

Table 3.6 Receivers of Remittances (F7)

Receivers	Percent
Spouse	58.9
Parents	31.2
Children	5.0
Relatives	4.2
Own account	0.7
	(401)
Total	100.0

Table 3.7 Spending Remittances (F9)

Spending Remittances	Japan	Taiwan	Malaysia	Singapore	Total
Buy land	28.6	13.9	4.6	9.4	12.2
Buy /repair house	7.1	9.8	8.3	14.5	10.4
Repay debts	28.6	56.3	20.4	53.8	41.2
Saving	8.9	7.4	24.1	6.8	11.9
Buy car	5.4	3.3	0.9	2.6	2.7
Investment	0.0	1.6	1.9	0.9	1.2
Buy jewelry	1.8	1.6	0.9	0.0	1.0
Education	8.9	1.6	1.9	0.0	2.2
Family expenditure	10.7	7.4	37.0	12.0	17.1
	(56)	(122)	(108)	(117)	(403)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.8 Occupation of Migrants (%)(B9, H3)

Occupation	Before	After
Farming	61.2	66.6
Industry	2.8	0.7
Construction	4.0	2.4
Offices	2.8	1.2
Restaurants	12.7	4.4
Housemaid	0.5	0.2
Government	0.5	1.7
Own business	4.2	16.8
Others	6.2	5.8
	(425)	(410)
Total	100.0	100.0

Table 3.9 Time spent in finding Job after Return (%) (H13)

Months/countries	Japan	Taiwan	Malaysia	Singapore	Total
Within 3 months	29.4	29.4	46.5	53.6	41.0
4 to 6 months	29.4	35.3	27.9	17.9	27.9
7 to 12 months	23.5	20.6	18.6	25.0	21.3
13 to 48 months	17.6	14.7	7.0	3.6	9.8
	(17)	(34)	(43)	(28)	(122)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.10 Reasons for Difficulty in Finding Jobs (%)(H14)

Reasons	Percent
Economic crisis	41.3
Low education	24.0
Job does not fit ability	12.0
No friends to help	6.0
Get old	4.7
Does not have information	8.7
No experiences	2.0
Being cheated	1.3
	(150)
Total	100.0

Table 3.11 Different Status after Return (%)(H19)

Status/Country	Japan	Taiwan	Malaysia	Singapore	Total
More respect	47.4	42.3	28.8	32.5	35.7
Better off	43.9	26.0	25.6	30.0	29.2
Better job	1.8	1.6	3.8	0.8	2.2
Less respect	3.5	0.8	1.9	0.0	1.3
Same as others	3.5	29.3	38.5	36.7	31.1
Poorer	0.0	0.0	1.3	0.0	0.4
	(57)	(123)	(156)	(120)	(456)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.12 Frequency of Returnees Being Advisors (%)(H29)

Advise/Country	Japan	Taiwan	Malaysia	Singapore	Total
Never	21.4	20.2	15.9	20.5	19.0
Very less often	1.8	2.4	3.8	2.5	2.8
Less Often	23.2	25.8	19.1	22.1	22.2
Often	41.1	43.5	58.0	48.4	49.5
Very Often	12.5	8.1	3.2	6.6	6.5
	(56)	(124)	(157)	(122)	(459)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.13 Workers' Involvement in Community Development Work

Work	Before	After
Not involved	92.0	80.7
Administrator/ Leader	1.6	5.4
Member of Development Groups	6.0	13.0
Not apply	0.4	0.9
Total	100.0	100.0

Table 3.14 Skills Acquired Abroad (H20)

Skills	Percent
Plastic work	2.2
Welding	1.9
Pipe line	2.9
Electrical work	9.6
Construction work	30.1
House work	2.9
Mechanic	5.1
Farming	2.2
Carpenter	2.9
Tailor	1.5
Behavioral change	20.6
	(136)
Total	100.0

Table 3.15 Disadvantage of Working Abroad by Sex (%) (H18)

Disadvantage/Sex	Male	Female	Total
Homesickness	31.8	32.4	31.8
Debt	25.1	11.8	23.3
Need adjustment	9.0	5.9	8.6
Cheated	17.5	20.6	18.0
Bad rumor	5.7	20.6	7.8
Family problem	10.9	8.8	10.6
	(211)	(34)	(245)
Total	100.0	100.0	100.0

Table 3.16 Re-migration of Returnees (%) (H31)

Re-migrate/Country	Japan	Taiwan	Malaysia	Singapore	Total
Certainly will go	83.9	83.1	36.9	59.8	61.2
Go	8.9	10.5	24.2	19.7	17.4
Not sure	0.0	1.6	17.8	5.7	8.1
Not going	5.4	2.4	10.2	6.6	6.5
Never consider	1.8	2.4	10.8	8.2	6.8
	(56)	(124)	(157)	(122)	(459)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.17 Opportunity to Go Abroad during Recession (%) (H34)

Opportunity/Country	Japan	Taiwan	Malaysia	Singapore	Total
Very easy	5.3	0.8	5.1	2.5	3.3
Easy	5.3	11.3	12.1	4.9	9.1
Not sure	10.5	10.5	11.5	13.9	11.7
Can find some chance	33.3	25.8	24.8	16.4	23.9
Very difficult	45.6	51.6	46.5	62.3	52.0
	(57)	(124)	(157)	(122)	(460)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.18 Attitude toward Income after Return (%) (H15)

