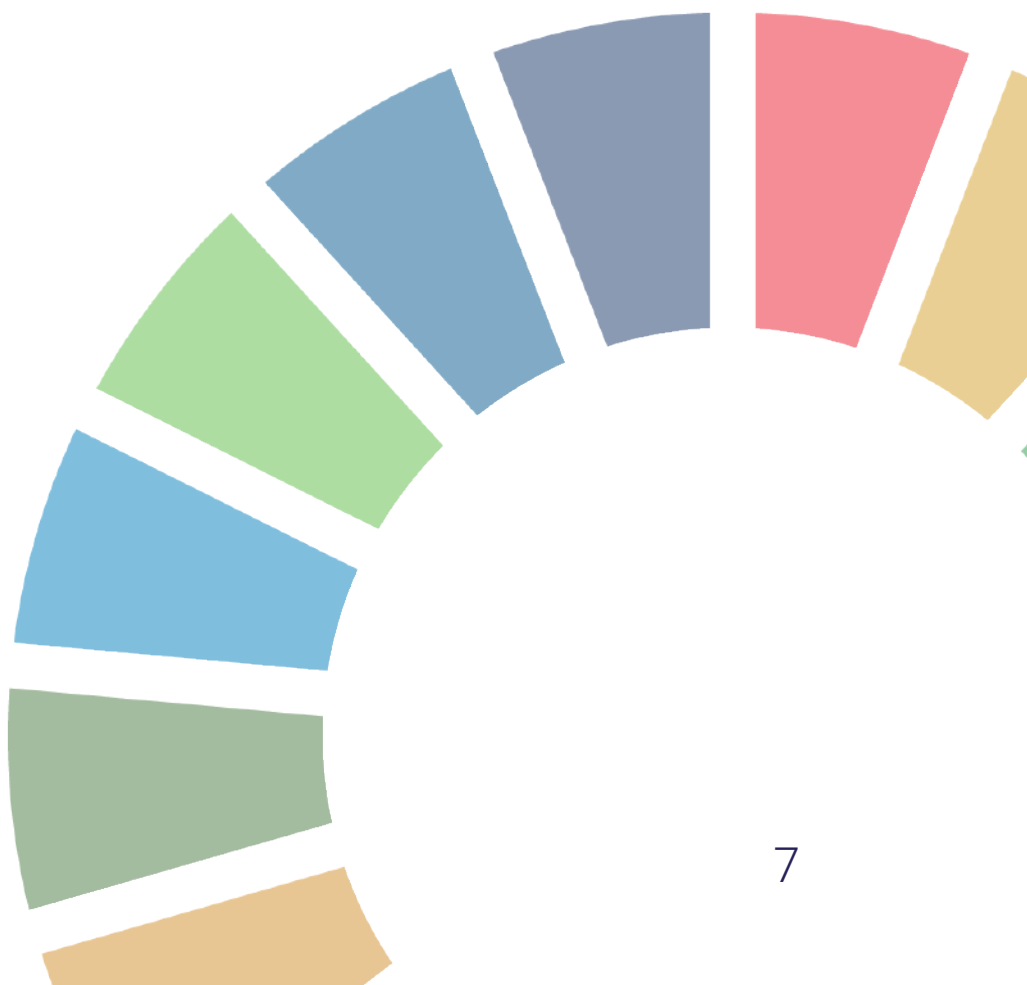
1. **Grey literature:** a literature review was carried out of key documents on social protection for migrant workers as well as relevant laws, reports, and policy documents.
2. **KIIs:** 24 KIIs were conducted with Thai Government officials, service providers, academics, NGOs, unions, and United Nations officials from the ILO and IOM. Table 2 below provides a breakdown of the quantity of KIIs per respondent type. A list of key informants is provided in Annex A.
3. **Administrative data:** the research team made formal requests to numerous Royal Thai Government institutions on migrant workers enrolled in key programmes. The report reports any data in tables or footnotes with the used sources.

Table 2: Overview of type and number of respondents

Type of respondent	Number of KIIs
Thai Government (Ministry of Public Health, MoL)	2
Service provider	1 (5 staff)
Academics	1
Non-governmental organizations (NGOs) and unions	15
United Nations	2
Migrant workers	2
Employer representative	1

2.2.2 Limitations

Comprehensive data on migrant workers in Thailand is not systematically collected or housed by a single authority and not all existing data were made available to our researchers. Where possible the paper relies on the data received from the Royal Thai Government and the literature review for the analysis. For the assessment of the coverage and effectiveness of social protection for regular migrant workers, the paper predominantly draws from the literature and on expert opinions.





3 Needs: characteristics and social protection entitlements

Migrant workers form a significant part of the labour force in Thailand and help fill labour shortages. Not only do they contribute to economic growth, but their importance to the national labour force is growing as Thai society ages. Constituting over 10 per cent of the total labour force, their work is thought to contribute between 4.3 per cent and 6.6 per cent of Thailand's gross domestic product (UNMWG, 2019; ILO and IOM, 2017). This paper focuses on migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam and touches briefly on irregular migrant workers and migrant workers under international protection.

This chapter first discusses the channels for regular migration (see section 3.1) and then presents an overview of migrant workers in Thailand (section 3.2) and their social protection entitlements (section 3.3). The final section discusses what social protection arrangements exist for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam on the part of their governments (section 3.4).

3.1 Channels for regular migration

There are two official channels for regular migration to Thailand:

Memorandum of Understanding

Under the MoU process, migrant workers can be recruited in their countries of origin by their employers or through recruitment agencies certified by the Thai MoL. MoU workers must be between 18 and 55 years old. A work permit under the MoU employment scheme is valid for two years from the date of issuance. Prior to the work permit expiry date, migrant workers can apply for a renewal for another two years.

The total length of uninterrupted employment in Thailand cannot exceed four years unless otherwise prescribed by the Council of Ministers.⁷ One such exception is the current COVID-19 pandemic, for which the Cabinet approved an extension for MoU workers whose papers would have expired during the period of border closure. In all other cases, following the four-year uninterrupted employment period, the MoU workers must return home for a mandatory 30-day "cooling off period", during which they cannot re-enter Thailand.⁸

A migrant jobseeker, as well as their Thai employer, is required to sign an MoU contract prior to departure from their country of origin. This is a requirement of the MoU recruitment process which legally binds the employer, the worker, and the recruitment agency (even though the contract is not signed by the recruitment agency). Section 56 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2561 (2018) requires that the MoU employment contract be prepared in two languages: Thai and the worker's national language. It is equally binding in both languages.

An MoU contract is different from an employment contract. An employment contract is an agreement that governs the employment relationship between the worker and the employer, establishing benefits and rights in accordance with Thai laws and enterprises' codes of conduct (if applicable). The Thai Labour Protection Act B.E. 2541(2005) does not require the employer and the worker to sign a written contract, deeming a verbal agreement to be sufficient.

7 See Sections 65–67 of the Royal Ordinance Concerning the Management of Employment of Foreign Workers B.E. 2561 (2018).

8 See Section 67 of the Royal Ordinance Concerning the Management of Employment of Foreign Workers B.E. 2561 (2018).

Border pass employment scheme

The Royal Thai Government introduced a legal framework to set out a border pass employment scheme to supply a labour force for the expanding economic activities in the border provinces and SEZs (see Figure 1 below).⁹ These laws regulate entry and work permits for non-Thai workers from Cambodia and Myanmar residing in a limited number of Thai border provinces to find seasonal work.

Migrant workers under this scheme need a border pass with a stamped visa inside and a temporary work permit. The visa gets stamped in the border pass booklet on entry to Thailand.¹⁰ The border pass permitting entry into Thailand is only valid for up to 30 days and then requires migrant workers to return to their country of origin and re-enter Thailand. The temporary work permit is valid for up to 90 days. A migrant worker under this scheme must therefore travel up to two times to the border to re-enter, after which they must reapply for the border pass and work permit.

Border pass holders cannot travel freely in Thailand. They are not allowed to go outside of the province that they entered to work. Additionally, some provinces restrict their movement to the district level (IOM, 2020a). If border pass holders are found to have relocated outside the designated area, they may face imprisonment for up to two years or be fined up to 20,000 Thai Baht (THB) (approximately USD 643) (International Commission of Jurists, 2020: 86).

Regularization through the ad hoc NV process

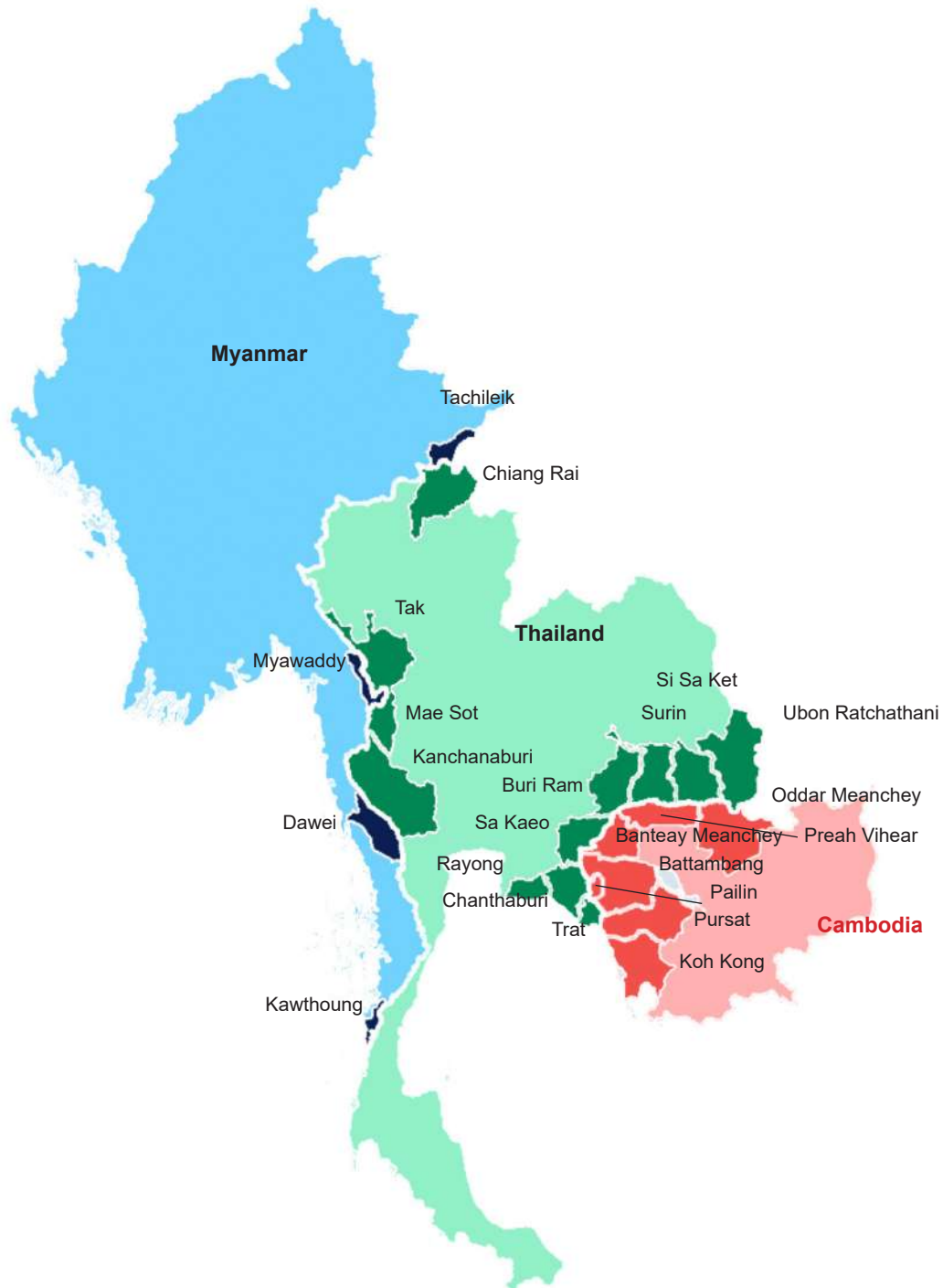
The NV process allows irregular migrant workers to register and regularize their status in Thailand. This allows undocumented and hence irregular migrant workers to come forward and register themselves. Migrant workers regularized through the NV process are permitted to stay in Thailand for up to two years with a yearly visa renewal. Therefore, there are regular migrant workers in Thailand who obtained regular status without going through the MoU and border pass employment schemes. The Royal Thai Government has periodically allowed irregular migrant workers to go through this NV process on an ad hoc basis.

Migrant workers who have regularized their status through an NV process have the same rights as MoU workers. They have the right to register along with their children aged under 18 (UNMWG, 2019).

9 See Section 64 of the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2561 (2018).

10 This is different from the two-year work permit under the MoU employment scheme.

Figure 1: Border pass locations in Thailand, Myanmar and Cambodia



Source: Produced by OPM for this background study, drawing on material from IOM (2020a).

Notes: Those living in the highlighted border locations in Cambodia and Myanmar can legally work in the highlighted provinces in Thailand as long as they hold a valid border pass. This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the International Organization for Migration.

3.2 Overview of migrant workers in Thailand

The United Nations Thematic Working Group on Migration in Thailand estimated the size of the non-Thai population to be about 4.9 million people in 2018, an increase from an estimated non-Thai population of 3.4 million in 2014 (UNMWG, 2019). Over half of the non-Thai population are estimated to be regular workers, with work permits through the MoU or border pass employment scheme or having gained regular status through an ad hoc NV process (see Table 3 below). The estimated number of irregular migrant workers is 2.3 million people.¹¹ However, the number of irregular migrant workers remains an estimate given the undocumented nature of their presence. One key informant to this study referred to a range of 3 to 5 million undocumented workers in Thailand.

Most irregular migrant workers are likely to come from Myanmar, Cambodia, and Lao People's Democratic Republic. Despite numerous NV processes that regularized the status of migrant workers (see Table 3 below for an estimate), many migrant workers do not have a work permit and are therefore not able to do contractual work. Of all migrant groups, this group has the least protection, receiving little support and being vulnerable to the risks of exploitation, extortion, abuse, arrest and deportation.

These categories of migrant workers are all non-Thai citizens. In addition, there are Thai citizens who migrate within the borders, particularly from the North and North-Eastern regions to the Central region and Bangkok. Some of this migration follows the seasonal nature of agricultural employment, with internal migrant workers seeking seasonal employment elsewhere to diversify their income (UNMWG, 2019). As Thai citizens, they can take their social benefits with them when they move within Thailand, such as social security, universal health care, and free basic education for children.

¹¹ We use the 2018 estimate of 4.9 million as a base and subtract the number of regular and forced migrant workers from 2020 to obtain an estimate of the number of irregular migrant workers.

Table 3: Overview of migrant workers by status and sex¹²

Status of migrant workers	Total (number of people)	Male (%)	Female (%)
Regular migrant workers not from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam (professional and skilled workers and ethnic minority)	197 583	70%	30%
Regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam	2 284 673	55%	45%
MoUs (Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam) ¹	987 214	56%	44%
Border pass holder ²	30 074	46%	54%
Completion of NV process (regularized) ³	1 267 385	55%	45%
Irregular migrant workers (estimate)	2 300 000	N/A	N/A
Internationally protected	99 806	50%	50%
Total	4 900 000 estimated migrant workers		

Notes: (1) Migrant workers who entered Thailand and received a work permit under the MoU employment scheme with four neighbouring countries (Myanmar, Lao People's Democratic Republic, Cambodia and Viet Nam), including those whose work permits expired. For example, migrant workers who are dismissed from work but unable to find a new employer within 30 days as permitted by law. Their residence and working status have been regularized by the Cabinet Resolution on 4 August 2020. (2) Migrant workers who have received a work permit under this border pass/seasonal workers employment scheme and whose work permits have expired are of two nationalities: Myanmar and Cambodia. Their residence and working status have been regularized by the Cabinet Resolution on 4 August 2020. (3) Migrant workers who have received a work permit under the NV employment scheme, including through an open registration for Myanmar, Lao People's Democratic Republic and Cambodia. Their residency and working status have been regularized by the Cabinet Resolution on 20 August 2019.

Source: Office of Foreign Workers Administration (2020a, 2020b, 2020c); UNMWG (2019).

3.2.1 Overview of regular migrant workers

Of the estimated regular migrant workers, 92 per cent come from Myanmar, Cambodia, Lao People's Democratic Republic, and Viet Nam, as shown in Table 4. This is nearly 2.3 million people. Myanmar is the country of origin of the largest number of regular migrant workers by far (68%), followed by Cambodia (22%), Lao People's Democratic Republic (10%), and Viet Nam (0.01%).

¹² Please note that the data presented here are different from the data used to calculate the coverage rates of migrant workers in social protection schemes. This is because the SSF registration data provided by the SSO dates from December 2019. This paper therefore uses overall estimates of the number of migrant workers from the same date to calculate the coverage rates. This section presents estimates of the number of migrant workers from 2020 as this is the most recent data available to the research team. See Annex B for migrant demographic data.

Regular migrant workers in Thailand are required to possess two types of identification documents to stay and work in Thailand legally: (1) a passport or identity document with a valid visa; and (2) a valid work permit. Although there are two main channels for regular migration – the MoU and border pass employment schemes – most of the regular migrant workers in Thailand obtained work permits through a NV process (56%). In comparison, 43 per cent of regular migrant workers obtained a work permit through the MoU employment scheme and just over 1 per cent of regular migrant workers hold a border pass.

Table 4: Numbers of migrant workers from Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam by type of work permit

Type of work permit	Myanmar	Cambodia	Lao People’s Democratic Republic	Viet Nam	Total	% of total permits
Total regular migrant workers	1 557 426	501 401	225 588	258	2 284 673	
(% of total)	68%	22%	10%	0.01%		
Migrant workers with MoUs ¹	533 890	278 119	174 948	257	987 214	43%
(% of total)	54%	28%	18%	0.03%		
Completion of NV process ²	1 003 270	213 474	50 640	1	1 267 385	56%
(% of total)	79%	17%	4%	0%		
Border pass holders ³	20 266	9 808	N/A	N/A	30 074	1%
(% of total)	67%	33%	N/A	N/A		

Notes: (1) Migrant workers who entered Thailand and received a work permit under the MoU employment scheme with four neighbouring countries (Myanmar, Lao People’s Democratic Republic, Cambodia and Viet Nam), including those whose work permits expired. For example, migrant workers who are dismissed from work but unable to find a new employer within 30 days as permitted by law. Their residence and working status have been regularized by the Cabinet Resolution on 4 August 2020. (2) Migrant workers who have received a work permit under the NV employment scheme, including through an open registration for Myanmar, Lao People’s Democratic Republic and Cambodia. Their residency and working status have been regularized by the Cabinet Resolution on 20 August 2019. (3) Migrant workers who have received a work permit under this border pass/seasonal workers employment scheme and whose work permits have expired are of two nationalities: Myanmar and Cambodia. Their residence and working status have been regularized by the Cabinet Resolution on 4 August 2020.

Source: Office of Foreign Workers Administration (2020c: 4).

3.3 Legislation and entitlements for regular migrant workers

3.3.1 Legislation

There are numerous pieces of legislation governing the employment of migrant workers as well as their entitlement to social protection. Five key pieces of legislation are described briefly below, with further detail provided in Annex D.

The Labour Protection Act B.E. 2541 (1998) applies to migrant workers and ensures that they are guaranteed the same working conditions and protections as Thai workers. It regulates a legal minimum wage, maximum working hours and minimum rest periods, paid sick leave, annual leave, maternity leave, and prohibitions against discrimination and workplace harassment and child labour. There are sectors of employment which only have limited coverage by the Act and are governed by separate Ministerial Regulations, such as domestic work and seasonal and temporary work.¹³

The Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017) and amendment B.E. 2561 (2018) is a comprehensive legal framework regulating the recruitment and employment of migrant workers. It outlines migrant workers' labour rights, including that migrant workers must always have access to their identity documents and possessions, as well as protection from abusive practices during recruitment and employment. Migrant workers can work only in the job categories and tasks specified in their work permits.¹⁴ The law regulates that employers are prohibited from demanding or receiving money or any other property from migrant workers coming to work in Thailand, except for fees for passports, medical clearance, work permits, or other fees as declared by law.¹⁵ It also reiterates Thai employers' duty to cover the service fee charged by the recruiter in Thailand. It prohibits employers from accepting a recruitment fee.

The law applies strict conditions to MoU migrant workers who wish to change their jobs or their employers. An MoU migrant worker can change employer only under specific conditions, such as an employer terminating the contract, being declared bankrupt, the migrant worker suffers physical assault and abuse at the workplace, or the employer fails to comply with the contract or labour law.¹⁶ In such cases, the migrant worker must then find new employment within 30 days.

The Social Security Act B.E. 2533 (1990) and its amendments are a set of laws concerning workers' welfare and benefits, based on a contributory social insurance scheme that receives contributions from the employer, the worker, and the State. The law states that employees of migrant workers who are 18–55 years of age shall be insured, and thereby provided with seven benefits, relating to non-work-related injury or illness, maternity, disability, death, children, old age (retirement pension) and unemployment.

The Workmen's Compensation Act B.E. 2537 (1994) and its amendments are a set of regulations that provide workers with benefits should they experience occupational injuries or illness. The Act set up the WCF under the SSO to provide four types of benefits in relation to work-related accidents, injuries, and illness:

- ▶ cash compensation to the workers or their survivors in the case of sickness, injury, permanent impairment, permanent disability, death, or disappearance as a result of a work responsibility;
- ▶ medical expenses;
- ▶ occupational rehabilitation expenses; and
- ▶ funeral expenses.

According to the Act, all workers, including migrant workers, are covered under the WCF, except domestic workers and workers employed by street vendors. The 2018 amendment of the Act extended the protection and coverage to employees from State agencies, non-profit organizations, and local staff working at embassies and international organizations. The Announcement by the MoL on 21 February 2019 extended the WCF coverage to workers in agriculture, fishery, forestry, and livestock sectors. However, domestic workers and employees of street or mobile vendors are still excluded.

13 See Ministerial Regulations No. 14 B.E. 2555 in accordance with the Labour Protection Act B.E. 2541, 30 October 2012 retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2555/A/105/42.PDF; Ministerial Regulations Concerning the Protection of Agricultural Worker, B.E. 2557, 12 December 2014, retrieved from www3.mol.go.th/sites/default/files/laws/th/23970.pdf; Ministerial Regulations Concerning the Protection of Sea Fishery Workers No. 1 B.E. 2557, 22 December 2014, retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2557/A/088/95.PDF; and No. 2 B.E. 2561, 31 March 2018, retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/021/6.PDF.

14 See Sections 8 and 9 of the Royal Ordinance Concerning the Management of Employment of Foreign Workers B.E. 2561.

15 See Section 49 of the Royal Ordinance Concerning the Management of Employment of Foreign Workers B.E. 2561.

16 See a video clip (in Thai) from the Department of Public Relations on the conditions faced by migrant workers from Cambodia, Lao People's Democratic Republic and Myanmar: www.prd.go.th/th/content/category/detail/id/42/iid/490.

Health Examination and Health Insurance of Foreign Workers B.E. 2562 (2019). The announcements of the MoPH on Foreign Workers' Health provide the legal framework for the MHIS for regular migrant workers of all categories, including MoU workers, NV process workers, and border pass holders. The MHIS is a contributory health-care programme for migrant workers and their dependents up to the age of 18 years old who are not eligible for the SSF, or not yet covered by it because they have made less than three months' contributions to the SSF. The MHIS is considered a voluntary scheme because the MoPH does not have a legal mechanism to oblige enrolment. However, in practice, migrant workers are required to undergo and pass the obligatory health examination and purchase migrant health insurance as part of the work permit application process. Migrant workers who are not covered by the SSF are required to purchase a migrant health insurance with a validity of no less than the duration of their employment, while migrant workers who are eligible for the SSF are required to purchase a three-month migrant health insurance to cover the gap period before they can access the health-care benefits under the SSF. Migrant workers must purchase a migrant health insurance at the public hospital where they undergo the medical check-up. The MHIS is only available at public hospitals.

3.3.2 Social protection entitlements for regular migrant workers

Although the legal framework stipulated by the Constitution guarantees equal treatment of all persons,¹⁷ national policies governing non-citizens are more restrictive. Migrant workers are partially considered national security and economic security risks, and policies towards them seek to balance those risks with providing social protection (Chalamwong et al., 2019). A wide range of social assistance programmes and benefits are provided by the Royal Thai Government (see Merttens et al., 2021a). However, most social protection programmes are limited to Thai nationals. There are four programmes available for regular migrant workers, three of which are contributory and one of which is non-contributory.

Contributory social protection or social security

- ▶ **The SSF Article 33:** The Social Security Act and its amendments are a set of laws concerning workers' welfare and benefits, based on a contributory social insurance scheme that receives contributions from the employer, the worker, and the State. It is administered by the SSO under the MoL. Article 33 is mandatory for all private sector employees, with some exceptions. Regular migrant workers with a valid work permit and identity documents who are aged 18–55 are eligible to contribute to the SSF. Some workers (both Thai and migrant workers) are excluded from Article 33. These are workers working in agriculture, forestry and livestock who are not employed year-round, workers who are employed on a seasonal or temporary basis, domestic workers, and workers employed by street vendors.
- ▶ **WCF** is mandatory for all employees covered by Article 33 and requires employers to contribute for additional work-related accident, sickness, and death benefits. Workers in agriculture, forestry and livestock production are nominally entitled for the WCF (though not for the SSF if they are on a seasonal or temporary employment). Employers of regular migrant workers and formally employed Thai nationals pay contributions into the fund.
- ▶ **MHIS** is a voluntary health-care scheme for migrant workers and their dependents up to 18 years of age. It is regulated by the Cabinet Resolutions and the Ministry of Public Health's Announcement on 24 May 2019 and 10 July 2020. It is available for migrant workers not covered by the SSF, those who are eligible for the SSF but who have contributed less than three months to it, and migrant workers with a border pass. Migrant workers under the MHIS must register at the specific hospital where they receive their health screening on arrival. They are then linked to this service provider for the whole year, which is problematic if the migrant workers change employer or move to another province (Tangcharoensathien et al., 2017 (discussed in section 5.1 below)).

Non-contributory social protection or social assistance

- ▶ **Free basic education for migrant children:** every child in Thailand is entitled to 15 years of free basic education in Thai public schools, including children of regular and irregular migrant workers, under the 2005 Cabinet Resolution on Education for Unregistered Persons and the Ministerial Regulations on Document Requirements to Admit Students into Education Institutions B.E. 2548.

¹⁷ See Section 27 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

Eligibility by type of regular migration status

MoU migrant workers and regularized migrant workers through the NV process are eligible and required to be enrolled in the SSF unless they work in temporary employment such as in agriculture, forestry and livestock, as well as domestic work.¹⁸ Migrant workers employed in these sectors are required to sign up for the MHIS. Migrant workers eligible for registration with the SSF are expected to register with the MHIS for the first three months of their SSF registration, during which they cannot yet access the benefits.

Border pass migrant workers were previously not eligible to enrol in the SSF at all, but this has recently changed for some border pass migrant workers depending on their type of employment. The SSO has changed its internal guidance on the registration of migrant workers. Previously this excluded migrant workers with a border pass and work permit because border pass workers were considered temporary workers by definition (the border pass scheme is set up as a temporary work scheme). However, the SSO has recently responded to a request by the Human Rights and Development Foundation (HRDF) to ensure border pass workers in SEZs can be enrolled in the SSF as they are de facto employed year-round in the garment and textile industries (and therefore should be eligible for the SSF) with automatically renewing 90-day contracts (HRDF, 2020). The SSO has now recognized this reality by allowing employers to register migrant workers with a border pass number.

However, border pass migrant workers who work in temporary employment and domestic work remain ineligible for the SSF. Provincial SSOs are now requesting employers in garment and textile factories in SEZs to enrol their border pass employees in the SSF.¹⁹ Other border pass migrant workers in temporary or domestic employment are required to enrol in the MHIS. The different entitlements for all regular migrant workers are presented in Table 5 below.

Table 5: Social protection entitlements (contributory and non-contributory) for regular migrant workers

Migration status	Sector of employment	SSF (A33)	WCF	MHIS
MoU migrant workers	Temporary and seasonal work	X	✓	✓
	Street vending and domestic work	X	X	✓
	All other sectors as defined by the MoL ¹	✓	✓	X ²
Regularized migrant workers (NV process)	Temporary and seasonal work	X	✓	✓
	Street vending and domestic work	X	X	✓
	All other sectors	✓	✓	X ³
Border pass migrant workers	Temporary employment and domestic work	X	X	✓
	Working for a business establishment in year-round employment	✓	✓	✓
Irregular status	All sectors of employment	X	X	X

Notes: (1) Migrant workers are allowed to work in 25 occupations as defined by the Ministry of Labour. A full list of permitted occupations is provided in Annex C. (2) Migrant workers eligible for registration with the SSF are expected to register with the MHIS for the first three months of their SSF registration, during which they cannot yet access the benefits. (3) Migrant workers eligible for registration with the SSF are expected to register with the MHIS for the first three months before the SSF coverage starts.

18 This excludes employees in enterprises which do not require employment throughout the year such as planting forestry or animal husbandry as well as domestic workers and street vendors from the SSF (see Section 5 of the Workmen's Compensation Act B.E. 2537).

19 The Tak Province SSO sent a letter to the HRDF to confirm this. Source: Tak Province Social Security Office, Letter to the Director of Human Rights and Development Foundation, Letter No. Tor Kor 0030/1494, dated 7 May 2020. This is on file with HRDF and not publicly available.

Social protection for dependents of migrant workers

Migrant workers' dependents have varying entitlements to social protection depending on their migration status and sector and type of employment (year-round versus temporary). All dependents themselves are not eligible for the SSF because this is only for migrant workers who are employed, but some migrant workers can receive entitlements related to their dependents such as a child allowance (see below). This is illustrated in Table 6 below.

- ▶ **Dependents of MoU and border pass migrant workers:** MoU and border pass migrant workers are not allowed to bring their dependents to Thailand. This means that if their dependents do enter along with migrant workers, they have irregular status and the parent migrant worker is therefore not eligible to receive child allowance under the SSF. Dependents can also not register with the MHIS. If these migrant workers have a spouse in Thailand, the spouse is only eligible if they have regular migration status and meet the criteria for the WCF and SSF as discussed above.
- ▶ **Dependents of regularized migrant workers:** Migrant workers with regularized status through the NV process can register their dependents. However, the dependents will not be covered by the SSF and WCF. The parent migrant who is employed and enrolled in the SSF can receive child allowance. In addition, dependents up to the age of 18 can enrol in the MHIS.
- ▶ **Irregular and regular migrant children** are all entitled to obtain basic education. They have a right to up to 15 years of free basic education in Thai public schools, including nutrition support, basic child health care and child protection services.

Table 6: Social protection entitlements for dependents of regular migrant workers

Type of migrant worker dependents	Sector of employment of migrant worker	SSF (A33)	WCF	MHIS	Basic education
MoU migrant worker dependents	All sectors of employment	Not allowed to bring dependents			✓
Regularized migrant worker (NV process) dependents	All sectors of employment	Can register dependents but SSF and WCF do not register dependents		✓ (up to 18 years)	✓
Border pass migrant worker dependents	All sectors eligible for border pass scheme	Not allowed to bring dependents			✓
Irregular status migrant worker dependents	All sectors of employment	Not allowed to bring dependents			✓

The four social protection schemes available to regular migrant workers have different benefits and responsible agencies and cover different age categories. These are presented in Table 7 and Table 8 below.

Table 7: Social protection programmes including migrant workers

Programme	SSF (A33)	WCF
Benefits	<ul style="list-style-type: none"> • Medical treatment and cash compensation for non-work-related sickness and injury. • Retirement benefits. • Disability benefits (income replacement, medical care, and rehabilitation). • Funeral grant and death allowance. • Maternity benefits (medical expenses for pregnancy care and child delivery, as well as cash compensation for maternity leave). • Child allowance. • Unemployment benefits. 	<ul style="list-style-type: none"> • Compensation in the case of work-related sickness, injury, permanent impairment, permanent disability, death, or disappearance. • Medical expenses. • Occupational rehabilitation expenses. • Funeral expenses.
Legal framework	<ul style="list-style-type: none"> • Social Security Act B.E. 2533 and its amendments B.E. 2537, 2542, and 2558. • Prescribing Other Activities or Employees Not Subject to the Law on Social Security. 	<ul style="list-style-type: none"> • Workmen's Compensation Act B.E. 2537 and its amendment B.E. 2561.
Responsible government agencies	<ul style="list-style-type: none"> • SSO • MoL 	<ul style="list-style-type: none"> • The Office of WCF, under the SSO • MoL
Categories of migrant workers covered	<ul style="list-style-type: none"> • Regular migrant workers (MoU, regularized through NV process), except migrant workers in temporary or seasonal employment or domestic work and migrant workers employed by street vendors. • Border pass holders working in permanent year-round employment. 	<ul style="list-style-type: none"> • Regular migrant workers (MoU, regularized through NV process), except migrant workers in domestic work and migrant workers employed by street vendors. • Border pass holders working in permanent year-round employment.
Contributions	<ul style="list-style-type: none"> • Regular migrant workers contribute and have access if they have a contract for longer than a year – migrant workers and employers each pay 5 per cent, and the government pays 2.5 per cent. 	<ul style="list-style-type: none"> • Employers pay contributions into the fund.

Programme	MHIS	Basic education
Benefits	<ul style="list-style-type: none"> • Annual health check-up. • General medical treatment, including maternity care, dental care, and vaccinations for children aged 0–15 years old. • Emergency medical treatment. • Communicable diseases prevention. • HIV/AIDS medication. 	<ul style="list-style-type: none"> • 15 years of basic education in Thai public schools, including nutrition support, basic child health care and child protection service.
Legal framework	<ul style="list-style-type: none"> • Cabinet Resolutions. • MoPH Announcements on Health Examination and Health Insurance for Migrant Workers on 24 May 2019, and on 10 July 2020. 	<ul style="list-style-type: none"> • 2005 Cabinet Resolution on Education for Unregistered Persons. • Ministerial Regulations on Document Requirements to Admit Students into Education Institutions B.E. 2548.
Responsible government agencies	<ul style="list-style-type: none"> • Health Insurance Fund for Foreigners and Foreign Workers, MoPH 	<ul style="list-style-type: none"> • The Office of Basic Education Commission, Ministry of Education
Categories of migrant workers covered	<ul style="list-style-type: none"> • Regular migrant workers not covered by the SSF, migrant workers with a border pass, and those who are eligible for the SSF but have contributed less than three months to the fund. • Before May 2020, this included irregular migrant workers, but now it only includes regular migrant workers. 	<ul style="list-style-type: none"> • Migrant workers' children, regardless of their nationalities and legal status.
Contributions	<ul style="list-style-type: none"> • Migrant workers cover the expenses, except for migrant workers in the fishery sector, for whom the employer is obliged to cover the expenses. 	<ul style="list-style-type: none"> • Non-contributory.

Table 8: Social protection programmes for migrant workers by benefit type and age group

Social protection floor pillar	Functional classification	Child				Working age					Senior			
		Age 0–2	Age 3	Age 4–6	Age 7–17	Age 18–25	Age 26–54	Age 55	Age 56–59	Age 60	Age 61–70	Age 71–80	>Age 81	
Pillar 1: Health	Medical care					SSF, MHIS								
	Work injury					WCF								
	Maternity care					SSF, MHIS								
	Child health care	MHIS for dependents												
Pillar 2: Basic income security for children	Education		Basic education											
	Child allowance	SSF												
Pillar 3: Basic income security for persons in active age	Maternity (income compensation)					SSF 33								
	Sickness (income compensation)					SSF 33								
						WCF								
	Unemployment					SSF 33								
Disability insurance					SSF 33									
					WCF									
Pillar 4: Basic income security for older persons	One-time pension							SSF						
	Monthly pension							SSF 33						
	Death (survivors' benefit)					SSF 33								
					WCF									

3.4 Social protection arrangements by countries of origin (Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam)

Migrant workers are also covered by social protection arrangements from their country of origin. The countries overall provide very little provision for social security (see Table 9).

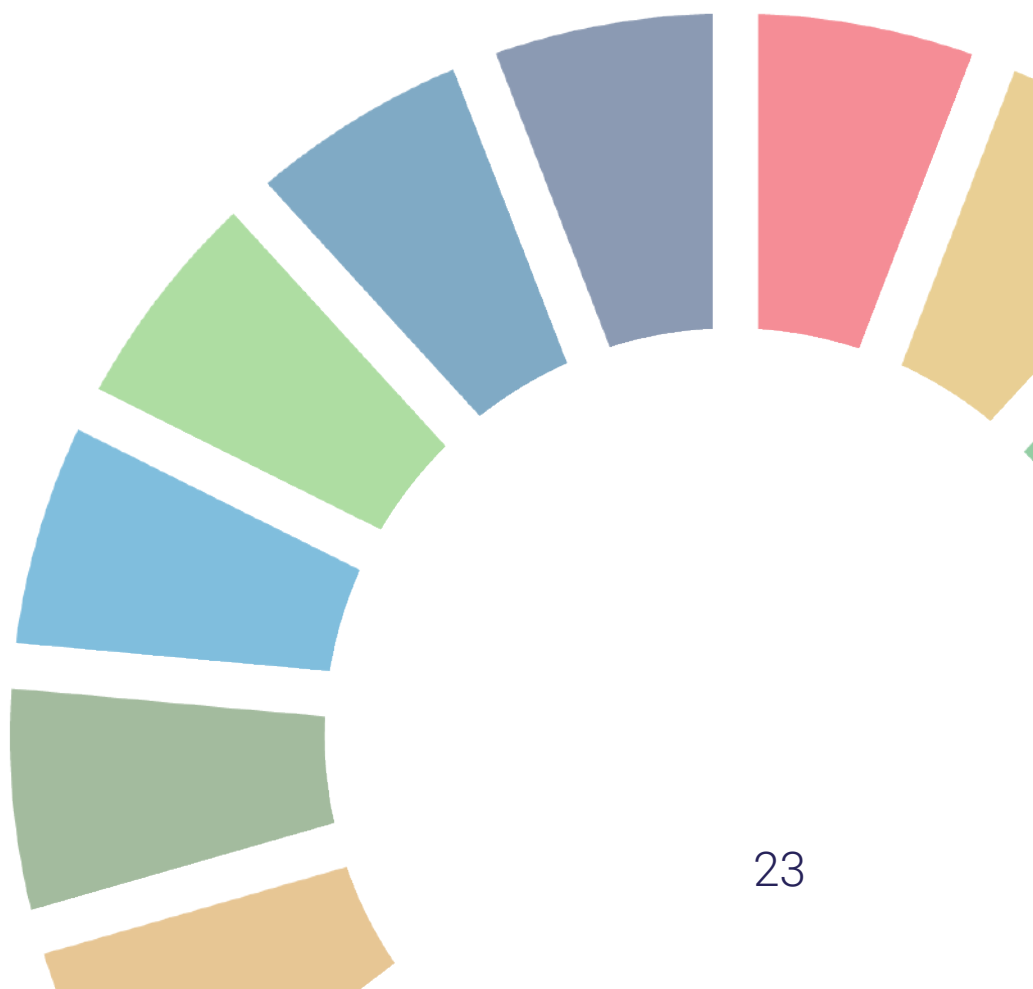
Table 9: Legal and bilateral provisions for migrant workers from Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam

Country	Legal and bilateral provisions for workers in Thailand from Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam
Myanmar	<p>Overall: Limited social security arrangements exist to protect migrant workers abroad.</p> <p>Law Relating to Overseas Employment (1999):</p> <ol style="list-style-type: none"> 1.Right to compensation for damage or injury sustained at foreign worksite. 2.Right to take legal action for the loss of rights and privileges relating to overseas employment – however, this excludes social security entitlements. <p>MoU between Myanmar and Thailand (2003, renewed 2016):</p> <ol style="list-style-type: none"> 1. Migrant workers cannot be discriminated against and are accorded the same protection, rights, and benefits as Thai nationals in accordance with labour laws. 2. Employers are liable for compensation in the event of accident, illness, or death.
Cambodia	<p>Overall: Limited social security arrangements exist to protect migrant workers abroad.</p> <p>Policy and regulatory framework:</p> <ol style="list-style-type: none"> 1.Regulation of recruitment agencies involved in overseas labour migration. 2.Equipment and protection at the pre-departure stage and in country of destination, including complaints and compensation measures and mechanisms. <p>MoU between Cambodia and Thailand (2003, replaced 2015):</p> <ol style="list-style-type: none"> 1. Migrant workers cannot be discriminated against and have right to same protection and benefits as Thai nationals in accordance with labour laws (equal treatment clause). 2. Migrant workers are entitled to legal protections as stipulated in employment contract. <p>Migrant workers can contribute to social security funds if they exist and both countries will ensure the migrant workers’ needs are met in relation to health insurance.</p>
Lao People’s Democratic Republic	<p>Overall: Limited social security arrangements exist to protect migrant workers abroad.</p> <p>Policy and regulatory framework:</p> <ol style="list-style-type: none"> 1.Regulation of recruitment agencies involved in overseas labour migration. 2.Prohibitions imposed on Lao citizens – the State does not permit sending of Lao labour overseas for employment in vocations or areas that are dangerous to health and safety or contrary to Lao customs and traditions or where safety cannot be guaranteed. 3.Decree 245 on Placement of Lao Workers to Work Abroad (Revision dated 22 May 2020): Right to become a member of social security scheme and entitled to the general benefits (Article 10). <p>MoU between Lao People’s Democratic Republic and Thailand (2002):²⁰</p>

20 The agreement used to include a deportation fund, to which Lao workers must contribute 15 per cent of their salary to be repaid 45 days after their employment was terminated. However, the Thai authorities repealed this in 2014.