Income/Country	Japan	Taiwan	Malaysia	Singapore	Total
Much decrease	7.0	12.2	3.8	3.3	6.3
Decrease	21.1	20.3	15.3	14.8	17.2
Same	22.8	34.1	19.7	35.2	28.1
Increase	40.4	29.3	52.2	43.4	42.3
Much increase	8.8	4.1	8.9	3.3	6.1
	(57)	(123)	(157)	(122)	(459)

Total	100.0	100.0	100.0	100.0	100.0
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Table 3.19 Income after Return (H10)

Income/Countries (baht)	Japan	Taiwan	Malaysia	Singapore	Total
Less than 1,500	30.0	29.1	12.0	29.1	24.7
1,501 – 3,000	25.0	45.3	53.3	37.2	42.2
3,001 – 5,000	10.0	10.5	14.7	15.1	12.9
5,001 – 10,000	20.0	7.0	12.0	9.3	10.8
More than 10,000	15.0	8.1	6.7	9.3	9.1
	(40)	(86)	(75)	(86)	(287)
Total	100.0	100.0	100.0	100.0	100.0

Table 3.20 Comparative Income before and after Return (%)

Income (baht)	Before	After
Less than 1,500	23.1	25.0
1,501 – 3,000	46.9	42.1
3,001 – 5,000	16.8	12.8
5,001 – 10,000	9.7	10.8
More than 10,000	3.4	9.0
	(381)	(287)
Total	100.0	100.0

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The Costs and Benefits of Migration

Chula Manusphaibool

I. Introduction

The migration pattern in Thailand has shifted from intra-regional to inter-regional pattern, especially from the Northeastern region to the Central region. An analysis done by the Thailand Development Research Institute, (TDRI, 1986), showed that in 1960, only 42 % of all inter-provincial migrants had moved between regions, whereas 58 % migrated within regions. Between 1965 and 1970, the percentage of migration between regions had increased to 46 %. This changing trend continued to 1980 when it was revealed that there was more inter-regional than intra-regional migration.

However, during the period between 1970 and 1990, international migration in Thailand had become increasingly important, when many countries in the Middle East had great demand for foreign workers from developing countries such as Thailand, the Philippines, and so on. During 1990's there was decreasing demand for Thai workers among the Middle East countries, while the so called Newly Industrialized Countries (NICs) like Singapore and Taiwan have had higher demand for foreign workers due to economic restructuring and socio-demographic transition. International migration from Thailand then shifted towards the East and Southeast Asia (Manning and Tsay, 1998; Hugo, 1998; Tsay, 1999).

This paper attempts to analyze costs and benefits of migration from the empirical data gathered from a field survey interviewing 461 Thai workers who had worked in any of the four destination countries, namely Japan, Malaysia, Singapore or Taiwan during the past decade. A team survey at the Asian Research Center for Migration conducted the research in 1999.

II. Theoretical and Conceptual Framework

2.1 Migration Theory

Every stream of migration is considered by both economists and demographers to be a response of the human organism to economic, demographic and social forces in the environment of both origin and destination areas. People tend to migrate when they expect higher economic and social opportunities at the destination than in the original places.

There are various approaches or models to explain the migration decision: the three well-known models are the General Theory of Migration, the Gravity Model and the Neoclassical Model.

2.1.1 General Theory of Migration

The first empirical generalizations or so called "Laws" of migration were developed by Ravenstein (1885; 1889). The laws of migration could be summarized in the form of five basic propositions:

- 1) The rate of migration between two points will be inversely related to the distance between these two locations.
- 2) People tend to move by stages, that is, they tend to move first toward nearby towns (intra-provincial) and eventually towards the most rapid growing cities, i.e. inter-regional and international migrations in that order.
- 3) For every stream of migration, there will always be a counter-stream of reverse migration, so that the "net" is always less than "gross" migration between these two points.
- 4) The natives of towns have a lower propensity to migrate than those people in the rural parts of the country.
- 5) The economic motive is always predominant among the factors influencing the decision to migrate.

Lee (1966) developed a useful schematic diagram to explain the determinant factors which influence the decision to migrate and the migration process. He also introduced the uncertainty, expectations and risks as important elements in the migration process.

2.1.2 The Gravity Model

The Gravity Model approach to explain the migration process is derived from a probability point of view, resembling physical gravitation (Isard, 1960). Generally, this model can be regarded as the first formal model to interpret migration behavior. It is utilized to present a cross-sectional picture of the

micro-level interaction relationship among the regions that are theoretically stationary with respect to time, space and direction. These stationary assumptions exist because the migration gravity model is derived from the law of physical gravitation in which time, space and direction can be controlled. (Miller, 1972)

2.1.3 The Neoclassical Model

The final approaching model to explain the decision to migrate is the Neoclassical Model. Migration in the Neoclassical General Equilibrium Theory is based on the wage differential between origin and destination places. It says that labor will migrate from the low wage to the high wage region until real wages are equalized, with the assumption of a comparative static framework, homogeneous labor, constant returns to scale, zero migration costs and perfect competitive labor market.

However, due to the restricting assumptions in the real world, some empirical studies have modified versions of the theory, drawing upon additional variables to correct for the distortion of perfect competition, retaining wage differential as the key determinant and relying on the labor market adjustment.

A modified version of the Neoclassical General Equilibrium and the new economic theory of migration (Stark 1991) might be a suitable alternative approach in accounting for the migration of Thai workers. In this perspective, the decision unit of migration is the household. Household members collaborate by sending familial members out as a means of minimizing household risks and loosening market constraints. In sharp contrast to the cost-benefit calculation of human capital theory, the new economics of migration theory views migrations as triggered by the household feelings of relative deprivation (Tsay and Lin, 1999).