Country	Legal and bilateral provisions for workers in Thailand from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam
	The countries will apply national laws to protect the rights of workers to whom it applies, and migrant workers will receive wages and benefits at the same rates as national workers.
Viet Nam	<p>Overall: Increasing recognition of migrant workers' rights but limited social security arrangements.</p> <p>2013 Constitution and law on Vietnamese Contract-based Workers Abroad (2015):</p> <ol style="list-style-type: none"> 1. Recognition for the importance and wellbeing of Vietnamese workers overseas. 2. Contracts for Vietnamese workers abroad should include social insurance coverage. <p>MoU between Viet Nam and Thailand (including 2015 bilateral agreement):</p> <ul style="list-style-type: none"> - No specific provisions for social protection coverage.

Source: Olivier (2018).





PRIMARY READER

A	B	C	D
A (အိ)	B (ဗိ)	C (ဆီ)	D (ဒီ)
E	F	G	H
E (အိစ်)	F (ဖိ)	G (ဂိ)	H (ဟိ)
I	J	K	L
I (အိ)	J (ဆီ)	K (ကိ)	L (လိ)
M	N	O	P
M (အိ)	N (နိ)	O (အိ)	P (ပိ)
Q	R	S	T
Q (အိ)	R (ရိ)	S (ဆီ)	T (တိ)
U	V	W	X
U (အိ)	V (ဖိ)	W (ဂိ)	X (ဆီ)
Y	Z		
Y (အိ)	Z (ဆီ)		

က	ခ	ဂ	င
ကလေးငယ် ခုတ်စွယ်	ခလေး ခလေး	ဂလေး ဂလေး	ငလေး ငလေး
ဆ	ဇ	ည	တ
ဆရာ ရှိသော	ဇလေး ဇလေး	ညလေး ညလေး	တလေး တလေး
ဓ	ဏ	ပ	ဖ
ဓလေး ဓလေး	ဏလေး ဏလေး	ပလေး ပလေး	ဖလေး ဖလေး
ဇ	ဈ	ဍ	ဎ
ဇလေး ဇလေး	ဈလေး ဈလေး	ဍလေး ဍလေး	ဎလေး ဎလေး

4 Coverage of social protection

This chapter discusses the extent to which social protection programmes cover eligible migrant workers by programme (section 4.1) and the informal provision of social protection for migrant workers who are not eligible due to being irregular or not being covered due to other reasons (section 4.2).

4.1 Coverage gaps of eligible migrant workers

This section discusses what proportion of the migrant worker population is covered by the three contributory social protection schemes: the SSF, WCF, and the MHIS. It also describes how many claims are made by insured migrant workers.

4.1.1 Social Security Fund

Table 10: Insured migrant workers for SSF and WCF by country and sex in 2019 and 2020

Programme / country	2019			2020		
	Women	Men	Total	Women	Men	Total
SSF						
Myanmar	326 946	466 267	793 213	299 037	417 355	716 392
Cambodia	100 298	126 540	226 838	80 602	99 105	179 707
Lao People's Democratic Republic	30 763	32 290	63 053	26 595	27 019	53 614
Viet Nam	482	696	1 178	386	465	851
Total	458 489	625 693	1 084 182	406 620	543 944	950 564
WCF						
Myanmar	327 629	467 242	794 871	299 830	418 461	718 291
Cambodia	100 508	126 805	227 313	80 816	99 368	180 184
Lao People's Democratic Republic	30 827	32 358	63 185	26 665	27 091	53 756
Viet Nam	483	597	1 080	387	466	853
Total	459 447	627 001	1 086 448	407 698	545 386	953 084

Source: Information received from SSO on 3 March 2021.

Table 10 shows that, in 2020, 950,564 migrant workers were enrolled in the SSF. Various data sources between 2019 and 2020 are used to calculate coverage rates. Notes under each table specify the data sources used.²¹

The most recent migrant population data available is for 2019, so data for that year are what are primarily referred to in this section. In 2019, 1,084,182 migrant workers were enrolled in the SSF.

21 Authors' communication with SSO on 3 March 2021.

In December 2019, there were a total of 2.8 million regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam in Thailand. This includes MoU, NV, and border pass workers. As a share of the total migrant population, 39 per cent of regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam were insured in the SSF in 2019.

However, this total population figure includes migrant workers who are not eligible to enrol into the SSF or for whom there is no obligation to be enrolled into the SSF and who are hence rarely enrolled. Border passes are for seasonal and temporary workers, who are not eligible to be enrolled in the SSF, so we therefore exclude them (65,991 workers) from the denominator.

In addition, 915,998 MoU and NV workers were employed in sectors excluded from social security. This includes domestic workers, who are de jure excluded, and workers employed by enterprises not requiring employment throughout the year, such as in the agriculture and livestock industries. If working full time, legally they are eligible to enrol in the SSF and WCF but are more commonly excluded in practice. We therefore assume for the purpose of these calculations that they are excluded and deduct them from the total.²² This leaves an eligible migrant population of 1.8 million migrant workers, which increases the nominal coverage rate of the SSF to 60 per cent of eligible migrant workers. The same coverage rates are calculated for the WCF and MHIS in Table 11 below.

The coverage rate of total regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam is slightly higher than the coverage rate of Thai workers of the active-age population enrolled in the SSF, which is 30 per cent (Merttens et al., 2021a).²³ Part of the reason for the low coverage rates of both Thai and migrant workers in the SSF is a result of the legal provisions which exclude certain groups as well as access barriers (discussed in section 5).

Table 11: Coverage rates for and claims made by migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam in 2019

Indicator	SSF	WCF	MHIS
Total number of insured migrant workers	1 084 182	1 086 446	823 420
Coverage as % of total regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam	39%	39%	29%
Coverage as % of eligible regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam	60% ¹	60% ¹	84% ²
% of insured migrant workers making a claim or seeking a benefit	9%	2%	13%

Notes: (1) Eligible population refers to migrant workers who have MoU or NV status and who do not work in temporary work such as in agriculture and livestock as well as in domestic work. (2) Eligible population refers to all border pass holders and migrant workers employed in agriculture, livestock, agriculture-related or livestock-related as well as domestic work.

Source: Population figures from SSO, December 2019, SSF and WCF figures from SSO on 3 March 2021, MHIS data from Division of Health Economics and Health Security (2020). Please refer to Annex C for information on the distribution of migrant workers across sectors.

More men than women migrant workers are insured under both the SSF and the WCF. Table 12 below shows that, for both the SSF and the WCF, 43 per cent of regular men migrant workers are enrolled compared to 40 per cent of women migrant workers. This may indicate that it is more likely for women than men to work in temporary and domestic work. It could also indicate that women are more likely to be excluded from social protection, even when they are eligible. An analysis of social protection coverage by sector could reveal whether either of these two hypotheses holds true. Note that the population data used to calculate the coverage figures in Table 12 come from the MoL, since a split by gender was available in that data, while the migrant population figures used in Table 11 are from the SSO.

²² This assumption is valid since, even though agriculture represents roughly 30 per cent of employment for migrant workers (see Table 24), it represents only 3.9 per cent of all of those insured (see Figure 2).

²³ The coverage rate of Thai workers eligible for the SSF is not available.

Table 12: Coverage rates for men and women migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam in 2020

Indicator	Men	Women	Total
Coverage SSF (% of population)	43%	40%	42%
Coverage WCF (% of population)	43%	40%	42%

Source: Population figures from Division of Foreign Workers Management (2020c). SSF and WCF figures from SSO on 3 March 2021. In 2019, only 9 per cent of insured migrant workers made a claim to the SSF, which is a small proportion of the total number of insured migrant workers. The number of claims made to the SSF increased by more than 50 per cent between 2019 and 2020, from 98,751 claims to 156,182 (see Table 13). This increase can likely be attributed to the COVID-19 pandemic. Unemployment claims increased 30-fold, from 2 per cent to nearly half (42%) of all claims made to the SSF with other claims remaining relatively stable.

Sick leave was the most frequently claimed benefit. Half of all claims in 2019 related to sick leave. Child allowance is the second most frequently claimed benefit, accounting for around a quarter of all claims (see Table 13).

Table 13: Migrant workers insured under the SSF who requested social security benefits in 2019 and 2020

Benefit	2019		2020	
	Number of insured migrant worker claims by type	Percentage of total	Number of insured migrant worker claims by type	Percentage of total
Sickness	51 622	52%	47 293	30%
Maternity	18 161	18%	17 196	11%
Disability	9	0%	11	0%
Death	750	1%	624	0%
Child allowance	25 495	26%	24 932	16%
Old age				
Pension	586	1%	910	1%
Lump sum	10	0%	11	0%
Unemployment	2 118	2%	65 205	42%
Total	98 751	100%	156 182	100%

Source: Information received from SSO on 3 March 2021.

It is noteworthy that women migrant workers make most SSF claims. In 2019, 63 per cent of claims came from women and in 2020 73 per cent did. This is largely because women are eligible for maternity leave and they, rather than men, tend to make claims for child benefits (see Table 14 below). In terms of absolute numbers, women also make more claims for sick leave, which is likely also connected to their caring responsibilities.

Table 14: Gender split of migrant workers insured under the SSF who requested social security benefits in 2019 and 2020

Benefit	2019				2020			
	Women	Men	Women (%)	Men (%)	Women	Men	Women (%)	Men (%)
Sickness	29 765	21 857	41%	81%	27 936	19 357	28%	34%
Maternity	15 538	2 623	22%	10%	14 937	2 259	15%	4%
Disability	3	6	0%	0%	3	8	0%	0%
Death	150	600	0%	2%	133	491	0%	1%
Child allowance	24 982	513	35%	2%	24 461	471	25%	1%
Old age								
Pension	218	368	0%	1%	365	545	0%	1%
Lump sum	2	8	0%	0%	2	9	0%	0%
Unemployment	1 117	1 001	2%	4%	30 897	34 308	31%	60%
Total	71 775	26 976	100%	100%	98 734	57 448	100%	100%

Source: Information received from SSO on 3 March 2021.

4.1.2 Workmen's Compensation Fund

In 2020, 953,084 migrant workers were insured with the WCF; this is slightly less than in 2019, when this figure was 1,086,446. This represents 39 per cent of the regular migrant worker from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. The WCF's eligibility criteria are the same as those for the SSF. However, workers in some sectors such as agriculture, forestry and livestock, are nominally eligible for the WCF whereas they are excluded from the SSF if they are on a seasonal or temporary employment. Making the same assumptions as above yields the same coverage rate for the WCF as for the SSF, namely 60 per cent (see Table 11).

Table 15 below shows that, in 2019, only 2 per cent of insured migrant workers claimed benefits from the WCF. This amounted to 18,284 claims. In 2020, this figure was slightly lower at 15,891 claims. In addition, most claims (70%) are for up to three days of sick leave, with almost all the remainder being for sick leave longer than three days, both of which are comparatively low-cost claims. We discuss the incentive structures surrounding WCF claims in section 5.2 below.

In 2016, the five industrial sectors with the highest numbers of work-related harm and injury cases were, in descending order: construction, food and drinks manufacture, butchery, plastics manufacture, and rubber manufacture (SSO, 2016: 13).

Table 15: Claims by migrant workers insured under the WCF in 2019 and 2020

Benefit	2019		2020	
	Number of claims by migrant workers	% of total	Number of claims by migrant workers	% of total
Death	68	0%	69	0%
Disability/Invalidity	1	0%	2	0%
Loss of an organ	214	1.2%	155	1%
Sick leave for more than three days	5 214	28.5%	4 858	31%
Sick leave for less than three days	12 787	69.9%	10 807	68%
Total	18 284	100%	15 891	100%

Source: Information received from SSO on 3 March 2021. Men migrant workers make most work-related death or injury claims. In both 2019 and 2020, 82 per cent of WCF claims came from men. Proportionately, there is no difference between men and women with respect to the type of claims made, only that men make about five times as many claims as women do. An exception is the benefit claims made in relation to death, which are almost entirely made by men. Out of the 69 claims made in 2020, 64 were made by men. Similarly, in 2019, out of the 68 claims made, 62 were by men. This may indicate that migrant men's occupations are more life threatening, compared to women's occupations.

4.1.3 Migrant Health Insurance Scheme

In September 2019, there were 823,420 migrant workers and dependents with active MHIS. As at August 2020, the numbers of migrant workers with active MHIS had dropped to 510,211 (Division of Health Economics and Health Security, 2020).

Table 16: Migrant workers with active MHIS as at 30 September 2019

	Myanmar	Cambodia	Lao People's Democratic Republic	Other nationalities	Total
Migrant workers and migrant children aged 7–18 years	544 000	173 186	56 436	604	773 854
Migrant children under seven years old	38 625	8 405	2 530	6	49 566
Total	582 253	181 591	58 966	610	823 420

Source: Division of Health Economics and Health Security (2020).

As a proportion of the total Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam regular migrant worker population, 29 per cent had purchased the migrant health insurance in 2019 (see Table 11). The MHIS is intended for those migrant workers who are ineligible for the SSF, i.e. seasonal and temporary workers and workers in agriculture, forestry, livestock, and domestic work. If we assume that these migrant workers are the only ones purchasing migrant health insurance, the coverage rate of the MHIS is 84 per cent. This would be a very high coverage rate, which may indicate that it is not accurate. It is also possible that MoU and NV migrant workers who work in sectors that are covered by the SSF are not enrolled in the SSF and have instead enrolled in the MHIS. Without detailed information on the number of insured migrant workers across the three schemes by sector of employment, it is impossible to assess to what extent the MHIS does or does not cover the eligible population. According to MoPH records, in 2019 13 per cent of MHIS-insured migrant workers, or 109,127 migrant workers, made 293,738 hospital visits.

Compared to its neighbouring countries, Thailand's social protection arrangements for migrant workers may be considered generous. Migrant workers eligible for the SSF are entitled to comprehensive social protection benefits, even if accessing the SSF and its benefits can be challenging as discussed above. However, coverage figures across the three programmes are low, indicating that there is space for improving the access to social protection for migrant workers.

Legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that the social security system covers only part of the labour force. Migrant workers are often concentrated in sectors of the labour market that are either not covered by social security or in which compliance with social security laws is weakly enforced (Olivier, 2018).

4.2 Informal and non-governmental social protection provision

Migrant workers working in sectors excluded from the SSF and WCF (roughly 40% of regular migrant workers) and migrant workers with irregular status do not have access to any of the formal social protection programmes described in this section (aside from the MHIS for regular migrant workers).

The Migrant Fund (the M-Fund) is an example of a non-profit, private-run health insurance programme for migrant workers, regardless of their legal status.²⁴ The M-Fund was established to provide sustainable access and quality health-care services to migrant workers in Thailand. It is a contributory health insurance scheme, currently operating in four locations in Thailand and Myanmar with high concentrations of migrant populations, namely: in Thailand, Tak and Sa Kaeo provinces, Sangklaburi District in Kanchanaburi Province, and Myawaddy in Myanmar. Between 2016 and 2020 around 22,900 migrant workers registered as M-Fund members. As of November 2020, 52 per cent remained active, with the majority of these aged between 18 and 29 years. The majority of the fund's members are Myanmar nationals residing in Tak Province.

The members of the fund pay a low monthly contribution of THB 100 (USD 2.80), with the benefits provided comprising health-care and medical treatment at public hospitals and private clinics where the M-Fund has established a partnership and collaboration. The M-Fund was set up to fill the health coverage gaps, particularly for migrant populations who are not eligible to enrol in the State-provided systems.

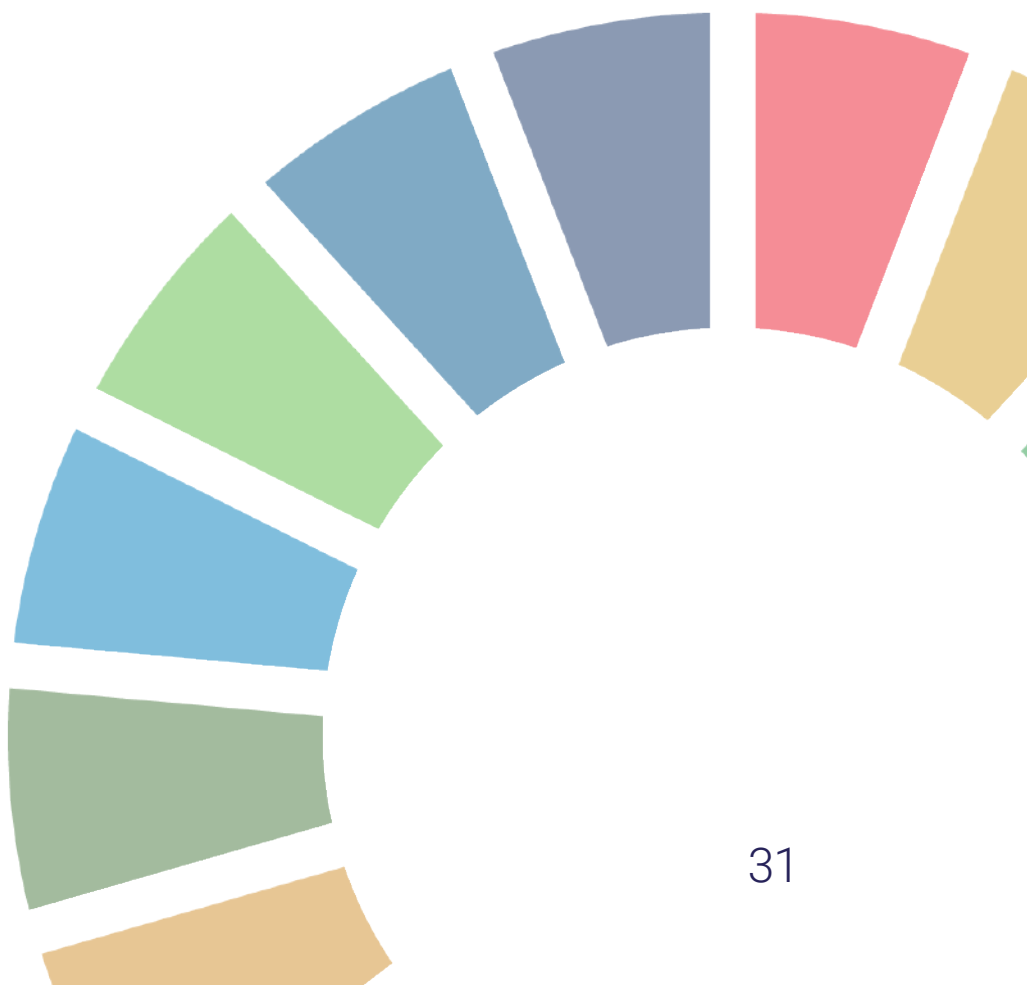
Several faith-based and charity organizations also provide social protection services to unregistered migrant populations, especially for asylum seekers and urban refugees living in Bangkok and metropolitan areas. For example, the Council for Humanitarian Networking, under the umbrella of the Sheikhu Islam Office of Thailand, has been supporting urban refugees with humanitarian relief, including hospital fees, accommodation rental fees, tuition fees and school transportation for children, food coupons, and immigration fines for undocumented persons from various countries, including Somalia, Pakistan, Afghanistan, the Syrian Arab Republic and the Palestinian Territories. The Council shared that they are currently supporting 650 families of asylum seekers and urban refugees with food coupons monthly. Those who are registered with UNHCR can receive medical treatment at public hospitals, while those who are undocumented prefer to visit NGO-run clinics or private hospitals. Most of these displaced populations are not eligible for State social protection programmes, except in some cases, though displaced children are able to enrol and study in Thai public schools.

Some organizations provide material support, such as Stella Maris, which distributes basic essential medication and food for fishery workers on board boats. The Raks Thai Foundation has traditionally focused on communicable disease prevention and detection, such as HIV/AIDS, TB, and malaria, in migrant communities. However, it has also started providing support such as covering hospital fees, health screening tests, and promoting awareness of sexual reproductive health among migrant communities.

People who are forcibly displaced to Thailand fall under international protection. They do not have a distinct status in Thailand compared to migrant workers. The Royal Thai Government does not have a formal national asylum framework nor does it issue documentation regularizing refugee status in the country. It is therefore UNHCR that provides most services for refugees, in coordination with the Committee for Coordination of Services to Displaced Persons in Thailand. This includes documentation, social services, camp management,

24 See the M-Fund website at www.dreamlopmments.com/the-migrant-fund.

education, food, health, livelihoods, psychosocial support, and water, sanitation, and hygiene. Most refugees are members of ethnic minorities from Myanmar who have been living in Thailand for over three decades. There are also an estimated 40,000 IDPs whose displacements are associated with conflict in Thailand and more than an estimated 60,000 new IDPs associated with disasters in 2019 (Internal Displacement Monitoring Centre, 2019).





5 Effectiveness: barriers to enrolment and accessing benefits

This chapter discusses the effectiveness of social protection programmes. It first presents the main challenges to registration and enrolment for the different programmes for migrant workers who are eligible (section 5.1). The next section then discusses the barriers to receiving benefits for registered migrant workers (section 5.2). The chapter concludes with a discussion on the challenges and social protection responses and gaps for migrant workers during the COVID-19 pandemic (section 5.3).

5.1 Barriers to registration and enrolment for eligible migrant workers

This section discusses the barriers to registration and enrolment in social protection schemes faced by regular migrant workers who are entitled to enrol in these programmes.

1. Employers recruit migrant workers through inappropriate migration channels

Civil society organizations (CSOs) have raised concerns that migrant workers are often not consulted on which employment scheme (MoU or border pass) they are recruited through. It is up to the employers to choose how to register migrant workers, and employers tend to choose the lowest cost employment scheme. Several employers in SEZs in border provinces prefer to register migrant workers under the border pass scheme, even when their business operations do not involve seasonal or temporary work. Registering migrant workers as seasonal workers, daily workers, or domestic workers means they are not eligible for enrolment in the SSF and thus do not incur additional costs for the employer.²⁵ The HRDF (2020) reports that some employers in Mae Sot District intentionally utilized the border pass scheme to avoid these employers' contributions.²⁶

2. The cost of regular migration provides a disincentive for employers and employees to use the appropriate migration channels

The costs and cumbersome process of obtaining the required migration documents can provide an incentive for employers and migrant workers alike to use an inappropriate channel (e.g. using the border pass scheme when the migrant worker should be employed through the MoU scheme due to the nature of their employment). A CSO representative summed it up in the following way:

We have to look at why, systematically, migrant workers choose not to be documented or are unable to be documented. It becomes obvious that formal migration channels are too costly, too time-consuming, and too centralised. When a migrant looks at the practical process, getting all the documents and paying all the fees, it is very complicated and costly. In many cases, migrant workers who are documented end up receiving lower than minimum wage.

Obtaining the required documents – formalization – is costly. Table 17 below provides an indication of the types of fees associated with regular migrant workers' employment by work permit type. The health examination refers to the obligatory health check, which takes place at the border (see section 3.3.2).

25 See the Royal Ordinance on Category of Enterprise and Employees Who Are Not Covered Under the Social Security Act B.E. 2560 (2017), 17 February 2017.

26 As discussed in Chapter 3, the SSO in response has issued guidance to allow employers to register border pass migrant workers employed in year-round employment. These workers only constitute a small portion of the total migrant workers in Thailand due to the small number of border passes issued.

Table 17: Fees for regular migration status for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam between 2019 and 2020²⁷

Employment category/ fee	MoU		NV		Border pass
	Sector admissible to SSF	Sector not admissible to SSF	Admissible to SSF	Not admissible to SSF	Not admissible to SSF
Health examination	THB 500	THB 1 000 (two health checks) ¹	THB 500	THB 1 000 (two health checks) ²	THB 500
Thai visa	THB 1 900 (one year)	THB 1 900 (one year)	THB 1 900 (one year)	THB 1 900 (one year)	THB 1 900 (one year)
Work permit application fee	THB 100	THB 100	THB 100	THB 100	THB 100
Work permit					
Three months	-	-	-	-	THB 225
Six months	-	-	THB 450	THB 450	-
One year	-	-	THB 900	THB 900	-
Two years	THB 1 800	THB 1 800	THB 1 800	THB 1 800	-
Profile records/updates	THB 80	THB 80	THB 80	THB 80	THB 80
Sea book for fishery workers	-	THB 100	-	THB 100	THB 100
Total (THB)	6 280	7 780	6 180	7 680	2 805
Total (USD)	151	187	148	184	67

Notes: (1)(2) Migrant workers are required to undergo an annual health examination to be screened for communicable and infectious diseases, such as leprosy, tuberculosis in dangerous stage, elephantiasis, as well as drug addiction. In 2020, the Ministry of Interior revised the Ministerial Regulation no. 14 B.E. 2535 (1992) to include COVID-19 to the list of diseases that prohibit entry and work in Thailand.

Source: Department of Employment (January 2020).

The cost of regular migration can be higher than the formal fees highlighted above. This is particularly the case with the MoU scheme, which encourages and facilitates the use of private labour recruitment agencies. Employers often pay brokers and private recruitment agencies to help provide necessary documents and navigate the complex MoU process. Once the documentation is completed, including the work permit, visa, and MHIS card, the employer passes on the recruitment costs to the worker by deducting all or part of it from their salary over time, even though this is illegal. The Thai visa fee relates to the residence permit that needs to be obtained alongside the work permit. These costs exclude recruitment fees or any other expenses. Formalization fees are about THB 4,380 (USD 147) for a two-year work permit. These fees can be higher for workers in sectors for which access to the SSF is not permissible, due to the need for an additional health check for MoU and NV workers, or the requirement to possess a "sea book" for fishery workers. This is even though workers in these sectors are often lower paid.

A recent study by the ILO found that regular migrant workers (MoU and border pass) pay higher recruitment costs than migrant workers entering Thailand irregularly (average of USD 497 compared to USD 474) (ILO, 2020a). However, the difference for regular and irregular migrant workers from the same country of origin is larger than this average difference. For example, the study estimates that regular migrant workers from Myanmar

²⁷ See the MoL's Ministerial Regulations on Fee and Fee Waiver in Foreign Workers Management B.E. 2563, 20 August 2020 and the MoPH's Announcement on Health Examination and Health Insurance of Foreign Workers B.E. 2562, 24 May 2019.

(i.e. MoU or border pass) pay an average of USD 441 to move to Thailand compared to USD 317 by irregular migrant workers. This difference is even greater for migrant workers from the Lao People's Democratic Republic, where regular migrant workers pay an average of USD 543 and irregular migrant workers pay USD 317. These differences are presented in Table 18 below.²⁸

The estimated costs of migration from the ILO and IOM (2017) and ILO (2020b) studies are also significantly more than the fees outlined in Table 17 above based on information provided by the Department of Employment. These range from USD 67 for the border pass scheme to USD 187 for MoU migrant workers not eligible for the SSF. These fee levels are much lower than the estimated costs from the ILO (2020a) study, which are about three to ten times as high.

Table 18: Estimated cost of migration

Country of origin / study		Myanmar (USD)	Lao People's Democratic Republic (USD)	Cambodia (USD)	Viet Nam (USD)
ILO and IOM (2017) Risks and rewards	Average across status	400 (26% of yearly income)	171 (5% yearly income)	211 (7% yearly income)	276 (5% yearly income)
	Average	394	503	517	N/A
ILO (2020a) Recruitment fees and related costs	Regular (MoU, border pass)	441	543	592	N/A
	Regular (NV)	374	304	281	N/A
	Irregular	317	317	522	N/A

The differences in official fees charged by the Department of Employment and the average fees paid by migrant workers can in part be explained by fees charged by recruitment agencies. Although the Royal Ordinance concerning the management of migrant workers prohibits agencies from charging migrant workers fees, ILO (2020a) found more than half (54%) of migrant workers paid a fee to a licensed recruitment agency or informal broker. Conversely, only 13 per cent of all migrant workers responded they had not made any payments to a recruitment agency or broker, although none of these migrant workers reported having used such services. One implication here is that no migrant workers went without paying any fees, even though the costs are supposed to be covered by the employer. Irregular migrant workers were more likely to pay a recruitment agency or broker (64%) compared to regular migrant workers (38%) (ILO, 2020a).

In addition, to obtain an MoU with a work permit requires obtaining the services of an agent before travelling to Thailand. There are also reports of illicit payments being requested by State officials: for instance, for transportation from the border entry point to the migrant's place of work (Verité International, 2016: 16–20). Reportedly, recruiters charge migrant workers excessive fees while providing incomplete or misleading information about working and living conditions (Sakulsri et al., 2020).

Obtaining and renewing the required documents can also be time-consuming and costly, especially for migrant workers living and working in remote areas, as is often the case in the agricultural sector. This means migrant workers must spend one to two days travelling to the required government agencies located in the city to complete registration. When earning a minimum wage or less, and not getting paid on days not worked, this might create a preference to remain irregular.

²⁸ It is worth noting the estimated average cost of migration by country varies significantly between the two cited studies (ILO and IOM, 2017; ILO, 2020a). These differences could be the result of when the studies were conducted or reflect margins of differences in methodology.

3. Lack of compliance by employers enrolling migrant workers in the context of weak enforcement of social security legislation

The legal framework puts responsibility for registering migrant workers with the SSF and the WCF on the employer. This makes registration reliant on the employer's willingness to register migrant workers and (continue to) pay contributions. Due to the associated costs, some employers do not register their employees. This happens in a context where existing monitoring and inspection mechanisms are not sufficient and effective enough to ensure compliance. Moreover, as discussed below, employers have no obligation to educate migrant workers about their entitlements. At times, employers have an incentive to withhold that information: for example, if they are failing to comply with the legal provisions.

4. Migrant workers are not always aware of their entitlements

The key informants for this study highlighted that most migrant workers in Thailand migrate from countries – particularly, Cambodia, Lao People's Democratic Republic, and Myanmar – in which social protection services are underdeveloped or at an early stage of development. Based on 2019 United Nations statistics, 76 per cent of the Thai population is covered by at least one social protection benefit, compared to 16 per cent in Cambodia, less than 1 per cent in Lao People's Democratic Republic, and 2 per cent in Myanmar.²⁹ Thus, most of the population in these countries do not have experience of being insured and benefiting from social protection systems in their countries of origin. Therefore, most migrant workers do not expect, or are not aware of, the kind of social protection programmes to which they may have access, or the benefits of these, because they have no experience of such services. CSOs, especially, expressed concern that neither Thai employers nor migrant workers have sufficient knowledge about the social protection benefits and services available, including the registration process and the procedures for claiming benefits.

Even though regular migrant workers receive a briefing when entering the country, key informants indicate that migrant workers are often not aware of their rights and do not have information about the available benefits and how to access them. If they were aware, for example, that under the SSF they can visit a hospital for free, or that maternity care is covered, or that under the MHIS they may pay as low as THB 30 per hospital visit, they might be more willing to contribute to those programmes. A lack of this awareness currently results in many migrant workers not contributing to social security as they consider it a deduction from their salary without a corresponding benefit. Migrant workers interviewed for this research explained that clear and detailed information about the benefits package under the MHIS is not available publicly in the native language of the migrant worker.

5. Language barriers

One of the most common challenges with registering for social protection highlighted in the KIIs are communication and language barriers. Migrant workers must navigate a public service system that is designed for Thai nationals. If a worker cannot speak and read Thai well, they will require a translator or interpreter to communicate with health-care or other officials or to fill out paperwork.

Some government agencies that provide services to migrant workers have interpreters available, such as the Department of Employment and public hospitals with high numbers of migrant insured persons. But often the number of interpreters is inadequate for the number of migrant workers using the service. The MoL does not have an adequate number of interpreters who can accurately communicate in the native languages of migrant workers. The interpreters employed by the MoL also have limited qualifications and are ineffective. In some cases, they lack knowledge and understanding of human rights and labour rights protections (Migrant Working Group, 2019).

29 See the United Nations Department of Economics and Social Affairs (Statistics Division) Country Profiles for Cambodia, Lao People's Democratic Republic, Myanmar, and Thailand, retrieved from <https://country-profiles.unstatshub.org/> on 20 December 2020.

A worker may hire a private liaison or translator at a daily rate of between THB 200 and THB 500 to accompany them, but this is an expense they often struggle to afford. This is also a significant challenge for accessing social protection services such as health care and education.

The Royal Thai Government has taken several actions to partially mitigate the language barriers for migrant workers. First, the MoPH has created a network of migrant liaison officers (MLOs) and migrant health volunteers (MHVs) in areas where there is a high number of migrant workers using health-care services. MLOs and MHVs are trained in supporting Thai public health officials in providing migrant-friendly health-care services, for example by providing interpretation and translation services, communicating public health messages, and sensitizing migrant worker communities on sanitation and disease prevention. Second, in 2016, the government established post-arrival and reintegration centres for migrant workers. MoU migrant workers pass through an arrival centre when they enter Thailand, where they receive a second medical check-up as well as post-arrival training, which includes information about labour rights and social security entitlements.

5.2 Barriers to accessing benefits when registered

1. Employers' lack of compliance with social security legislation

WCF: Although most employers of migrant workers (except in domestic work and street vending) are obliged to contribute to the WCF, this regulation is not effectively enforced. If workers are injured, they are often at risk of having their employment terminated. The employee therefore ends up paying out of their pocket instead of reporting accidents and injuries to the WCF.

Employers also sometimes fail to register migrant workers with the WCF. Migrant workers can still claim compensation in this situation, whereby the compensation and medical expenses are covered by the employer based on a decision issued by the WCF. However, it is then up to the migrant worker to follow up on the claim and monitor the enforcement of the WCF decision. Often the employer tries to avoid their responsibility or negotiate to reduce the amount of the compensation ordered by the WCF. In such cases, despite the good intentions of the legal framework, the claim process places the worker and employer as parties in conflict with each other, with the migrant worker having much less bargaining power due to their dependence on the employer as well as language and legal barriers. This results in the migrant worker being discouraged by the time-consuming and costly process and potentially being pressured to accept an insufficient level of compensation from the employer.

It is mandatory for employers to report occupational safety incidents, injury, and sickness to the authorities.³⁰ In practice, employers tend to avoid reporting safety incidents and accidents to the SSO because such reports influence the amount of the employer's contribution in the future: the more incidents of injury and sickness, the higher the contribution required.

SSF: Similarly, employers of SSF contributors often decide to end an employee's contract when they become pregnant to avoid paying the full salary during maternity leave, as mandated by law.

Migrant workers also face challenges accessing benefits from the SSF or WCF because employers do not pay the mandatory contributions. This happens in a context where existing monitoring and inspection mechanisms are not sufficient and effective enough to ensure compliance. There is a lack of accessible mechanisms for migrant workers to check if contributions are being made on their behalf by the employer, making it difficult for migrant workers to hold their employers accountable. Civil society representatives highlighted that migrant workers frequently are unable to access benefits from the SSF and WCF because they are only informed that their social security status is inactive due to a lack of contributions paid by the employer at the point of contact. This is despite migrant workers having payslips showing the monthly SSF deductions from their salary. These practices seem to take place most often in the construction, manufacturing, and garment and textile sectors.

³⁰ See the Workmen's Compensation Act B.E. 2537 and the Occupational Safety, Health and Environment Act of the Kingdom of Thailand B.E. 2554.

2. Long duration of verification or claims processing prevents access to benefits

Non-occupational disability benefits: Nominally, the legal framework allows a migrant worker to claim non-occupational disability benefits. However, in practice the procedure for verifying the disability and determining the amount of compensation claimable under the SSF usually takes a long time – in some cases up to two to three years. An injured or disabled migrant worker usually does not have an adequate social or family support system to provide them with necessary care during this time, especially when that worker cannot work and earn an income. Four CSO respondents discussed migrant workers that have had to renounce the benefit as they cannot afford to remain in Thailand while they wait for the SSF decision.

SSF and WCF claims: The SSF and WCF do not specify the time within which a claim has to be processed. As a result, migrant workers who claim benefits under the SSF and the WCF may have to wait for a long time – again, in some cases, up to two or three years – to receive the result of their claims. The National Human Rights Commission of Thailand (NHRCT) has observed that the intention of the Social Security Act and the Workmen's Compensation Act is to provide social protection for all workers, especially in the case of injury, disability, and death, and that the SSO should speed up the process of claim investigation and provide a timely result for workers, to allow them to access remedies, with the aim of alleviating suffering and mitigating the impacts on workers' livelihoods (NHRCT, 2009: 1-3).

3. Administrative and time barriers in obtaining required documentation prevent migrant workers from accessing survivors' benefits, child allowance, and maternity care

Child allowance: The procedure for a migrant worker to claim the SSF child allowance is complicated and requires several documents. These include a child's birth certificate, a marriage certificate translated from the migrant's language into Thai and certified by the embassy, or a court letter certifying guardianship of the child. Several of our key informants reflected that a migrant worker may prefer not to claim the benefits when considering the loss of income opportunity, the cost of transportation, and the translation fee (which a worker must cover). While some SSF offices may have an in-house translator, usually the number of translators is not sufficient for the number of migrant workers needing the service on any given day. Furthermore, migrant workers frequently do not register their marriage with the authorities because the process for doing so is bureaucratic and time-consuming. Therefore, they do not have a marriage certificate to present to the SSF office to claim their benefits.