Apart from the household decision, a study of Harro and Todaro (1970) also postulated that a person tends to migrate if his/her expected gain in income from the move is greater than his /her expected costs of migration. This model tends to be a decision criterion for a person to migrate. A person's age, however, also affects the present value of the expected benefit because the older a person is, the fewer the years before retirement. Furthermore, age also influences costs of moving. Older people usually have greater costs than younger ones because of larger families and a greater accumulation of assets in the origin place. Besides, opportunity costs of the older tend to be greater than the younger. The distance of the move is also a determinant factor of migration because of greater uncertainty associated with longer distance from the origin. The farther a place is away from home, the greater is the lack of knowledge of job opportunities. Traveling cost of a return visit and the volume of return trips that could be made might affect the migration decision.

In summary, Todaro's basic migration model mentions four essential features as follows:

- 1) Migration is stimulated primarily by rational economic consideration of relative costs and benefits, not only in financial but also in psychological terms.
- 2) The decision to migrate depends on "expected" rather than "actual" real wage differential, where the "expected" differential is determined by the interaction of two variables, the actual wage differential and the probability of successfully obtaining employment in the modern sector.
- 3) The probability of obtaining a job is inversely related to the destination unemployment rate.
- 4) Migration rates in excess of job opportunity growth rates are not only possible but also rational and probable in the face of continued positive expected income differentials.

However, a systematic view of the decision to migrate as an investment was given by Sjaastad (1962). According to Sjaastad, if the present value of all future monetary returns (benefits) from moving exceed the monetary costs of migration for an individual, then it is rational for that person to migrate.

He defines the private costs into two terms, namely monetary and non-monetary costs. The former is defined as the increase in expenditure for food, lodging and transportation incurred due to migration. The latter costs include the opportunity costs or earnings foregone while traveling, searching for, learning and "psychic cost" involved in leaving a familiar environment, family, relatives and friends, and adapting to a new environment.

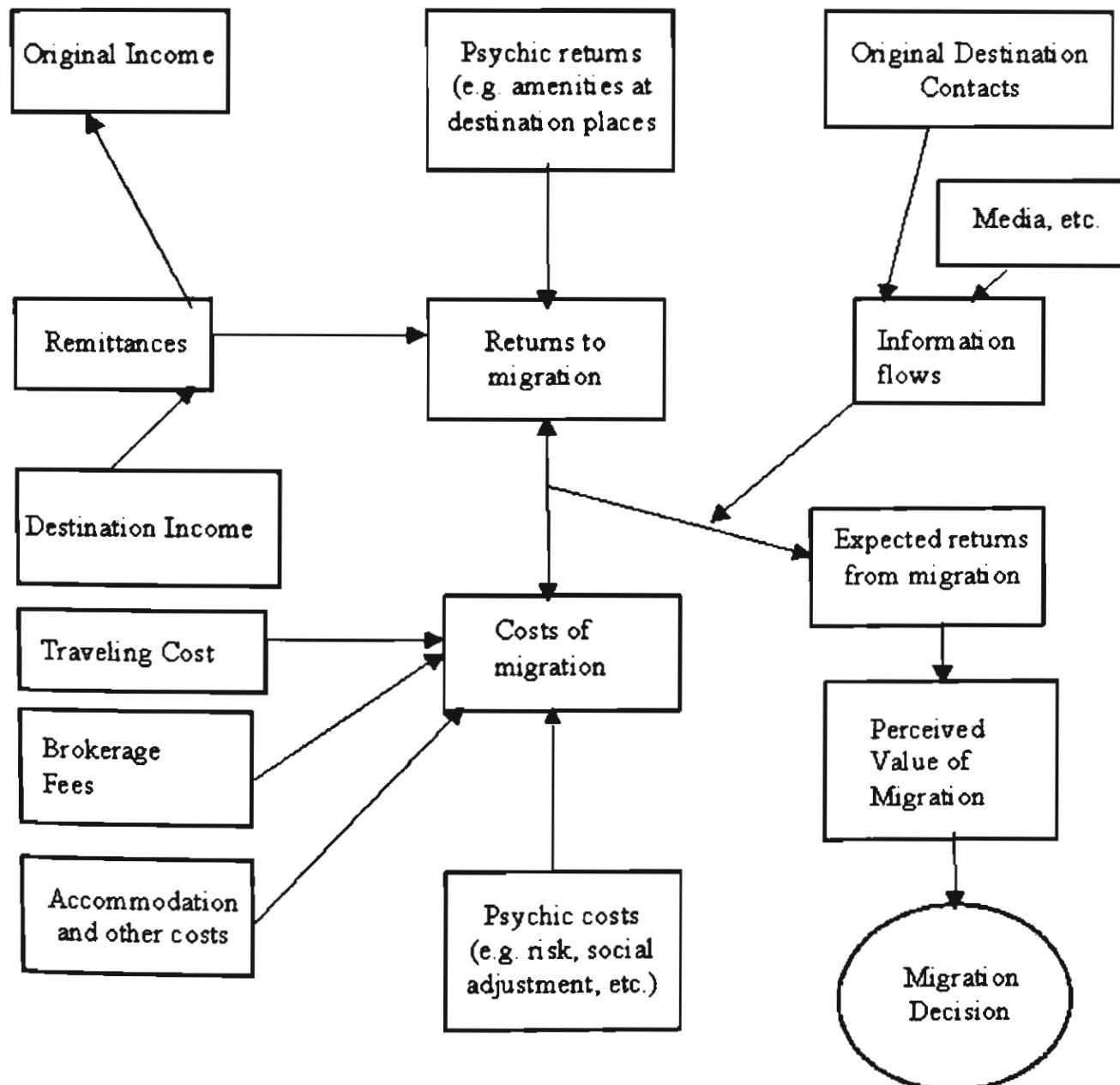
The private returns consist of the positive or negative returns or increments to the earning stream obtained through migration, price changes and the changes in the costs of employment. Non-monetary

returns would depend on whether the migrant's preference for his/her new locality as compared to his/her old, is positive or negative.