Non-occupational death and survivors' benefits: When a migrant worker passes away, their survivors are entitled to receive a funeral grant and cash compensation, providing that the survivors can provide documentary evidence to prove their relationship as spouse, child, parent, etc. of the deceased (e.g. an official marriage certificate translated into Thai, a birth registration certificate in Thai, or a household registration certificate translated into Thai and certified by their embassy). Obtaining these documents is time-consuming and costly for a migrant worker. Four CSO respondents emphasized that this forms a significant barrier for migrant workers to access these benefits and, hence, many do not.

Pre- and post-natal care: In practice, pregnant women must pay the hospital fee for pre- and post-natal care in advance. In many cases, pregnant women must pay more than THB 1,000 over the pregnancy period. To claim a cash benefit for a delivery of THB 15,000, a migrant worker must present to the SSO a birth registration certification from a local district office, a receipt for the child delivery fee, details of a Thai bank account, and a completed claim form. A birth certificate from the local district office is often difficult to obtain due to the numerous onerous steps involved.³¹ Moreover, in practice, this procedure is not standardized or streamlined: different district offices have different guidelines and requirements for registering a migrant birth. Also, the

31 When a migrant child is born, the hospital will provide a letter to acknowledge the birth. A parent must register the childbirth with the local district office within 15 days by presenting: 1) the identity documents of both parents; 2) a letter from the hospital acknowledging the child's birth; and 3) a letter from the owner of the residence where the migrant workers are living, together with a copy of a household registry book. This means that migrant parents must obtain permission and a letter from a Thai house owner or an employer to register a birth in the household.

98-day maternity leave may be inadequate if a migrant woman needs to travel back to her country of origin to obtain the necessary documents for a child.

Education: The Thai Government allows all non-Thai children to receive free basic education in Thai public schools.³² Despite this, migrant children face certain administrative barriers to being admitted to public schools, such as difficulties in obtaining the required documentation, such as birth registration, non-Thai identity cards, and house registration of the parents' employers. It is estimated that more than 200,000 migrant worker children remain out of school and are not receiving any form of education. Moreover, the number of out-of-school children may be underestimated due to the lack of data on the total number of children of (irregular) migrant worker (UNMWWG, 2019).

4. Inability to pay fees and other associated costs for receiving (emergency) medical services

Emergency medical treatment: CSOs interviewed for this paper commonly identified the challenges when a migrant worker is injured in a road accident, which is considered an emergency medical treatment and covered under the SSF health-care package. The first challenge is the requirement to advance the cost of hospital treatment, which will be reimbursed by the relevant agency later, after the accident is investigated and a responsible party identified. In many cases migrant workers cannot afford the lump-sum payment of the hospital fee. To manage this risk, it is reported that some health officials confiscate or retain migrant workers' identity documents, as a guarantee against the payment of medical fees. This is despite the health authorities' emphasis that this is not an official policy and is in fact a violation of the rights of migrant workers to access their identity documents, as guaranteed under the Royal Ordinance.³³

Health-care benefits under the MHIS: to claim health-care benefits under the MHIS a migrant worker must visit the specific public hospital in which they are registered and must pay a small fee for each visit. Some migrant workers who cannot afford to pay the medical bill have reported being threatened with arrest or having their identity documents retained as a guarantee of the payment.

In addition, migrant workers sometimes must travel long distances to reach the hospital where they can access medical care under the MHIS. This is because migrant workers can only receive medical care at the hospital at which they have registered. This drives up the transportation costs required to reach the respective hospital. Migrant workers working in agriculture and construction in particular tend to live and work in remote places.

KIIs with CSOs also indicated occasional malpractice by some hospitals,³⁴ which charge a contribution from migrant workers for HIV/AIDS medication, even though this treatment is covered under the MHIS.

32 See the Ministerial Cabinet's 'Resolution on providing education for persons who do not possess Thai civil registration and non-Thais' of 5 July 2005, the Ministry of Education's Ministerial Regulations on Document Requirements to Admit Students into Education Institutions B.E. 2548 (2005) of 5 September 2005, and the Ministry of Education's Announcement on the Admission of Students who do not possess Thai civil registration of 19 January 2018.

33 Minutes of Meeting of the Migrant Working Group with the representative of the Division of Health Economics and Health Security, MoPH, 20 October 2002.

34 It is not possible to quantify the number of hospitals at which this might happen.

5. Access to unemployment benefits is challenging due to discrepancy between the length of benefits and length of time allowed to find a new employer

A migrant worker can access unemployment benefits if they have contributed for at least six months in the last 15 months to the SSF, with levels of benefits depending on the nature of unemployment.³⁵ Migrant workers must apply for unemployment benefits in person at the Department of Employment or the SSO,³⁶ as opposed to Thai nationals who can apply online.

In practice, migrant workers have limited ability to claim unemployment benefits from the SSF because of the legal discrepancies between the Royal Ordinance and the Social Security Act. The Royal Ordinance gives a migrant worker a period of just 30 days from leaving their job to find a new employer. A migrant worker cannot remain in the country legally after that period, and thus cannot claim the unemployment benefits. However, migrant workers that were granted amnesty to remain in Thailand due to COVID-19 after their visas and work permits expired were entitled to receive unemployment benefits.

6. Minimum continuous contribution periods to qualify for benefits result in lack of access

To access their benefits under the SSF, migrant workers need to pay contributions for a specified time period (see Table 19 below). For health-care services, migrant workers are expected to contribute to the MHIS for the first three months until they have qualified for these benefits from the SSF. However, such provisions do not exist for other types of benefits. Due to the fact that migrant workers have a maximum length of MoU of four years, with biannual renewal, migrant workers' social security contribution periods are often interrupted, resulting in them not being able to fully utilize the available benefits.

Moreover, a regular migrant worker is de facto rarely able to qualify for monthly pension payments as the maximum length of the work permit an MoU migrant worker can apply for is four years, subject to renewal every two years. Migrant workers are eligible for a lump-sum pension payment when they leave Thailand regardless of how long they have contributed to the SSF or their age (i.e. whether they have reached 55 or not), if their country of origin has an agreement with the Thai Government on SSF old-age benefits.³⁷

1. If they paid contributions from one to 11 months: they will receive an old-age lump-sum payment equal to the amount of their contributions paid for child allowance and old-age benefits; or
2. If they paid contributions from 12 to 179 months: they will receive an old-age lump-sum payment equal to the aggregate value of contributions that both the insured and the employer have paid for child allowance and old-age benefits, together with benefits as announced by the SSO.

Table 19: Minimum contribution periods to receive benefits

Benefit under SSF	Length of contribution period before migrant workers qualify to receive benefits
Health-care and disability benefits	Three months
Maternity protection	Five months
Unemployment benefits	Six months
Child allowance	12 months
Monthly pension	180 months / 15 years

35 Causes of unemployment and entitlement: (1) resignation (at the rate of 30% of their monthly wage for a period not exceeding 90 days per year); (2) the end of their work contract (at the rate of 50% of their monthly wage for the period of unemployment but not exceeding 180 days per year); and (3) force majeure.

36 For unemployment benefits that are from lay-off, resignation, or end of contract, workers have to register with the Department of Employment. For unemployment due to force majeure, workers have to register with the SSO.

37 See the MoL's Ministerial Regulations Concerning Payment of Lump-Sum Old-Age Benefit for an Insured Non-Thai national, 11 January 2017, retrieved from www.oic.go.th/FILEWEB/CABINFCENTER2/DRAWER056/GENERAL/DATA0000/00000212.PDF.

7. Cumbersome and fragmented data management system complicates accessing social protection benefits

Another operational barrier for migrant workers seeking to access social protection services is the lack of an integrated MIS on migrant workers, as well as a lack of online information sharing between agencies. This challenge was identified by numerous experts, including government agencies and employer and employee representatives. As a result of a complex and fragmented labour migration regulatory framework, each government agency tends to develop their own MIS to manage the registration of migrant workers, including the Department of Employment, the SSO, the Immigration Office, and the MoPH. This leads to additional workload for frontline service providers, such as hospital staff and social security officers, in terms of them matching the identity of a worker with the social protection programmes for which they are eligible. Different public services also require different types of documentation (e.g. passport, work permit, social security card, border pass, receipt of MHIS) to claim the services, leading to confusion and increased transaction costs for both migrant workers and frontline staff.

8. Discriminatory behaviour by service providers prevents access

Migrant workers tend to be viewed negatively by the Thai public. A recent study (ILO and UN-Women, 2020) on the attitudes of Thai citizens found a small majority (53%) of Thais surveyed believe the country does not need low-skilled migrant workers and that two in five (40%) Thais believe migrant workers are a drain on the economy. Similarly, it is a common public perception to view migrant workers as committing higher number of crimes than nationals (73% of respondents) and that crime rates have increased due to migration (77%). This is despite a lack of evidence for these claims and even evidence to the contrary, showing migrant workers are less likely to commit crimes than nationals in Thailand's Tak region. Furthermore, that migrant workers deserve equality of treatment is not a norm: most Thai respondents felt that irregular migrant workers should not have any rights (76%) and should not receive the same salary and benefits as national workers (52%).

These negative attitudes and beliefs can affect the behaviour of service providers, leading to a lack of access to benefits. For example, some migrant workers have experienced negative attitudes and stigma when attempting to access health care or utilize social insurance services. Negative public attitudes and stigma attached to migrant workers have resulted in misconceptions and xenophobia about migrant workers among many Thai nationals (ILO and IOM, 2017). Officials working in health professions and implementers of migration policies sometimes see migrant workers as a burden on the system, rather than as making a valuable contribution to the economy. For example, health workers perceive that women migrant workers have a high fertility rate and therefore place a disproportionate burden on hospital resources. Similarly, some social security officers are unwilling to pursue and enforce the law against employers when migrant workers suffer work-related injuries or illness, as the process for claiming the benefits for migrant workers requires several follow-ups and takes a long time. As discussed above, migrant workers are often perceived as exploiting Thai domestic resources, even though they are in a disadvantaged position because, although they pay monthly contributions like Thai workers, they are not able to fully claim all seven social security benefits under the SSF and can experience discrimination when claiming public services.

Some of the public attitudes towards entitlements to health care are more positive. For example, 71 per cent of the Thai public believe female migrant workers should be offered maternity leave. Nevertheless, maternity leave for female migrant workers is not the norm, and they can face dismissal from their job (ILO and UN-Women, 2020).

Women also face additional challenges because of discriminatory practices and negative gender norms in Thailand. These include more challenges than men in accessing safe and regular migration opportunities and receiving lower pay due to the undervaluing of occupations that are traditionally viewed as women's work, such as domestic work. They also face more discriminatory practices in sectors employing both men and women. For example, pay discrimination based on gender is significant, with men earning 14 per cent more than women on average, and up to 73 per cent more in domestic work and 24 per cent in construction (ILO and IOM 2017).

9. Social protection benefits are not portable

The social protection benefits that a migrant worker qualifies for in Thailand are not portable to another country. This means that when a migrant worker leaves Thailand to return to their country of origin, they will no longer be able to make a claim on the benefits to which they contributed. Benefits are portable when the payment of benefits is made irrespective of the country in which the migrant worker resides. While Thailand has a comprehensive – albeit somewhat fragmented (Merttens et al., 2021a) – social protection sector, those in neighbouring and key countries of origin (Cambodia, Lao People’s Democratic Republic and Myanmar) are at earlier stages of development, which thus limits the potential for making benefits portable.³⁸

A recent ILO study concluded that, in general, there is a ‘large-scale absence of portability arrangements in the legal systems of ASEAN countries of destination and countries of origin’ (Olivier, 2018). For example, the banking systems of Thailand and the countries of origin are not synchronized. Therefore, migrant workers are not able to receive social security benefits through the banks in their countries of origin. International transfer fees are very high. There remains a disconnection in the financial system and basic infrastructure, such as the telecommunications network, that prevents the portability of social security services. Another challenge is the need to re-assess qualifying conditions.

In addition, it is difficult to withdraw lump-sum entitlements such as accrued pension contributions in Thailand to take back to a sending country. After termination, a migrant worker can only stay in Thailand with a regular status for two weeks, allowing only a very short time to claim lump-sum payments for pension contributions or compensation payments.

5.3 Challenges and responses to COVID-19

The COVID-19 pandemic and resulting economic disruptions, as well as health management measures such as restrictions, lockdowns, and curtailment of movement, are having a significant impact on the Thai economy. As a result, the pandemic has exacerbated the vulnerabilities faced by migrant workers. The Migrant Working Group estimated as many as 700,000 migrant workers lost their job between March and June 2020 – mostly in the tourism, services, and construction industries (ILO, 2020b). These migrant workers struggled to find new jobs, had limited options to go back home, and receive limited support from the government (ILO, 2020b).

1. The Royal Thai Government assisted migrant workers at risk of becoming irregular due to expiring documents

By the middle of 2020, an estimated 150,000 migrant workers from Myanmar, 50,000 from Cambodia, and 60,000 from Lao People’s Democratic Republic had returned home after losing their jobs in Thailand. Most of these left Thailand in March and April of 2020, after which it became more difficult to return home (ILO, 2020b). Many migrant workers in Thailand faced challenges around their regular status and mobility, with the risk of being immobile whilst in a precarious situation due to lack of access to social security benefits.

The Prime Minister announced an emergency decree that ordered the closure of 18 border points in March, making travel to and from Thailand impossible for many, though with a few exceptions. There was also a national curfew (between 10 P.M. and 4 A.M.) from early April until mid-June. Internal travel between the provinces resumed by mid-June. As of December 2020, the emergency decree remained in force with local provincial authorities authorized to issue provincial measures to prevent the spread of COVID-19. Several

38 Portability of benefits means the right and ability of a migrant worker to access the benefits for which the migrant worker has qualified in one country (e.g. the country of destination) in another country (e.g. another country of destination or country of origin), i.e. the payment of benefits irrespective of the country in which the migrant worker resides.

provincial authorities, including Tak and Kanchanaburi provinces, ordered the closure of border entry points except for transportation of products, and some provinces introduced a ban on the cross-provincial movement and transportation of migrant workers.³⁹

To aid migrant workers, the government extended the permission to work in Thailand for those with documents expiring on 31 March 2020. In addition, the Thai Government passed cabinet resolutions in August and December which allow undocumented migrant workers from Cambodia, Lao People's Democratic Republic, and Myanmar to register for a permit to work in the country for two years. Registering for the permit involves signing up online and paying for and undergoing a health check (Wongsamuth, 2020).⁴⁰

Despite these measures, existing barriers to the regularization of migration status in Thailand, as outlined in this paper, have generally been exacerbated by the COVID-19 pandemic and the economic shock and public health measures that it has provoked.

2. Migrant workers are particularly vulnerable and face additional barriers to accessing benefits and health care during the COVID-19 pandemic

In general, many migrant workers are either not covered or face significant barriers to accessing social security benefits, including health care and paid sick leave, for the reasons discussed throughout this report. The COVID-19 pandemic has exacerbated these barriers, including being undocumented, not speaking Thai, being unable to pay fees up front, discriminatory behaviour by service providers, and non-compliance by employers with social security legislation. Migrant workers employed in jobs excluded from the SSF (such as domestic and seasonal or temporary work), those whose employers have not enrolled them in the social security system, and migrant workers with irregular status all face limited access to COVID-19 testing and treatment as well as a lack of other health-care services. The repercussions of engaging with authorities (such as deportation) entail a further disincentive and barrier to accessing necessary health-care support (ILO, 2020b).

The presence of these barriers was confirmed by a Thai CSO coalition survey in six provinces during April 2020. The survey found that migrant workers in agriculture and domestic work face barriers to accessing social security and support payments, either due to dependency on employer enrolment or because they are undocumented (Oxfam International, 2020).

In addition, as migrant workers are largely ineligible for financial support from the government (see below), COVID-19 is also said to have severely tested the ability of migrant workers to keep their children in school. Although education is supposed to be free of cost, auxiliary costs for schooling range from THB 1,000 to THB 10,000 per student per year. Poverty also has a direct impact on schooling by increasing the opportunity cost of going to school (OPM, 2020). Other effects of COVID-19 on migrant workers include worsening of nutrition and food security outcomes. Children of migrant workers were estimated to already have higher levels of undernutrition than the national average (e.g. the national average for under-five stunting was 10.2% in 2016 compared to 16.3% for non-Thai children), and increased hardship because of the COVID-19 pandemic may have worsened this situation.

39 Also see: Extension of Duration of the Declaration of an Emergency Situation in all areas of the Kingdom of Thailand (8th Extension), retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/275/T_0040.PDF; the Status of border entry points in the border provinces, November 2020, retrieved from www.ditp.go.th/contents_attach/659883/659883.pdf; The Order of the Kanchanaburi Provincial Committee on Communicable Disease No. 5528/253, retrieved from https://covid.kanchanaburi.go.th/files/com_announce/2020-12_022fcbf45efdd76.pdf, 30 December 2020, and the Order of Tak Province on the prohibition of movement of foreign workers in and out the area of Tak province, 30 December 2020, retrieved from <http://web.tak.go.th/upload/files/U-1609406048.pdf>.

40 Cabinet Resolution on the Guidelines on the Management of the Employment of Foreign Workers from Cambodia, Lao People's Democratic Republic, and Myanmar in the Situation of 2019 Coronavirus Pandemic.

3. Migrant workers have been largely excluded from the social protection measures the Thai Government has put in place

In response to the pandemic, the Thai Government has put in place additional social protection measures, but these largely exclude migrant workers (ASEAN Secretariat, 2020; OPM, 2020). The Government provided:

- ▶ 1.37 million workers falling under Section 33 in the Social Security Act with 62 per cent of their daily rate for a period of three months;
- ▶ 15.1 million workers falling outside of Section 33 (and therefore not insured under the SSF) outside the agricultural sector with THB 5,000 per month for three months;
- ▶ 7.1 million workers not under Section 33 and working in the agricultural sector (i.e. farmers) with THB 5,000 per month; and
- ▶ A reduction in the SSF employee and employer contributions between March and May and a reduction in employers' contributions to the WCF.

Migrant workers who have contributed to the SSF for a minimum of six months are entitled to unemployment benefits (IOM, 2020b). However, they face barriers to claiming these benefits, such as the lengthy process of making claims or their employers not notifying the Department of Employment about the termination of their employment (ASEAN Secretariat, 2020). For example, access to social security for migrant fish workers depends on boat owners filling out the registration paperwork.⁴¹

4. Specific groups of migrant workers are particularly vulnerable and need additional support and protection

The economic shocks of the COVID-19 pandemic have resulted in increased risks of violence, exploitation, and abuse. This is especially the case for already vulnerable groups, including migrant workers (OPM, 2020). Specific groups of migrant workers might face especially strong risks and additional barriers to accessing relevant forms of support.

For example, domestic workers already faced precarious pre-pandemic working conditions, which are often exploitative or even abusive. Domestic workers work longer hours, often beyond the legal maximum, do not receive their full wages, or have their travel documents withheld by their employer (Centre for Southeast Asian Studies, 2018). They are also amongst the least likely to access support being made available in the COVID-19 pandemic (OPM, 2020).