Thus, it is appropriate to modify the above-mentioned theoretical models to explain migration decisions of Thai workers and to analyze costs and benefits of their moves.

2.2 Conceptual Framework of the Study

The main focus of this study is on the comparison between private costs incurred because of migration and private returns (benefits) or the real earning stream obtained through migration. The conceptual framework of this research is presented in the following diagram:



III. Costs of Migration

The estimated costs of migration are based on data from responses of the respondents in the field survey conducted in 1999. This study classified costs of migration into two major categories, i.e. average fixed cost of migration process and average variable cost at the destination countries.

3.1 Fixed Cost of Migration

Almost all the Thai migrant workers responded that they had to pay for certain fixed costs to migrate. The predominant costs are presented in an equation form as:

C_{fl} = Traveling cost from origin to destination countries

C₁₂ = Accommodation on arriving at the destination countries

C₈ = Expenses to obtain Visa

C_{f4} = Brokerage Fees paid to placement agencies

C₅ = Other expenses, i.e. skill test, medical check-up, etc.

An analysis of the empirical data demonstrates that Thai migrant workers to Japan pay the highest amount of fixed cost which accounted for an average of 221,109 baht per person, while those who migrated to Taiwan, Singapore and Malaysia paid at the average amount of 142,281 baht, 111,285 baht and 26,529 baht, respectively (Table 1).

Table 1. Average Fixed Costs of Migration

Destination/ Average Costs	Unit: baht			
	Japan	Taiwan	Malaysia	Singapore
Traveling (C ₁₁)	32,292	41,938	727	26,833
Accommodation (C ₁₂)	2,600	22,500	814	4,300
Visa (C ₁₃)	11,217	10,178	1,088	10,337
Brokerage (C ₁₄)	175,000	65,765	23,100	68,615
Others (C ₁₅)	-	1,900	800	1,200
Total ($\sum_{i=1}^n C_{vi}$)	221,109	142,281	26,529	111,285

Table 1 shows that brokerage fee is the greatest burden for Thai workers who are seeking employment in other countries. In practice, they can pay either a lump-sum amount or by installment arranged by the placement agencies. Hence, about 38.8% of the respondents had been in debt due to this high fixed cost for migration process. Traveling cost is also significant for those who migrate to Japan, Taiwan and Singapore. However, the finding reveals that other expenses, e.g. skill testing and medical check-up fee, do not contribute much to the total cost. The main reason could be that placement agencies might absorb such expenses in their brokerage fee.

3.2 Average Costs at the Destination Countries

Expenses incurred by Thai migrant workers during living in the destination countries are also estimated in this study. They are calculated on a monthly basis. The equation form of average monthly expenditures is presented in the following:

$$\sum C_v = C_{v1} + C_{v2} + C_{v3} + C_{v4} + C_{v5} + \dots \dots \quad (2)$$

where:

- C_{v1} = expenditure for food
- C_{v2} = transportation cost
- C_{v3} = recreation and leisure expenses
- C_{v4} = communication cost, e.g. post, telephone, etc.
- C_{v5} = rent paid for accommodation

The estimated average expenditure per month of Thai migrant workers at the destination varied from country to country. This may be due to differences in the cost of living in each country.

Table 2 shows that those who lived in Japan paid the highest average expenses per month which amounted to 28,645 baht or 343,740 baht per annum, while those who lived in Taiwan, Singapore and Malaysia spent the amounts of 11,428 baht per month or 137,136 baht per annum, 7,222 baht per month or 86,664 baht per annum, and 6,526 baht or 778,312 baht per annum, respectively.

Table 2. Average Expenditure at the Destination Countries

Unit: baht

Destination/Exp. Item	Japan	Taiwan	Malaysia	Singapore
Food (C _{v1})	7,920	2,063	2,139	2,379
Transportation (C _{v2})	4,693	1,123	892	2,431
Recreation/Leisure (C _{v3})	7,795	2,693	1,491	1,800
Communication (C _{v4})(Post, Telephone)	3,773	3,219	822	621
Rent (C _{v5})	4,464	2,330	1,182	-
Average Cost/Month ($\sum_{i=1}^n C_{vi}$ /Month)	28,645	11,428	6,526	7,222
Average Cost/Annum ($\sum_{i=1}^n C_{vi}$ /Annum)	343,740	137,136	78,312	86,664

IV. Returns to Migration

As mentioned in the conceptual framework, the migration decision either by individuals or by household unit is predominantly economic rationale. An empirical analysis finds that Thai migrant workers have perception value of the rate of returns (benefits) to migration. The returns are classified into two categories, namely monetary benefits and fringe benefits.

4.1 Monetary Benefits

The analysis of rate of returns to migration is based on only money benefits that Thai migrant workers gain from their employment. The stream of returns is calculated from the following equation:

where:

b₁ = regular wage per month

b₂ = overtime per month

According to the respondents, the average regular wage per month of Thai workers who worked in Japan was the highest which amounted to 39,840 baht. An average overtime payment was around 11,704 baht per month. Thus, average total annual income of Thai workers in Japan was approximately 618,636 baht. The second highest annual income was earned by those who worked in Taiwan, and amounted to 259,188 baht per annum. It was followed by Singapore and Malaysia where the average annual income earned by the workers was about 113,076 baht and 94,080 baht, respectively (Table 3).

Table 3. Average Returns to Thai Migrant Workers**Unit: baht**

Destination/ Average Returns	Japan	Taiwan	Malaysia	Singapore
Regular wage/month	39,849	14,635	7,840	9,423
Overtime/month	11,704	6,964	1,504	3,312
Average Income/Month	51,553	21,599	9,344	12,735
$\sum_{i=1}^n B_{vi}/Month$				
Average Income/Annum	618,636	259,188	112,128	152,820
$\sum_{i=1}^n B_{vi}/Annum$				

4.2 Fringe Benefits

Apart from monetary benefits, Thai migrant workers were entitled to other fringe benefits from their employers in the destination countries. Major benefits mentioned by Thai migrant workers are demonstrated in an equation form as:

$$\sum B_f = b_{f1} + b_{f2} + b_{f3} \dots \dots \dots (4)$$

where:

b_{f1} = insurance coverage per claim

b_{f2} = accident coverage

b_{f3} = death claim

The provision of these fringe benefits is for job security. The analysis of costs and benefits of migration did not impose these benefits into the monetary benefits. The amounts of fringe benefits are revealed in Table 4.

Table 4. Fringe Benefits to Thai Migrant Workers**Unit: baht**

Destination/ Benefit types	Japan	Taiwan	Malaysia	Singapore
Insurance coverage/claim(b_{f1})	13,000	8,530	1,740	1,708
Accidental coverage(b_{f2})	352,450	234,082	4,833	281,928
Death claim (b_{f3})	245,000	553,462	20,000	352,610
$\sum_{i=1}^n B_{fi}$	610,450	796,074	26,573	636,246

V. Comparative Costs and Benefits of Migration

Due to the cross-sectional data collected from the field survey, an analysis of costs and benefits in terms of present value will be made according to certain given assumptions. This section is mainly focused on a comparison of average cost of migration and average benefit or income per annum of Thai migrant workers.

Migrant workers tend to migrate when benefits exceed costs of migration:

$$\text{Or } \sum_{i=1}^n B_{mi} > \sum_{i=1}^n C_{vi}$$

Table 5 shows the comparative average costs and benefits of migration. It seems that average earnings of Thai migrant workers exceed average costs in every destination country.

Table 5. Comparative Average Costs and Benefits

Destination/ Benefit and Costs	Japan	Taiwan	Malaysia	Singapore	Unit: baht
Average Income/Annum ($\sum B_{mi}$)	618,636	259,188	112,128	152,820	
Average Cost/Annum($\sum C_{vi}$)	343,740	137,136	78,312	86,664	
$\sum_{i=1}^n B_{mi} > \sum_{i=1}^n C_{vi}$	274,896	122,052	33,816	66,156	
Average fixed cost ($\sum_{i=1}^n C_{fi}$)	221,109	142,281	26,529	111,285	
Net Returns to Migration	53,787	(20,229)	7,287	(45,129)	

However, when taking average fixed costs ($\sum C_{fi}$) into account, Thai migrant workers in Japan and Malaysia were better off since their annual benefits exceeded their fixed cost for migration process. The worst were those who were employed in Singapore and Taiwan and their net returns were much less than their annual incomes. They had to cover up by extending their work contracts or do overtime (OT) work in such countries.

VI. Benefit-Cost Analysis

This analysis is based on the streams of benefits and costs of migration in five years. The calculation of both streams is formulated under the following assumptions:

1. The annual incremental of average benefit and costs is allowed for at 10 % in every single year. This analysis excludes fringe benefits and benefits from remittances.
2. Average fixed cost occurred in the first year only.
3. Income foregone or opportunity cost of each migrant is averaged at 3,717 baht per month or 44,604 baht per annum. This figure was derived from the interviewing in the field survey and is assumed to

increase at the rate of 10 % per annum. The same amount of income foregone is imposed to the average costs of migration to every destination country.

4. The discount rates of 8 % and 12 % are postulated in this analysis.
5. Net present value (NPV) and benefit-cost ratios are calculated so that the migration decision could be set on the grounds of these ratios. Generally, the possibility to migrate would be greater when the benefit-cost ratio is greater than 1 or NPV is positive. On the contrary, workers may be reluctant to move when the ratio is less than 1 or NPV is negative.

6.1 Benefit-Cost Ratios of Migration to Japan

According to the above-mentioned assumptions, the B/C ratio of migration to Japan is 1.44 when discount rate is 8% and the ratio would be 1.24 when the discount rate is 12 %. All the expenses could be covered if each migrant stayed in Japan for 3 years (Table 6).