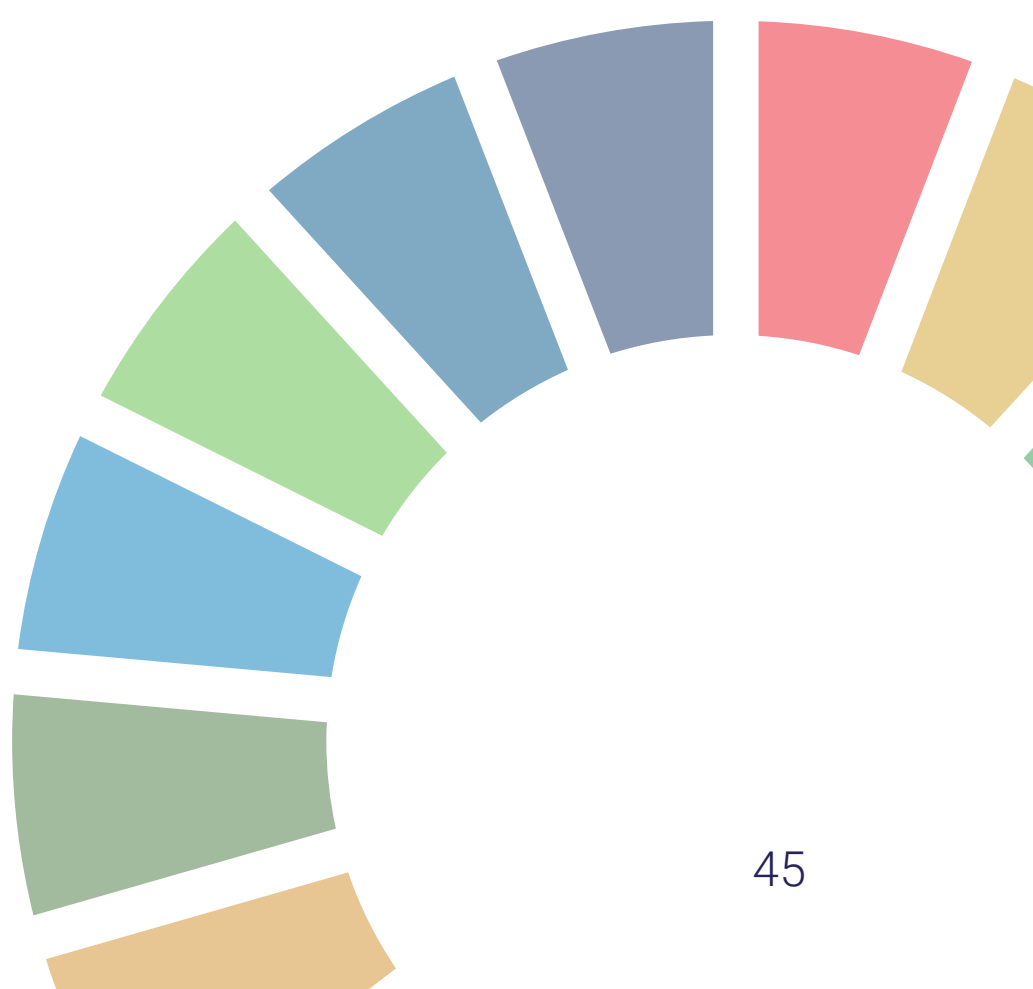
5. Additional COVID-19 testing costs tend to be borne by migrant workers, adding an additional barrier to regular migration status and social security benefits

The Thai Government has recently allowed irregular migrant workers to register online with the Department of Employment to regularize their stay in January and February 2021.⁴² Once registered, the migrant workers are required to undergo a medical examination and COVID-19 test. The cost for this process is THB 9,380 (USD 305) for fishery migrant workers and THB 9,180 (USD 298) for migrant workers in other sectors (Department of Employment, 2021). These costs are nearly twice as high as the previous costs for regularization through NV (USD 148 for those admissible to the SSF and USD 184 for those not admissible to the SSF, as presented in Table 17). This difference can in part be explained by the cost of the mandatory COVID-19 treatment test, which is THB 2,300 (USD 75) (IOM, 2021).

41 Notification of the Ministry of Labour regarding the arrangement of health and welfare benefits for fishery workers, No. 137, 5 (2020), retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/005/T_0030.PDF.

42 From 15 January to 13 February 2021.

In addition, for regular migrant workers covered by the SSF, the costs of COVID-19 tests are covered by the SSF. However, it is unclear where and how often migrant workers will be able to access these tests (Thai PBS, 2021). Regular migrant workers not covered by the SSF need to bear the cost of testing for COVID-19. Depending on the testing requirements of the Thai Government and their employer, this can present substantial additional costs they are unable to cover. Lastly, once regular migration resumes, COVID-19 tests will likely continue to be mandatory. This could also present an additional barrier to accessing regular migration channels in the future.





6 Social protection provisions by ASEAN countries of destination and countries of origin

This chapter presents experience from the region in providing social protection for migrant workers by governments in countries of destination and countries of origin. The first section (6.1) presents two case studies of countries receiving migrant workers, focusing on the two other countries (aside from Thailand) in the region that receive the largest number of migrant workers. Both case studies show improvements in their migration regime. The following section (6.2) discusses four innovative provisions by two large countries of origin in the ASEAN region: Indonesia and the Philippines.

6.1 Social protection provisions in countries of destination

Thailand, Malaysia, and Singapore are the three countries that receive the largest number of migrant workers in the ASEAN region (Centre for Southeast Asian Studies, 2018). Ideally, following international standards, countries of destination should extend their social protection – at the very minimum, in contributory benefits – to migrant workers based on equal treatment with national workers (Olivier, 2017). However, migrant workers often have access to lower levels of social protection. This section discusses two case studies of countries of destination: Singapore and Malaysia. The Singaporean and Malaysian case studies are both illustrations of a tiered migration regime, where high-skilled migrant workers have better access compared to low-skilled migrant workers. In Thailand, the distinction between sectors can be considered as an early form of this tiered system, which runs counter to equality of treatment principles.

Both case studies also show improvements in their migration regime. Singapore has strengthened the protection of domestic workers, which is instructive for the way Thailand could improve protection of migrant workers. Malaysia has recently included migrant workers alongside nationals under national worker protection legislation. The social protection arrangements for migrant workers in Malaysia are comparable to Singapore, especially following recent improvements (see Table 20 below). However, there is also substantial room for improvement by bringing the level of social security provisions up to that available for some migrant workers in Thailand.

Singapore: a tiered migration regime with improvements for domestic workers

Singapore's labour migration regime is organized on a system of tiers, based on skill and income level. High-earning and highly skilled labour migrant workers are granted longer-term work permits,⁴³ which include the right to bring dependents and to seek employment anywhere in Singapore. Somewhat lower-skilled and lower-earning foreign workers can obtain an 'Employment Pass', which is valid for between one and five years, but which is limited to a particular employment (Centre for Southeast Asian Studies, 2018). In contrast, low-skilled workers are considered 'seasonal' or 'short-term' workers, eligible for short-term work permits valid for two years.

Lower-skilled migrant workers are covered by the Employment of Foreign Workers Act (1990), which regulates foreign workers earning less than 1,500 Singapore dollars (SGD). Lower-skilled workers can only work in the occupation specified in their work permit, and for the employer specified, and they must not bring dependents and cannot marry Singapore nationals without government approval. As is the case in Thailand, employers must pay a levy for each foreign worker and keep a register of foreign staff (Olivier, 2018). Lower-skilled workers are mostly employed in the construction, manufacturing, and shipping industries, as well as in domestic work. The social protection arrangements that exist for migrant workers in Singapore are not portable when the migrant worker leaves Singapore (Olivier, 2018).

43 This is the personalized Employment Pass which lasts for five years, with unlimited numbers of extensions. See: www.mom.gov.sg/passes-and-permits.

Table 20: Social protection arrangements for migrant workers in Singapore

Social protection and labour arrangements for migrant workers in Singapore
<ul style="list-style-type: none"> • Central Provident Fund: Migrant workers with permanent residence status are entitled to contribute to the Central Provident Fund, which is the core social security fund in Singapore. It includes retirement savings, health care, support for home ownership, and wider family protection. Migrant workers without permanent residence status cannot contribute to this fund.
<ul style="list-style-type: none"> • Supplementary Retirement Scheme: Migrant workers without permanent residence status can contribute to this voluntary retirement scheme, which is also available for those with permanent residence status. Migrant workers can contribute varying amounts, subject to a cap. Contributors can purchase various investment instruments with their savings and are offered tax benefits.
<ul style="list-style-type: none"> • Employment of Foreign Workers Act (1990): This Act mandates that employers are responsible for all medical expenses incurred by migrant workers in their employment.
<ul style="list-style-type: none"> • Employment Act (1968): This Act obliges employers to pay sick leave benefits to employees.
<ul style="list-style-type: none"> • Work Injury Compensation Act (2009): This Act stipulates that employers must insure all staff – migrant workers as well as Singapore nationals – against accidents at work. Independent contractors and the self-employed are treated as employers and must make their own provision. Domestic workers and uniformed personnel are excluded from the Act.

Source: Olivier (2018).

Domestic workers

Domestic workers in Singapore come mostly from Indonesia, the Philippines, and Myanmar. An estimated one in five Singaporean households is reliant on help from a domestic worker. Like in Thailand, the working conditions of domestic workers are often exploitative or abusive.⁴⁴ Domestic workers work longer hours, often beyond the legal maximum, do not receive their full wages, or have their travel documents withheld by their employer (Centre for Southeast Asian Studies, 2018). There are also strict rules in place on their stay in Singapore. The Employment Act does not protect domestic workers and fishery workers, both of which are excluded from its purview.

Although domestic workers in Singapore and Thailand are both excluded from some legislation, Singapore has introduced additional protection measures to improve the protection for foreign domestic workers. Penalties for the confinement or sexual harassment of domestic workers were increased and are communicated in the 'Guide to Employers', while an orientation programme is now compulsory for all first-time employers. Employers who change their domestic workers frequently are monitored and employers who make five or more work permit applications a year must go back to the orientation programme. Employers are obliged to provide medical treatment, ensure personal safety, and provide proper housing, adequate food, and rest.⁴⁵ Employers must guarantee employees receive one day off a week and pay salaries monthly, and no later than seven days after the end of the month. Employment inspectors are authorized to implement controls at the place of employment. Employers who violate employment conditions can be fined up to SGD 5,000 and barred from hiring domestic workers. They can also be imprisoned for up to six months (Centre for Southeast Asian Studies, 2018).

Foreign domestic workers are covered under the Employment of Foreign Manpower Act, which requires employers to purchase personal accident insurance with a minimum coverage of SGD 60,000. Non-Singaporean domestic workers are also covered under the Employment of Foreign Manpower (Work Passes) Regulations, which require employers of foreign domestic workers to bear the cost of their medical treatment.

⁴⁴ For example, domestic workers must undergo biannual medical screenings for infectious diseases and pregnancies. If a foreign domestic worker falls pregnant, she must have an abortion or leave Singapore. This is stipulated by the Employment of Foreign Workers Act of 1990 (Centre for Southeast Asian Studies, 2018).

⁴⁵ Through the Employment of Foreign Manpower Act (which includes domestic workers).

Recruitment agencies are better regulated than in Thailand. For example, they must gain accreditation before being allowed to operate, and renew their accreditation every four years. Agencies must use a standardized contract for domestic workers, as well as a service agreement between themselves and employers. However, these contracts do not stipulate a range of working conditions⁴⁶ and do not cap the fee paid by migrant workers. This can result in fees as high as 10 months' wages⁴⁷ (Olivier, 2018; Centre for Southeast Asian Studies, 2018).

Malaysia: less favourable social protection arrangements for migrant workers

Malaysia is both a country of origin and a country of destination for migrant workers. It mostly sends high-skilled workers and receives lower-skilled workers, largely from Indonesia (ca. 40%) but also from Pakistan, Bangladesh, Thailand, Nepal, the Philippines, and Myanmar (Centre for Southeast Asian Studies, 2018). Like Singapore, Malaysia operates a tiered migration regime, whereby high-skilled workers are considered as expatriates and are permitted to bring dependents with them, while documented lower-skilled labour migrant workers are not allowed to bring dependents. In 2015, lower-skilled migrant workers worked in manufacturing (21%), agriculture (23%), construction (34%), the services sector (14%), and domestic work (7%). Salaries in these sectors are often lower than Malaysian nationals are willing to accept for the type of work involved. For each migrant worker, employers post a 'security' bond of between USD 60 and USD 600, depending on the migrant's country of origin (Centre for Southeast Asian Studies, 2018).

The Ministry of Home Affairs regulates immigration by issuing visas and work permits. The Ministry of Human Resources enforces labour regulation, which also applies to migrant workers. There is a tension between the two ministries, with the Ministry of Home Affairs seeing migrant workers as a security issue but the Ministry of Human Resources recognizing Malaysia's dependence on foreign workers. The Foreign Workers' Medical Examination Monitoring Agency manages annual mandatory medical examinations of foreign workers (Centre for Southeast Asian Studies, 2018).

Table 21: Social protection arrangements for migrant workers in Malaysia

Social protection and labour arrangements for migrant workers in Malaysia
<ul style="list-style-type: none"> • Employees Social Security Act: Migrant workers access protection related to work injury under this Act (since 2019, before which the government had a specific scheme for migrant workers in place). It excludes domestic workers.
<ul style="list-style-type: none"> • Employees Provident Fund: Migrant workers can opt into this fund, in which case both employee and employer must make monthly contributions.
<ul style="list-style-type: none"> • Health Insurance Scheme for Foreign Workers: This offers mandatory private medical insurance for foreign workers. Reportedly, the fees paid are higher than those paid by citizens, who are eligible for a subsidized scheme. In terms of premiums, employers are liable to pay the premium for plantation and domestic workers, while migrant workers in other sectors must pay the premium themselves. Insurance coverage is a condition for the renewal of work permits. Malaysian employers are not free to opt out of these insurance obligations.
<ul style="list-style-type: none"> • Employment Act (1955): Employers are liable for migrant workers' maternity and sick leave, which applies equally for Malaysian and migrant workers, except domestic workers. Reports of abuse and mistreatment of domestic workers in Malaysia persist and all three countries of origin – the Philippines, Indonesia, and Cambodia – have on occasion halted migration to Malaysia.

Source: Olivier (2018).

⁴⁶ The standardized contract does not guarantee eight hours' rest, nor one day of leave, but it does state that employers need to provide compensation in cash if a weekly rest day is not provided.

⁴⁷ It also does not cap the recruitment fee to be paid by migrant workers, while it is capped at 10 per cent of a month's wage for workers in other sectors. Recruitment fees can be as high as 10 month's wages but are considered a private arrangement between agencies and migrant workers, which is not regulated by the Government of Singapore.

At least nominal access to protection related to work injury is already the case in Thailand, whereas it was only introduced recently in Malaysia (2019). This means there is no longer a difference between national and migrant workers as regards their entitlement to work-related injury benefits (ILO, 2019a).

The rights and provisions for migrant workers leaving an employer due to a dispute are much fewer in Thailand compared to Malaysia, where the *de facto* situation also favours the employer more than the employee. In the latter, when a migrant leaves an employer due to a dispute, the migrant must purchase a visa for 100 Malaysian Ringgit (USD 30.10) a month, which legalizes their stay, even though they are no longer in employment. However, the visa does not allow the migrant to work and as a result many migrant workers return home after a dispute, without resolving the dispute or obtaining compensation (Centre for Southeast Asian Studies, 2018).

Migrant workers are covered by the separate Health Insurance Scheme for Foreign Workers, administered by the Ministry of Health. This offers mandatory private medical insurance for foreign workers. Reportedly, the fees paid are higher than those paid by citizens, who are eligible for a subsidized scheme. In terms of premiums, employers are liable to pay the premium for plantation and domestic workers, while migrant workers in other sectors must pay the premium themselves. Insurance coverage is a condition for the renewal of work permits. Malaysian employers are not free to opt out of these insurance obligations (Olivier, 2018). The level of compliance with these insurance regulations is unclear. A report by the Centre for Southeast Asian Studies (2018) in Indonesia states that most migrant workers do not have insurance in Malaysia.

6.2 Innovative social protection provisions by countries of origin

The Philippines is the largest organized labour exporting country and has 49 bilateral labour agreements with 25 countries. In 2008, a quarter of its labour force worked abroad. The country has some innovative ways of providing social protection arrangements for its migrant workers, who have a defined status in Filipino labour law as 'Overseas Filipino Workers' (Rodrigues, 2019). This section highlights two such innovative arrangements.

Indonesia is another example of a country of origin that has strong provisions for Indonesian migrant workers. Indonesia is the ASEAN region's second biggest nation of origin for migrant workers, who mostly work as domestic workers, construction workers, and agricultural workers in Malaysia (Centre for Southeast Asian Studies, 2018).

The Philippines: migrant worker welfare fund providing social protection

The Overseas Workers Welfare Association (OWWA) aims to oversee social welfare services, including insurance coverage, social work assistance, legal assistance, placement assistance, cultural services, and remittance services. The OWWA is attached to the MoL and is one of the largest welfare funds in the developing world. It is a membership fund with mandatory registration (on a two-year basis) for migrant workers who have their contracts processed by the Philippines Overseas Employment Administration and voluntary registration for nationals leaving without a contract. It collects a mandatory membership fee of USD 25, payable prior to deployment abroad by the worker or employer. Social protection benefits include compensation or benefits in the case of death or disability, burial insurance, and health-care benefits (Olivier, 2018). The OWWA also offers skills programmes for the migrant and scholarships for their dependents, as well as pre-departure loans, family assistance loans, and livelihood loans to assist in entrepreneurial opportunities after return. The OWWA also supports reintegration and repatriation (Rodrigues, 2019). These arrangements are more generous than are provided by other countries of origin, including CMVL. However, welfare funds such as OWWA also have limits. While they offer useful services pre-departure and post-arrival, they cannot tackle many of the more pressing concerns for migrant workers. For instance, migrant welfare funds cannot replace States regarding ensuring the exportability of social security benefits, or push for affordable remittances costs (Rodrigues, 2019).

The Philippines: extra-territorial application of social protection regulations

In addition to the OWWA, the Philippines also applies certain social protection provisions outside its borders. Unusually, the Filipino Labour Code has extra-territorial application and contains a number of provisions aimed at Filipino migrant workers. In addition, the remit of the Philippine Health Insurance Corporation has been expanded to include overseas representation. It is tasked with establishing an office or designating a focal person in all countries where there are Filipino citizens. These office focal points will process claims made by overseas workers (Olivier, 2018). While working abroad, Filipino migrant workers can make pension contributions in the Philippines into the same programmes that are available to local workers in the Philippines. In addition, the SSS Flexi-Fund Programme is a fund exclusively for Filipino migrant workers, and provides for supplementary pension savings (Olivier, 2018).

Indonesia: strong institutional set-up to support migrant workers

Indonesia makes strong institutional provisions to support migrant workers abroad, with the 2004 Act concerning the Placement and Protection of Indonesian Overseas Workers stipulating that the government should arrange, develop, implement, and control the placement and protection of workers abroad (Olivier, 2018). The Government reviews documents and provides pre-departure information to current as well as prospective migrant workers, as well as managing migrant worker departures and arrival through Indonesian ports (Centre for Southeast Asian Studies, 2018). Moreover, the Ministry of Foreign Affairs oversees migrant workers abroad, recording arrival and departure if the worker reports to the embassy, assessing the quality of employers and partner recruitment agencies, and approving placement documents before allowing workers to travel. At the provincial level, the Ministry of Manpower and the provincial body of the Agency for Placement and Protection of Migrant Workers coordinate screening and consent to job placement permissions, as well as providing pre-take-off briefings (Centre for Southeast Asian Studies, 2018). In addition, several compulsory pre-departure activities have been put in place, such as training and information events. An employment contract with the foreign employer must be in place before departure (Olivier, 2018).

Indonesia: compulsory migrant worker insurance

An important element of the Indonesian Government's support to migrant workers has been the establishment of a mandatory insurance scheme for migrant workers. Recruitment agencies are tasked with insuring workers and have to pay the insurance premium. However, the premium cost is very often recovered from the workers, since, while there is a legal obligation to provide insurance for the worker, it is not specified that the recruitment agency or employer must pay the premium. The migrant worker insurance covers compensation in the case of death or disability, as well as providing cover for non-work-related accidents, early contract termination, unpaid wages, and costs linked to a worker changing employer. The insurance must be in place before departure is approved (Olivier, 2018).



7 Conclusions and implications for policy

7.1 Conclusions

There are many migrant workers in Thailand, forming a significant portion of the general population, as well as of the labour force. In 2020, about 2.5 million of them were regular migrant workers, with the majority coming from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. Myanmar sends the largest number of regular migrant workers, followed by Cambodia, Lao People's Democratic Republic and Viet Nam.