Table 6. Benefit-Cost Ratios of Migration to Japan

	Year 1	Year 2	Year 3	Year 4	Year 5	$\sum B_i, \sum C$
Average Income	618,636.00	680,499.60	748,549.56	823,404.52	905,744.97	3,776,834.65
PVB (8%)	572,856.94	583,188.16	594,348.35	605,202.32	615,906.58	2,971,502.35
PVB (12%)	552,441.95	542,358.18	532,967.29	523,685.27	513,557.40	2,665,010.09
Average Cost	343,740.00	378,114.00	415,925.40	457,517.94	503,269.73	2,098,567.07
Average Fixed Cost	221,109.00	0.00	0.00	0.00	0.00	221,109.00
Income Foregone	44,604.00	49,064.40	53,970.40	59,367.92	65,304.72	272,311.88
PVC (8%)	564,353.48	366,091.80	373,097.61	379,911.11	386,630.63	2,070,084.72
PVC (12%)	544,241.53	340,461.18	334,566.12	328,739.41	322,381.71	1,870,389.95
NPV (8%)	8,503.46	217,096.27	221,250.74	225,291.21	229,275.95	1,348,268.28
NPV (12%)	8,200.42	201,897.00	198,401.16	194,945.86	191,175.68	2,142,888.40
B/C Ratio (8%)						1.44
B/C Ratio (12%)						1.24

6.2 Benefit-Cost Ratios of Migration to Taiwan

Although the first year average variable costs and average fixed cost for Taiwan are considered relatively high, if each migrant in Taiwan is able to extend his or her stay for the period of 5 years, the benefit-cost ratios would be 1.24 and 1.23 for the discount rates of 8% and 12% respectively. Therefore, net present value (NPV) or benefit over cost is positive so that migrants may consider migrating to Taiwan and staying for 5 years.

Table 7. Benefit-Cost Ratios of Migration to Taiwan

	Year 1	Year 2	Year 3	Year 4	Year 5	$\sum B_i, \sum C$
Average Income	259,188.00	285,106.80	313,617.48	344,979.23	379,477.15	1,582,368.66
PVB (8%)	240,008.09	244,336.53	249,012.28	253,559.73	258,044.46	1,244,961.09
PVB (12%)	231,454.88	227,230.12	223,295.65	219,406.79	215,163.54	1,116,550.98
Average Cost	137,136.00	150,849.60	165,934.56	182,528.02	200,780.82	636,448.48
Average Fixed Cost	142,281.00	0.00	0.00	0.00	0.00	142,281.00
Income Foregone	44,604.00	49,064.40	53,970.84	59,367.92	65,304.72	272,311.88
PVC (8%)	300,043.45	171,326.30	174,604.89	177,793.52	180,938.16	1,004,706.32
PVC (12%)	289,350.75	159,331.46	156,572.64	153,845.82	150,870.50	909,971.17
NPV (8%)	-60,035.36	73,010.23	74,407.39	75,766.22	77,106.30	240,254.78
NPV (12%)	-57,895.87	67,898.66	66,723.00	65,560.97	64,293.05	206,579.81
B/C Ratio (8%)						1.24
B/C Ratio (12%)						1.23

6.3 Benefit-Cost Ratios of Migration to Malaysia

Taking income foregone into account, benefit-cost ratios of migrants who migrate to Malaysia should be the worst. The ratios were 0.88 and 0.87 for the discount rates of 8 % and 12 %, respectively. Migrant workers should consider finding jobs in Thailand rather than migrating to Malaysia. However, the decision to move may not depend on financial or economic grounds but may be based on job opportunity and information as well.

Table 8. Benefit-Cost Ratios of Migration to Malaysia

	Year 1	Year 2	Year 3	Year 4	Year 5	$\sum B_i, \sum C_i$
Average Income	112,128.00	123,340.80	135,674.88	149,242.37	164,166.60	684,552.65
PVB (8%)	103,830.53	105,703.07	107,725.85	109,693.14	111,633.29	538,585.88
PVB (12%)	100,130.30	98,302.62	96,600.51	94,918.15	93,082.46	483,034.04
Average Cost	78,312.00	86,143.20	94,757.52	104,233.27	114,656.60	478,102.59
Average Fixed Cost	26,529.00	0.00	0.00	0.00	0.00	26,529.00
Income Foregone	44,604.00	49,064.40	53,970.84	59,367.92	65,304.72	272,311.88
PVC (8%)	138,386.07	115,872.91	118,090.32	120,246.88	122,373.69	614,969.87
PVC (12%)	133,454.39	107,760.46	105,894.59	104,050.36	102,038.07	553,197.87
NPV (8%)	-34,555.54	-10,169.85	-10,364.46	-10,553.74	-10,740.40	-76,383.99
NPV (12%)	-33,324.08	-9,457.84	-9,294.08	-9,132.21	-8,955.60	-70,163.73
B/C Ratio (8%)						0.88
B/C Ratio (12%)						0.87

6.4 Benefit-Cost Ratios of Migration to Singapore

In the case of Singapore, the benefit and cost ratio was equal to 1 when employing a discount rate of 8 %. The ratio is less than one for the discount rate of 12 %. Therefore migrant workers would not be any better off to work in Singapore. Meanwhile, when considering benefits and costs at the rate of 12 %, migrant workers in Singapore were most likely worse-off.

Table 9: Benefit-Cost Ratio of Migration to Singapore

	Year 1	Year 2	Year 3	Year 4	Year 5	$\sum B_i, \sum C$
Average Income	152,820.00	168,102.00	184,912.20	203,403.42	223,743.76	932,981.38
PVB (8%)	141,511.32	144,063.41	146,820.29	149,501.41	152,145.76	734,042.29
PVB (12%)	136,468.26	133,977.29	131,657.49	129,364.58	126,862.71	658,330.33
Average Cost	86,664.00	95,330.40	104,863.44	115,349.78	126,884.76	529,092.38
Average Fixed Cost	111,285.00	0.00	0.00	0.00	0.00	111,285.00
Income Foregone	44,604.00	49,064.40	53,970.84	59,367.92	65,304.72	272,311.88
PVC (8%)	224,604.08	123,746.34	126,114.42	128,417.52	130,688.85	733,571.21
PVC (12%)	216,599.83	115,082.66	113,090.01	111,120.46	108,971.43	664,864.39
NPV (8%)	-83,092.76	20,317.07	20,705.87	21,084.00	21,456.91	471.08
NPV (12%)	-80,131.57	18,894.64	18,567.48	18,244.11	17,891.28	-6,534.06
B/C Ratio (8%)						1.00
B/C Ratio (12%)						0.99

VII. Social Benefits

Almost all Thai migrants in the sample size claimed that they sent remittances home through remittance agents, usually on a monthly basis. Such remittances might be considered in term of social benefits since the country gains from foreign exchange earnings.

The remittances were utilized, in order of priority, for paying off the family's debt, daily expenses and household possessions. Table 6 shows the remittances were spent for various household possessions, such as land and houses, vehicles like motorcycles, trucks, farm trucks and cars. Many used the remittance money for TVs, refrigerators, electrical appliances and other goods.

The highest amount of remittance was from Thai migrant workers in Japan, which amounted to 1,690,310 baht, followed by Thai migrant workers in Taiwan, Singapore and Malaysia, who remitted sums of 884,267 baht, 725,288 baht and 149,479 baht, respectively.

Table 10. Remittances Classified by Household Possessions

Destination/ Household Possessions	Unit: baht			
	Japan	Taiwan	Malaysia	Singapore
Land (R ₁)	239,786	236,783	10,000	221,500
House (R ₂)	329,091	235,855	73,333	134,828
Motorcycle (R ₃)	53,946	33,639	27,619	41,458
Truck (R ₄)	324,888	277,000	-	185,000
Farm Truck (R ₅)	318,166	46,500	-	63,750
Car (R ₆)	337,500	-	6,000	31,000
TV (R ₇)	27,156	11,869	8,688	12,759
Refrigerator (R ₈)	10,656	12,283	8,222	10,107
Electrical appliances (R ₉)	26,262	12,488	5,367	12,219
Other goods (R ₁₀)	22,859	17,850	10,250	12,667
Total ($\sum_{i=1}^n R_i$)	1,690,310	884,267	149,479	725,288

VIII. Concluding Remarks

The findings from this study have reflected a certain picture of costs and benefits of migration. Theoretically, the wage differential between origin and destination is the key factor that determines the migration decision of individual and household. Practically, a comparison of benefits and costs of migration is more important to justify the movement from one country to another country.

An empirical result showed that net benefits of Thai migrant workers were positive for those who migrated to Japan and Malaysia with the net return amounting to 53,787 baht per annum and 7,287 baht per annum, respectively. Those who migrated to Taiwan and Singapore had costs exceeding benefits at the amounts of 20,229 and 45,129 baht per annum, respectively. The net loss was due to high fixed costs especially brokerage fee paid for placement agencies. Therefore, the longer the work contract is, the more benefits workers will gain from their employment. Apart from this, there are fringe benefits other than wages which make the employment more secure in the destination countries. Generally speaking, most Thai workers in East and Southeast Asia countries were satisfied with their migration outcomes.

This study also considered income foregone as opportunity costs in the calculation of benefit-cost ratios. When taking the discount rates of 8 % and 12 % into the analysis, benefit-cost ratios of migrants in Malaysia were the worst among the four nations. However, a longitudinal survey is suggested for further study so that an analysis of costs / benefits can be made correctly and the present value can be calculated more accurately.

Appendix

1. Costs of Migration

Payment for Medical check up					
Destination Countries	N	Minimum	Maximum	Mean	Median
Taiwan	22	300	2,000	1,463.64	1,500.0
Malaysia	1	800	800	800.00	800.0
Singapore	6	600	2000	1,216.67	1,200.0
Total	29	300	2,000	1,389.66	1,500.0

2. Returns of Migration

Regular wage per month					
Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	45	7,890	105,450	39,848.71	40,000.00
Taiwan	108	3,900	25,000	14,635.11	15,000.00
Malaysia	81	1,000	45,000	7,840.12	6,000.00
Singapore	94	480	20,000	9,423.02	9,010.00
Total	328	480	105,450	14,922.55	12,000.00

Payment for overtime					
Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	33	1,000	39,520	11,703.94	10,000.00
Taiwan	100	280	37,880	6,964.10	5,420.00
Malaysia	16	100	3,600	1,504.38	1,100.00
Singapore	79	70	11,500	3,311.72	2,640.00
Total	228	70	39,520	6,001.47	4,010.00

Higher, how much more					
Destination countries	N	Minimum	Maximum	Mean	Median
Japan	42	100	270,000	41,543.62	38,500.00
Taiwan	102	600	280,000	21,984.61	18,260.00
Malaysia	111	300	29,000	5,556.49	3,500.00
Singapore	82	210	100,000	11,076.34	10,000.00
Total	337	100	280,000	16,356.95	10,000.00

If yes, what's the maximum coverage that you can claim?					
Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	2	6,000	20,000	13,000.00	13,000.00
Taiwan	12	100	50,000	8,530.83	1,120.00
Malaysia	5	200	4,000	1,740.00	2,000.00
Singapore	6	300	5,720	1,708.33	1,115.00
Total	25	100	50,000	5,892.80	1,240.00

If yes, how much would you receive in case of an accident?