7.1.1 Work permit types for regular migrant workers

For migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam, there are two pathways to becoming a regular migrant: through the MoU between the Royal Thai Government and the Governments of these four neighbouring countries and via the border pass. There are also periodic ad hoc amnesties regularizing irregular workers (such as the NV process). Of these three avenues to regular migrant status, the NV process is the most common pathway, followed by the MoU pathway (43%). Only a very small minority (1%) of migrant workers use the border pass.

7.1.2 Coverage gaps and access to benefits

Just under a million regular migrant workers are enrolled in both the SSF and the WCF. This represents 39 per cent of regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam. This compares to a coverage rate of 30 per cent of Thai nationals in the active-age population in the SSF and the WCF.⁴⁸ The relatively low level of access to comprehensive social protection is therefore not limited to migrant workers. Considering this, Merttens et al. (2021a) emphasize the need for the Royal Thai Government to reduce the legal exclusions of certain groups of Thai nationals in Article 33, based on a social protection mapping and vulnerability analysis of the Thai social protection sector.

Migrant workers in short-term work or certain professions are excluded from the SSF and WCF. Excluding them from the eligible population yields a coverage rate of 60 per cent for both. More men than women migrant workers are insured under both the SSF and the WCF.

Of insured migrant workers, 9 per cent made a claim to the SSF and only 2 per cent of insured migrant workers claimed benefits from the WCF. This is higher than the proportion of Thai nationals making a claim to the SSF and can reflect the high proportion of migrant workers employed in sectors with high workplace risks. For both the SSF and the WCF, sick leave was the most frequently claimed benefit.

Women migrant workers make up about two thirds of SSF claims made by migrant workers. This is because women are eligible for maternity leave and they are more likely to make claims for child benefits. In contrast, men migrant workers make most work-related death or injury claims under the WCF (82%). Out of the 69 claims made in 2020, 64 were made by men, indicating that they work in more life-threatening professions than women.

Following the COVID-19 pandemic, the number of claims made to the SSF increased by more than 50 per cent between 2019 and 2020. Unemployment claims increased 30-fold, from 2 per cent to nearly half of all claims made to the SSF.

In 2019, there were 823,420 migrant workers and dependents with an active MHIS status. As a proportion of the total regular migrant worker from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam, 29 per cent of regular migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam had purchased migrant health insurance. In terms of claims, 13 per cent of MHIS-insured migrant workers were treated in hospitals.

⁴⁸ This is 29.7 per cent for the SSF and 29.8 per cent for the WCF as a proportion of the total active-age population of Thai nationals (Merttens et al., 2021b). The coverage rate of enrolment of eligible Thai nationals is not available.

The national social protection system covers only part of the labour force. Migrant workers are often concentrated in sectors of the labour market that are either not covered by social protection or in which compliance with social security laws is weakly enforced. They have recourse to informal schemes, which are at a much lower scale compared to government-run schemes. Two examples are:

1. The M-Fund is a non-profit contributory health insurance scheme for migrant workers, regardless of legal status. It offers health care at hospitals where the M-Fund has established a partnership. There are 22,900 registered members, with 52 per cent actively contributing. The majority of the fund's members are Myanmar nationals residing in Tak Province, aged between 18 and 29 years.
2. Several NGOs and faith-based and charity organizations also provide social protection services to unregistered migrant populations. However, they are very small in scale: the Council for Humanitarian Networking is supporting 650 families.

7.1.3 Key barriers to migrant workers accessing social protection

Although migrant workers are entitled to social protection services, they are not always able to access their benefits adequately or fully. The key barriers to access that migrant workers face can be split into three broad categories: (1) the policy framework preventing access; (2) lack of compliance with existing regulations preventing access; and (3) barriers to using existing entitlements preventing access. Within these categories we draw 14 conclusions.

Policy framework

1. Social security entitlements are tied to legal migration status creating unequal access to social protection

The type of legal status a migrant has determines his or her social protection entitlements. Irregular migrant workers and migrant workers under international protection are excluded from public social protection services because these groups are not legally allowed to work in Thailand, so cannot enrol in contributory social security.

While the Social Security Act provides comprehensive social protection coverage, eligibility criteria limit who has access to its benefits. Only NV and MoU migrant workers with valid employment and/or immigration documentation are eligible for social protection benefits under the Social Security Act. NV and MoU migrant workers, even with valid documentation, who are employed in domestic work, seasonal and temporary agriculture, forestry, livestock sectors, or other seasonal or temporary work are excluded from contributing to or benefiting from the SSF.

The Thai Government addressed the gap in health-care coverage for migrant workers not eligible to contribute to the SSF by setting up the MHIS. The MHIS used to include irregular migrant workers, but now is exclusively for regular migrant workers who cannot enrol in the SSF and enrolment is on a voluntary basis.

The migration policy framework is designed in a way that makes equality of treatment impossible. Migrant workers with varying legal status working in different sectors have different social protection entitlements.

It is likely that tying legal migration status to social security entitlements also has gendered effects to entitlement and access. More men than women migrant workers are insured under both the SSF and the WCF: for both the SSF and the WCF, 43 per cent of men regular migrant workers are enrolled, compared to 40 per cent of women migrant workers. This may indicate either that it is more likely for women than men to work in temporary and domestic work or that women are more likely to be excluded from social protection, even when they are eligible.

Women face specific barriers to accessing social protection services due to the exclusion of specific sectors and types of employment. For example, due to the exclusion of domestic workers from SSF Article 33, who are predominantly women. This is a structural form of gender discrimination and should be considered in the revision of the legislation.

2. Social protection entitlements, when available, are comparable to those available to Thai citizens

In terms of adequacy, in principle the social protection services for which migrant workers are eligible, especially health care, are equal to those of Thai nationals and are relatively comprehensive. Migrant workers who were able to claim their benefits expressed their satisfaction with the health-care coverage. However, migrant workers with serious diseases, such as HIV/AIDS, and other chronic diseases, have difficulty utilizing their health-care benefits without external support from CSOs. The current social protection system has not been designed to meet the specific needs of vulnerable groups, including pregnant migrant women, migrant workers living with HIV/AIDS, and migrant workers who live with disabilities. The various problems migrant workers face in accessing their benefits also mean that the de facto protections delivered are not as adequate as the de jure protections imply.

3. The cost of regularization means migrant workers may not regularize and may not access social protection

Migrant workers' access to social protection is linked to their work permit and immigration status. For this reason, the cost of enrolment into social protection schemes for migrant workers de facto includes the cost of regularizing their status, which can be very high.

The cost of regularization includes fees for a mandatory medical examination, visa, work permits, and profile records.⁴⁹ These fees total up to between THB 6,280 and 7,780 (USD 151–187) for a two-year work permit. The employer is also required to deposit THB 1,000 with the Department of Employment for each migrant worker, up to the maximum of THB 100,000 per employer. In contrast, obtaining a border pass is less than half the cost of obtaining a MoU or regularizing through NV at THB 2,805 (USD 76), as shown in Table 22.

Table 22: Fees for regular migration status for migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam between 2019 and 2020

Employment category/ fee	MoU		NV		Border pass
	Sector admissible to SSF	Sector not admissible to SSF	Admissible to SSF	Not admissible to SSF	Not admissible to SSF
Total (THB)	6 280	7 780	6 180	7 680	2 805
Total (USD)	151	187	148	184	67

The cost and time required to regularize their status (especially for MoU and NV migrant workers) discourages migrant workers from regularizing. The complexity involved also encourages the use of recruitment agencies, even though this is prohibited by law to charge recruitment fees to migrant workers. Employers often pay brokers and private recruitment agencies to help provide necessary documents and navigate the complex MoU process. In Myanmar, the use of recruitment agents is a legal pre-requisite. The fees described above therefore do not include common additional expenses such as recruitment fees or cost of obtaining passports or other requisite identification documentation. These additional fees can be even higher. A recent ILO report puts the total cost for a regular migrant worker to enter and work in Thailand at USD 497 (ILO, 2020a). This can be a lot higher, depending on the sector. For example, migrant workers and employers in the poultry industry report recruitment costs of between THB 15,000 and THB 26,000 (USD 500–860). As a result, migrant workers often incur significant debts to regularize their status.

4. Inconsistencies between labour laws and migration laws mean migrant workers cannot access the unemployment benefits they are entitled to

The Royal Ordinance permits an MoU migrant worker a period of just 30 days from leaving a job to find a new employer, but the unemployment benefit entitlement is for three months or six months, which is beyond the time a migrant worker can remain in the country legally.

⁴⁹ Additionally, fishery workers must obtain a sea book.

Compliance

5. Enrolment in and access to social protection programmes is low

Even when regular migrant workers are eligible for social protection programmes, many are not enrolled even though they should be. The WCF has the lowest coverage rate (41%) of the three programmes, followed by the SSF (60%). Coverage rates of the MHIS are difficult to assess, though analysis conducted by this research suggests it is comparatively high at 84 per cent. Nine per cent of SSF-insured migrant workers made claims in 2019, and in 2020 many sought unemployment benefits. Only 2 per cent of WCF-insured migrant workers made a claim in 2019. 13 per cent of those insured via MHIS sought hospital care in that year, which is the highest rate of benefit use among the three programmes.

6. Employers may choose a migration status that limits migrant workers' access to social protection

In border regions, employers have some discretion to choose their preferred way of regularizing their workers, i.e. border pass or MoU. This can be used as a tool to avoid paying social security contributions. In this way, migrant workers can be excluded from the more comprehensive social protection services.

7. Registering migrant workers into social protection requires actions by the employer, who may prefer not to pay contributions

Both the SSF and the WCF require the employer to register the migrant worker into the social protection system. The employer must file an employer registration form and an insured registration form with the SSO to register a worker with the SSF. Registering a worker with the WCF must be done at the same time. WCF involves one payment per year by the employer, while the SSF involves monthly contributions by both the employer and the employee.

If an employer does not comply with their legal obligations, there is no monitoring by government agencies to ensure that migrant workers' social security status remains active and/or the worker's contribution is being made. Workers may see deductions on their payslip, but that does not mean payments are made on their behalf. There is an online tool to check SSF contributions, but it requires a Thai national ID number and hence does not function for migrant workers as they have a different ID.

8. Enforcement and monitoring of social security contributions is weak

The SSO can appoint officials to conduct inspections at workplaces. The Social Security Act threatens fines and/or custodial sentences for employers who fail to meet the Act's legal requirements, including registration with the SSF, paying monthly contributions, and deducting contributions from workers' income. However, unlike the enforcement mechanism under the Labour Protection Act, the Social Security Act does not prescribe the time to complete the investigation and deliver the compensation decision. The MoPH has not enacted a specific law to monitor and enforce the implementation of the MHIS.

9. Slow claims processes and weak enforcement mean few claims under the WCF are successful

When claims are made to the WCF, anecdotal evidence indicates that the employer tends to avoid reporting the incidents to the SSO because such reports will influence the level of the employer's contribution in the future. Claims, if they happen, are often resolved in the employer's favour. The WCF Act does not specify the time period in which a claim has to be processed. As a result, migrant workers who claim benefits from the WCF must wait for a long time, in some cases up to two or three years, to receive the result of their claims.

Labour inspectors are authorized by the Labour Protection Act to monitor and inspect workplaces for compliance with legal standards regulating working conditions. Labour officials from the Department of Employment are authorized to inspect private recruitment agencies, business establishments, and migrant workers, to check if workers and employers have fulfilled their obligations under the Royal Ordinance; for example, the validity of work permit and possession of identity document, as well as categories of job performed.

However, despite these provisions, the number of inspectors and inspections are few, and existing protections and provisions for migrant workers are poorly enforced. In 2016, the WCF received only a total of 7,569 work-related harms and injuries complaints from migrant workers.

Accessibility

10. Lack of coordination or shared processes between agencies means migrant workers cannot easily track social protection entitlements and service providers struggle to deliver services effectively

Migrant workers do not have ID documents that are interoperable with the Thai social protection system. As mentioned above, migrant workers cannot verify their SSF status online as this requires a Thai ID. They cannot claim unemployment benefits online for the same reason, so must report to the Department of Employment in person with a letter of contract termination from their employer.

The fragmented labour migration regulatory framework means that each government agency dealing with migrant workers tends to develop its own MIS to manage the registration of migrant workers, including the Department of Employment, the SSO, the Immigration Office, and the MoPH. This leads to a multiplication of ID numbers and additional workload for frontline service providers such as hospital staff and social security officers to match the identity of a worker with the social protection programmes for which they are eligible. Different public offices also require different types of documentation (e.g. passport, work permit, social security card, border pass, MHIS receipt) to allow migrant workers to claim the services they are entitled to, leading to confusion and high transaction costs for both migrant workers and frontline staff.

11. Up-front payments required for hospital treatment are high

Certain hospital admissions (e.g. for accidents or childbirth) require up-front payments that are prohibitively high for migrant workers, resulting in some migrant workers not being able to access those services.

12. Additional documentation requirements to claim certain benefits are onerous

Claiming child allowance under the SSF requires birth and marriage certificates notarized in Thai. These are expensive and difficult to obtain, with reports suggesting that a number of migrant workers do not seek this benefit as a result even though they are entitled to it.

13. Migrant workers face language barriers and discriminatory experiences when seeking social protection

Migrant workers identify communication and language barriers as common issues when seeking support. At public hospitals, there is often no or not enough translators to support migrant workers throughout the hospital visit. The MoL does not have an adequate number of interpreters who can accurately communicate in the native languages of migrant workers for the labour inspectors and in the labour court. The same applies to SSO staff.

In addition, migrant workers report experiencing discrimination, especially in hospitals, where their efforts to seek care are often seen as illegitimate and they feel that they are sometimes not taken seriously by medical staff.

14. Migrant workers lack knowledge about social protection entitlements

Migrant workers have little awareness of the social protection services to which they may be entitled. MoU workers receive inductions, which include briefings on social protection. The SSO does provide guidance documents and public materials on social protection entitlements and WCF benefits in five languages, including Thai, English, Myanmar, Laotian and Cambodian, but it is unclear to what extent these communication materials reach their intended audiences. One reason for the lack of awareness is the minimal social protection services available in the countries of origin, particularly in Cambodia, Lao People's Democratic Republic and Myanmar. Migrant workers from these countries do not have experience of being insured by and benefiting from social protection systems in their countries of origin. In addition, employers have neither obligation nor incentive to alert or inform their migrant staff of their rights.

7.2 Recommendations for policy

While the lack of data available for this background paper means definitive conclusions cannot be drawn, the picture that emerges is nevertheless quite clear. Thailand has several social protection programmes in place under which regular migrant workers are entitled to benefits, but, although these benefits are adequate to their needs (being relatively comprehensive and equal in principle to those of Thai nationals), three key shortcomings undermine the system of social protection for regular migrant workers:

- ▶ First, the policy framework in place determines that eligibility for social protection programmes depends substantially on the status of the worker and on the sector of employment.
- ▶ Second, even when migrant workers are eligible for social protection programmes, lack of compliance means they may not be registered and are thus unable to receive their entitlements.
- ▶ Third, even where migrant workers should be eligible for benefits, a variety of barriers prevent them from receiving them.

The conclusions presented above imply that several reforms to government social protection policy could improve social protection provision for migrant workers and their families. Potential areas for reform are listed in the policy recommendations below.

Policy framework

1. Revise eligibility criteria for social protection services to include short-term migrant workers and those working in sectors currently excluded from the SSF

- ▶ The current migration policy framework is designed in a way that makes equality of treatment among migrant workers, as well as between Thai national and migrant workers and between Thai national workers, impossible. The current eligibility criteria for the SSF in terms of work permit type (MoU/NV/ border pass) as well as sector (those covered by Article 33 and those not) introduces an unequal tiered system of access to social protection.
- ▶ The regulatory framework should be amended to include MoU and NV migrant workers temporary working in agriculture, forestry, livestock, and domestic work into the SSF (i.e. amend Article 33 to include migrant workers in these sectors).
- ▶ The exclusion of categories of workers in specific sectors is not limited to migrant workers: an assessment of the social protection system for Thai nationals concluded comprehensive social protection is also not available for many Thai nationals and recommends for the extension of SSF enrolment criteria to currently excluded groups.
- ▶ The border pass should only be used for the specific purpose of seasonal and temporary labour migration. It should not be possible for employers to hire migrant workers through the border pass on a regular basis. Additional regulatory measures could include:
 - Monitoring of border pass allocations per employer;
 - Introducing caps or quotas on border passes per employer; and
 - Regular inspections of large employers in SEZs and border regions.
- ▶ These measures have to be implemented in tandem with those concerning regularization suggested under the next point (recommendation 2), otherwise restrictions on the border pass risk pushing more migrant workers into irregular status.
- ▶ Social protection entitlements for border pass holders should be strengthened and short-term enrolment into the SSF should be explored (i.e. by an expert group). Once in place, it should be mandatory for all border pass holders and employers to contribute to the SSF. This would increase contributions to the SSF and lower incentives to abuse the border pass, since the employment costs of the border pass and MoU migrant workers would be more similar.

2. Reduce the cost of regularization

- ▶ The up-front costs of regularization are higher than the regular contribution costs to the SSF. However, having regular status is the first step to social protection. The costs of regularization should decrease and the ILO principle that recruitment costs and related fees should not be borne by the worker should be applied. The Royal Thai Government should comply with the international commitments and guidelines on this issue. A recent ILO report (ILO, 2019b) already has a series of detailed recommendations on this topic, which are summarized below:
 - MoU countries should move towards eliminating worker-paid recruitment fees, by eliminating them or ensuring employers pay them. Specifically:
 - Develop secondary legislation under the Royal Ordinance Concerning the Management of Employment of Migrant Workers defining what constitute the 'recruitment costs' not to be charged to migrant workers.
 - The Thai Government should reduce, or consider eliminating, the visa fee for migrant workers.
- ▶ Ensure effective regulation of recruitment by strengthening the human and financial resources available for monitoring, investigation, and enforcement. Specifically:
 - Despite prohibitions by the Royal Ordinance, Thai recruitment agencies charge fees to migrant workers. Hence, the capacity to conduct on-site visits and inspections of recruitment agencies should be increased. The licences of agencies that violate government provisions should be withdrawn, and financial audits and visits to employers should be conducted.
 - The capacity of existing institutional complaints mechanisms for migrant workers should be strengthened and their outreach expanded, including the development of standard operating procedures and referral mechanisms.

3. Harmonize migrant work permit regulation and SSF benefits regulation to ensure migrant workers can collect the benefits they contributed to

- ▶ Migrant workers that leave their jobs have a grace period of 30 days to find new employment before they must leave the country. However, those that have been contributing to SSF are entitled to unemployment benefit for longer than this period. There is thus a need to harmonize the regulation with the social security benefit provisions, to ensure migrant workers can either receive the benefit after leaving the country or extend their stay in Thailand. Specifically, a legal review of the Social Security Act and the Royal Ordinance should take place and suggest amendments to harmonize current legislation.

4. Support ongoing efforts to ensure portability of benefits between Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam

Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam are engaged in ongoing efforts to set up portability of social protection benefits. These should be supported. Specifically, in August 2018 senior labour officials of Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam dedicated a meeting to the theme "Social Security: Portability of Social Security for Migrant Workers in Cambodia, Lao People's Democratic Republic, Myanmar and Viet Name". In September 2019 a roadmap towards a ministerial declaration on the 'Portability of Social Security for Migrant Workers' was adopted. A draft of this Declaration was shared by the Government of Cambodia in August 2020, on which the ILO and IOM have provided technical comments. It is expected that Labour Ministers of Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam will adopt this Declaration within 2021. As per the ministerial road map, following the adoption of the Declaration several further steps are required:

- ▶ Ratify the bilateral agreements on portability of social security benefits;
- ▶ Set up registration formalities and procedures and exchange of comprehensive data and information to facilitate the portability of benefits for migrant workers as set out in the bilateral agreements;
- ▶ Comply with the bilateral agreement on portability of social security benefits in respect to pensions and the long-term benefits of employment injury insurance for migrant workers;

- ▶ Follow up, manage, administer, coordinate, and cooperate to comply with the bilateral agreement effectively and efficiently in line with social justice for migrant workers.

ILO and IOM should actively support these next steps with advice and advocacy efforts. In working towards a mechanism to allow migrant workers to preserve, maintain and transfer social security entitlements, the Royal Thai Government and its partners should ensure the agreements include the necessary components that will enable portability. The Royal Thai Government is encouraged to engage with partner countries on developing practical measures that allow the operationalization of the agreements, such as making payment systems work across borders.

5. Conduct a review of the MHIS in terms of both sustainability and affordability

- ▶ It is unclear if the MHIS is affordable for migrant worker households. Children above seven years old contribute the same as adults and all dependents in the household pay the same fee. A review should be commissioned to examine MHIS's affordability for migrant worker households. In particular, this review should propose alternative cost structures, such as charging additional MHIS subscribers of the same household less than the main subscriber.
- ▶ In terms of sustainability, that same review should also examine if the MHIS scheme covers its costs through contributions. This review should work in tandem with the expert group suggested in recommendation 1, which examines short-term enrolment in the SSF. The review should re-assess the MHIS jointly with results from the expert group on short-term social protection provision to migrant workers. The review should make recommendations on the future of the MHIS, including recommendations on contributions, cost recovery, and linkages with the SSF.

Compliance

6. Strengthen monitoring and enforcement of employer compliance with existing regulations

There is a need to better enforce existing regulations that make social protection provisions to migrant workers. It is important to note that the need to strengthen compliance and enforcement of social protection regulation is not limited to compliance for the enrolment and access of migrant workers but necessary for the Thai social protection sector at large (Merttens et al., 2021a, 2021b). These include:

- ▶ For the SSF, timely enrolment of migrant workers needs to be improved, monitoring of regular contributions by employer and employee should be set up, and the time and ease of making claims should be tracked. Specifically, this means that:
 - Migrant data from the MoU and any regularization processes should be linked to SSF registers to track that all eligible migrant workers are also enrolled in the SSF. Employers should be penalized if MoU employees are not registered within a certain period of time.
 - The frequency of contributions on behalf of migrant workers should be tracked. Any missed payments should automatically trigger a notification to the employer and the employee. Missed contributions should lead to a penalty to the employer. Persistent non-compliance should trigger workplace inspections. Leaving the SSF should require the employer to formally notify the SSF and should trigger a notification to the migrant worker employee.
- ▶ For the WCF, compliance with migrant worker enrolment should be improved and claims processes should be sped up and simplified. Immigration data for all migrant workers should be linked to WCF registers to ensure that all migrant workers are also registered in the WCF. Non-compliance with registration should result in a penalty.
- ▶ For both the SSF and WCF:
 - Claims processes should be tracked from filing the claim to its resolution. Targets for the share of resolved claims should be set and claims data made public on a regular basis.

- The grievance system should be strengthened to enable migrant workers to raise concerns, including anonymously, without fear of retaliation or losing benefits or migration status.
- ▶ In addition, better enforcement of both the Social Security Act and the Workmen's Compensation Act is connected to improved workplace inspection. The recommendation to strengthen labour inspection, particularly for specifically migrant-dominated sectors, should follow the recommendations set out by the ILO report on the fishery sector (ILO, 2020c).

Accessibility

7. Improve coordination and interoperability of processes and MIS for migrant workers across ministries and agencies

Several government agencies deal with migrant workers, each requiring a different set of documents, which are potentially duplicating each other. These processes should be integrated and streamlined. Examples of how this could be operationalized are:

- ▶ Data sharing and, ideally, data integration across government agencies, especially the MoPH, MoL, SSO, and Immigration Office.
- ▶ Agreement on one functional ID (i.e. what number and document is used to identify a migrant across all systems), which can be presented to hospitals and the SSO. Currently there is a duplication of IDs, i.e. one migrant worker will have a work permit number, a passport number, and a social security number.

8. Improve communication to migrant workers about processes, rights, and entitlements to social protection

- ▶ Provide more translators and staff qualified to deal with migrant workers at government offices, especially MHIS hospitals, social security offices, and the Department of Employment.
- ▶ Strengthen migrant workers assistance centres, which provide advice in their own language to migrant workers on any issue they may be facing with regards to their migrant status, employment, legal rights, or access to social protection.
- ▶ Oblige employers to advertise and provide information on social protection entitlements and services at the workplace. This information should include a hotline number and a safeguarding system (e.g. through the hotline/centres).
- ▶ Expand on existing good practice, such as MHVs, to distribute information and connect service providers with migrant communities.



Annex A List of key informants

Affiliation	Date of interview
MAP Foundation	9 November 2020
State Enterprises Workers' Relations Confederation	9 November 2020
Council for Humanitarian Networking of the Sheikhul Islam Office	9 November 2020
Migrant Workers Rights Network	10 November 2020
HRDF Chiang Mai Office	10 November 2020
Stella Maris Sri Racha Office	10 November 2020
Thailand's National Catholic Commission on Migration	11 November 2020
Raks Thai Foundation	16 November 2020
Division of Health Economics and Health Security, Ministry of Public Health	23 November 2020
HRDF Mae Sot Office	24 November 2020
Mae Sot Hospital, Tak Province	1 December 2020
M-Fund	30 November 2020
Friends International	20 November 2020
Diocesan Social Action Center, Ranong Province	1 December 2020
Foundation for Aids Rights	12 December 2020
HomeNet	23 November 2020
Myanmar domestic worker	20 November 2020
Myanmar domestic worker	22 November 2020
Institute for Population and Social Research, Mahidol University	22 November 2020
Mekong Migration Network	18 November 2020
Employers' Confederation of Thailand	14 December 2020
MoL	4 December 2020

Annex B Migrant demographics, 2019

The figures below were used to calculate coverage rates, not the ones cited in the body of the paper. The figures cited in the paper are from 2020. The figures below are from the SSO, the same source as the insurance data.

Table 23: Numbers of migrant workers from Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam categorized by type of work permit (December 2019)

Type of work permit	Myanmar	Cambodia	Lao People’s Democratic Republic	Viet Nam	Total
Total of all residence permits issued	1 825 921	693 191	281 247	96	2 800 455
(% of total)	65.20%	24.75%	10.04%	0.01%	100%
MoUs with Cambodia, Lao People’s Democratic Republic, Myanmar and Viet Nam	518 321	303 971	183 460	96	1 005 848
(% of total)	51.53%	30.22%	18.23%	0.02%	100%
Completion of NV process**	1 281 505	349 324	97 787	N/A	1 728 616
(% of total)	676 769	279 514	51 633	N/A	1 007 916
	599 743	63 048	45 869	N/A	708 660
	4 993	6 762	285	N/A	12 040
	%	%	%	N/A	100%
Border pass holders***	26 095	39 896	N/A	N/A	65 991
(% of total)	39.54%	60.46%	N/A	N/A	100%

Source: SSO, December 2019. Note that totals are the sum of rows and may differ from the total number of migrant workers.

Annex C Numbers of migrant workers by sector of employment

C.1 Permitted sectors of employment

Migrant workers from Cambodia, Lao People's Democratic Republic, Myanmar, and Viet Nam who are employed under the MoU and border pass schemes or regularized through the NV process are permitted to work in 25 types of business, as announced by the MoL (Department of Employment, 2016).

Table 24: Migrant workers by sector and status (December 2019)

Sectors	Numbers			Percentage		
	MoU workers	NV workers	Border pass holders	MoU workers	NV workers	Border pass holders
1. Fishing	7 388	32 282	2 170	1%	2%	3%
2. Agriculture and livestock	49 374	246 686	1 175	5%	14%	2%
3. Construction	204 614	347 042	21 936	20%	20%	33%
4. Fishery-related	22 027	31 797	8 058	2%	2%	12%
5. Agriculture-related	138 656	126 691	4 182	14%	7%	6%
6. Livestock-related	44 942	24 956	112	4%	1%	0%
7. Recycling, waste collecting and buying, waste separation	17 429	32 165	383	2%	2%	1%
8. Mining and quarrying	612	1 815	10	0%	0%	0%
9. Manufacturing and sale of metal products	35 454	64 649	278	4%	4%	0%
10. Manufacturing and sale of food and beverages	75 459	141 453	2 223	8%	8%	3%
11. Manufacturing and sale of clay products	2 245	7 008	949	0%	0%	1%
12. Manufacturing and sale of construction materials	23 084	31 097	484	2%	2%	1%
13. Stone processing	1 775	3 447	727	0%	0%	1%

Sectors	Numbers			Percentage		
	MoU workers	NV workers	Border pass holders	MoU workers	NV workers	Border pass holders
14. Manufacturing and sale of garments, clothes, textiles, accessories, footwear parts	67 194	95 766	14 099	7%	6%	21%
15. Manufacturing and sale of plastic products, chemical products, fertilisers, toys	62 504	65 262	715	6%	4%	1%
16. Manufacturing and sale of paper products	7 698	13 694	148	1%	1%	0%
17. Manufacturing and sale of electronics, electrics, batteries, automobiles	28 852	26 906	1 901	3%	2%	3%
18. Logistics and transportation: land, water, and storage	5 316	14 637	280	1%	1%	0%
19. Wholesale and retail trade, market vendor, and general shops	30 212	89 755	2 690	3%	5%	4%
20. Vehicle repair and car cleaning services	8 246	17 414	106	1%	1%	0%
21. Gas station	7 339	11 579	193	1%	1%	0%
22. Education centre, foundation, association, and health-care facilities	941	5 140	71	0%	0%	0%
23. Other service activities except subcontracting	98 911	159 711	2 365	10%	9%	4%
24. Fishery products processing	40 606	32 365	736	4%	2%	1%
25. Domestic workers	24 970	93 258		2%	5%	0%
Total	1 005 848	1 716 575	65 991	100%	100%	100%

Source: Office of Foreign Workers Management, December 2019. Note that totals are the sum of rows and may differ from the total number of migrant workers.

Table 25: Number of social security insured migrant workers by business type

(Persons)	(Per cent)	Business Type
47 131	3.93	A – Agriculture, forestry and fishing
3 340	0.28	B – Mining and quarrying
669 421	55.86	C – Manufacturing
499	0.04	D – Electricity, gas, steam and air conditioning supply
3 637	0.30	E – Water supply, sewerage, waste management and remediation activities
172 897	14.43	F – Construction
128 079	10.69	G – Wholesale and retail trade, repair of motor vehicles and motorcycles
18 085	1.51	H – Transportation and storage
62 002	5.17	I – Accommodation and food service activities
5 608	0.47	J – Information and communication
2 464	0.21	K – Financial and insurance activities
10 335	0.86	L – Real estate activities
16 897	1.41	M – Professional, scientific and technical activities
30 257	2.52	N – Administrative and support service activities
7 195	0.60	O – Public administration and defense, compulsory social security
6 436	0.54	P – Education
2 999	0.25	Q – Human health and social work activities
3 929	0.33	R – Arts, entertainment and recreation
7 207	0.60	S – Other service activities
-	-	T – Activities of households as employers, undifferentiated goods and services producing activities of households for own
-	-	U – Activities of extraterritorial organizations and bodies
1 198 418	100.00	Total

Source: SSO, 2019.

Annex D Social protection legislation relevant for migrant workers

D.1 The Social Security Act B.E. 2533 (1990)

The Social Security Act and its amendments are a set of laws concerning workers' welfare and benefits, based on a contributory social insurance scheme that receives contributions from the employer, the worker, and the State. The law states that employees of migrant workers who are 18–55 years of age shall be insured, and thereby provided with seven benefits, relating to non-work-related injury or illness, maternity, disability, death, children, old age (retirement pension), and unemployment.⁵⁰

The employer and migrant worker each pay a monthly contribution of 5 per cent and the government pays 2.5 per cent, based on the income level of the workers. For example, a worker who receives a monthly salary of THB 15,000 or more will pay the maximum contribution of THB 750 per month.

The agency responsible for administering the benefits guaranteed under the Social Security Act is the SSO under the MoL. The Act designates the Social Security Committee (SSC) as the governance board of the SSF, comprising representatives from relevant government agencies, including the MoL, the Ministry of Finance, the Ministry of Interior, the Ministry of Social Development and Social Security, the MoPH, the Budget Bureau, and seven elected representatives each from employers' and employee organizations.⁵¹ Members of the SSC must be Thai nationals. The SSC is responsible for decision making on national policy, measures, rules, and regulations in the administration and the governance of the SSF.⁵²

Regular migrant workers from the age of 18 to 55 years old are eligible to contribute to the SSF if they have a valid work permit and an identity document, such as a passport. The Social Security Act provides some coverage to informal economy workers (voluntary coverage, with a fixed worker and government contribution) under Section 40. The Act does not permit regular migrant workers to enrol under Article 40.⁵³

Employers have to register workers with the SSF within 30 days of hiring, by submitting the name of the migrant worker, their wage or salary, and other details that may be required by the SSO. The SSO will issue a certificate to the company and issue a card to the migrant worker. Additionally, employers are required to regularly submit contributions from both employers and workers to the SSF within 15 days of the end of the month during which the payroll deductions were made. Migrant workers can access benefits under the SSF after three months of paying monthly contributions.

50 See Section 34 of the Social Security Act.

51 See Sections 8 and 8/2 of the Social Security Act B.E. 2533.

52 See Section 9 of the Social Security Act B.E. 2533.

53 See the Royal Ordinance concerning the qualifications for a person who may be eligible to register as an insured person, 24 March 2018, retrieved from www.ratchakittha.soc.go.th/DATA/PDF/2561/A/019/71.PDF.

D.2 The Workmen's Compensation Act B.E. 2537 (1994)

The Workmen's Compensation Act B.E. 2537 (1994) and its amendments are a set of regulatory frameworks that provide workers with benefits should they experience occupational injuries or illness. The Act set up the WCF under the SSO to provide four types of benefits in relation to work-related accidents, injuries, and illness:

- ▶ cash compensation to the workers or their survivors in the case of sickness, injury, permanent impairment, permanent disability, death, or disappearance as a result of a work responsibility;
- ▶ medical expenses;
- ▶ occupational rehabilitation expenses; and
- ▶ funeral expenses.

Employers with at least one worker are required to register and submit workers' registration with the WCF within 30 days of hiring, and to pay a unilateral annual contribution to the WCF at the rate prescribed in the Act. Employers are not allowed to deduct the contribution amount from a worker's salary. Contribution level is identified based on work risks, which vary between different sectors.

The employer must provide the worker with access to medical treatment and cover their medical expenses immediately in the event of work-related injuries or illness.⁵⁴ The employer must inform the local authority that the worker has been injured, is sick, or is missing within 15 days of the event.⁵⁵ An employer who fails to report a work-related injury or sickness to the local authority may face a fine of up to THB 20,000 or imprisonment for up to six months.⁵⁶ A worker or his/her survivor may submit a claim for compensation to the local authority within 180 days of such an event. However, the Workmen's Compensation Act does not limit the time period during which the local authority may consider the compensation claim and deliver the decision.⁵⁷ This means that claimants can wait a long time to receive compensation.

The SSO of the MoL is the institution responsible for administering the provisions of the Workmen's Compensation Act. The Act designates the WCF Committee (WCFC) as the governance board of the WCF, comprising representatives from the SSO, six experts from the fields of medicine, law, economics, finance, and social security, and three elected representatives each from the employers and the employees.⁵⁸ Members of the WCFC must be Thai nationals.⁵⁹ The WCFC is responsible for decision making on national policy, measures, rules, and regulations in the administration and the governance of the WCF.⁶⁰

According to the Act, all workers, including migrant workers, are covered under the WCF, except domestic workers and workers employed by street vendors. In addition, the 2018 amendment of the Act extended the protection and coverage to employees from State agencies, non-profit organizations, and local staff working at embassies and international organizations.⁶¹ The Announcement of the MoL on 21 February 2019 extended the WCF's coverage to workers in agriculture, fishery, forestry, and animal husbandry. However, domestic workers and employees of street or mobile vendors are still excluded.⁶²

54 See Section 13 of the Workmen's Compensation Act B.E. 2537.

55 See Section 48 of the Workmen's Compensation Act B.E. 2537.

56 See Section 62 of the Workmen's Compensation Act B.E. 2537.

57 See Section 50 of the Workmen's Compensation Act B.E. 2537.

58 See Section 31 of the Workmen's Compensation Act B.E. 2537.

59 See Section 31/1 of the Workmen's Compensation Act B.E. 2537.

60 See Section 32 of the Workmen's Compensation Act B.E. 2537.

61 See the 2018 amendment of the Workmen's Compensation Act B.E. 2537, retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/080/T_0001.PDF.

62 See the Announcement by the MoL of 21 February 2019, on categories, sizes, and authorized local administration units of employers required to pay financial contribution to the fund, the contribution rate, the deposit rate, evaluation criteria, and methods of contributing to the fund, retrieved from www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/067/T_0019.PDF.

D.3 Health Examination and Health Insurance of Foreign Workers (No. 2) B.E. 2562 (2019)

The announcements of the MoPH on Foreign Workers' Health are a set of legal frameworks that provide MHIS for regular migrant workers of all categories, including MoU workers, NV process workers, and border pass holders. The MHIS is a contributory health-care programme for migrant workers and their dependents up to the age of 18 years old who are not eligible for the SSF, or not yet covered by it because they have made less than three months' contributions to the SSF (see Section D.1 above). The MHIS is considered contributory because the MoPH does not have a legal mechanism to oblige enrolment. However, in practice, migrant workers are required to undergo and pass the obligatory health examination and purchase migrant health insurance as part of the work permit application process. Migrant workers who are not covered by the SSF are required to purchase a migrant health insurance with a validity of no less than the duration of their employment, while migrant workers who are eligible for the SSF are required to purchase a three-month migrant health insurance to cover the gap period before they can access the health-care benefits under the SSF. Migrant workers must purchase a migrant health insurance at the public hospital where they undergo the medical check-up. The MHIS is only available at public hospitals.

The benefits of the MHIS are quite comprehensive and include an annual health check-up, general medical treatment (including maternity care), dental care, vaccinations for children (aged 0-18 years old), emergency medical treatment, communicable diseases prevention, and HIV/AIDS and TB medications.

If a migrant worker passes the obligatory health examination, the hospital will issue a medical certificate, which will be valid for 60 days except for the use of MHIS's enrolment, the medical certificate will be valid for one year. Migrant workers must purchase the MHIS at the public hospital where they undergo the medical check-up. The fees under the MHIS are explained in Table 26 below:⁶³

Table 26: Health examination and health insurance fees for migrant workers, by age and sector

Fee (THB)	Migrant worker (and dependent seven years and older)	Migrant fishery worker ⁶⁴	Migrant child under seven years
Three months	500	-	-
Six months	900	-	-
One year	1 600	1 600	365
Two years	3 200	-	730

For migrant workers who purchase the migrant health insurance for the first time, their right to access medical care is only activated 15 days after enrolling in the insurance scheme.⁶⁵ For migrant workers who renew the migrant health insurance, they can immediately continue to use medical care services. The MoPH also allows newborn children of migrant workers to utilize medical care and benefits instantly after enrolling in the MHIS.⁶⁶

The Health Insurance Fund for Foreigners and Foreign Workers is administered by the Division of Health Economics and Health Security, under the MoPH.

63 See the MoPH's Announcement on Health Examination and Health Insurance of Foreign Workers B.E. 2562 of 24 May 2019.

64 See the MoPH's Announcement on Health Examination and Health Insurance of Foreign Workers (No. 2) B.E. 2562 (2019) of 10 July 2020.

65 See the MoPH's Announcement on Health Examination and Health Insurance of Foreign Workers B.E. 2562 (2019) of 24 May 2019.

66 See the MoPH's Announcement on Health Examination and Health Insurance of Foreign Workers B.E. 2562 (2019) of 24 May 2019.

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