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	4	20.000	739.800	352.450.00	325.000.00
Taiwan	21	12.340	965.000	234.081.90	150.000.00
Malaysia	3	500	12.000	4.833.33	2.000.00
Singapore	18	22.200	1.200.000	281.927.78	200.000.00
Total	46	500	1,200,000	248,146.09	150,000.00

How much would your family receive in case of death?

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	4	2.000	620.000	245.000.00	179.000.00
Taiwan	26	12.340	2.000.000	533.462.31	350.000.00
Malaysia	2	10.000	30.000	20.000.00	20.000.00
Singapore	20	22.200	1.200.000	352.610.00	200.000.00
Total	52	2,000	2,000,000	421.965.77	248,160.00

3. Remittances Information Data

Remittance of Land (Land Prices)

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	28	30.000	2.000.000	239.785.71	145.000.00
Taiwan	23	4.000	3.200.000	236.782.61	60.000.00
Malaysia	1	10.000	10.000	10.000.00	10.000.00
Singapore	8	7.000	1.000.000	221.500.00	140.000.00
Total	60	4,000	3,200,000	232,366.67	103,500.00

Total Land

Place of Residence in Thailand	N	Minimum	Maximum	Mean	Median
Udon Thani	97	1	107	18.79	14.00
Nakhonratchasima	60	1	100	20.50	20.00
Chiang Rai	57	1	36	11.96	10.00
Phayao	4	1	25	9.00	5.00
Pattani	23	1	33	2.87	1.00
Satun	33	1	33	6.48	4.00
Petchaburi	1	1	1	1.00	1.00
Total	275	1	107	14.73	10.00

Place of Residence in Thailand and House Price Cross tabulation

Place of Residence in Thailand	House Price			Total
	50,000 and less	50,001 - 100,000	More than 100,000	
Udon Thani	11	12	19	42
	50.0%	57.1%	70.4%	60.0%
Nakhonratchasima	--	2	2	4
	--	9.5%	7.4%	5.7%
Chiang Rai	3	3	3	9
	13.6%	14.3%	11.1%	12.9%
Phayao	1	--	--	1
	4.5%	--	--	1.4%
Pattani	4	2	2	8
	18.2%	9.5%	7.4%	11.4%
Satun	3	2	1	6
	13.6%	9.5%	3.7%	8.6%
Total	22	21	27	70
	100.0%	100.0%	100.0%	100.0%

Motorcycle Price

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	9	10,000	33,000	22,000.00	20,000.00
Taiwan	30	3,000	68,000	26,716.67	30,000.00
Malaysia	18	500	50,000	28,472.22	31,000.00
Singapore	10	3,200	88,000	34,020.00	29,500.00
Total	67	500	88,000	27,644.78	30,000.00

Place of Residence in Thailand and Motorcycle Price Remittances Cross tabulation

Place of Residence in Thailand	Motorcycle Price Remittances				Total
	20,000 and less	20,001 - 30,000	30,001 - 40,000	More than 40,000	
Udon Thani	14	10	11	12	47
	40.0%	20.8%	32.4%	42.9%	32.4%
Nakhonratchasima	6	8	5	7	26
	17.1%	16.7%	14.7%	25.0%	17.9%
Chiang Rai	4	19	15	6	44
	11.4%	39.6%	44.1%	21.4%	30.3%
Phayao	--	4	2	--	6
	--	8.3%	5.9%	--	4.1%
Pattani	4	2	--	1	7
	11.4%	4.2%	--	3.6%	4.8%
Satun	7	4	1	2	14
	20.0%	8.3%	2.9%	7.1%	9.7%
Petchaburi	--	1	--	--	1
	--	2.1%	--	--	.7%
Total	35	48	34	28	145
	100.0%	100.0%	100.0%	100.0%	100.0%

Motorcycle Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	28	30,000	400,000	53,946.43	35,250.00
Taiwan	48	2,000	90,000	33,639.58	30,000.00
Malaysia	21	2,000	68,000	27,619.05	20,000.00
Singapore	48	1,500	500,000	41,458.33	30,000.00
Total	145	1,500	500,000	39,277.24	30,000.00

Truck Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	18	120,000	700,000	324,888.89	300,000.00
Taiwan	10	80,000	600,000	277,000.00	215,000.00
Singapore	2	120,000	250,000	185,000.00	185,000.00
Total	30	80,000	700,000	299,600.00	280,000.00

Place of Residence in Thailand and Farm Truck Price Remittances Cross tabulation

Place of Residence in Thailand	Farm Truck Price Remittances		Total
	50,000 and less	More than 50,000	
Udon Thani	8 72.7%	3 33.3%	11 55.0%
Nakhonratchasima	1 9.1%	1 11.1%	2 10.0%
Chiang Rai	2 18.2%	4 44.4%	6 30.0%
Phayao	-- --	1 11.1%	1 5.0%
Total	11 100.0%	9 100.0%	20 100.0%

Farm Truck Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	6	39,000	800,000	318,166.67	265,000.00
Taiwan	10	20,000	80,000	46,500.00	49,000.00
Singapore	4	20,000	100,000	63,750.00	67,500.00
Total	20	20,000	800,000	131,450.00	50,000.00

Car Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	4	150,000	600,000	337,500.00	300,000.00
Malaysia	1	6,000	6,000	6,000.00	6,000.00
Singapore	1	31,000	31,000	31,000.00	31,000.00
Total	6	6,000	600,000	231,166.67	175,000.00

Place of Residence in Thailand and TV Price Remittances Cross tabulation

Place of Residence in Thailand(a3)	TV Price Remittances				Total
	5,000 and less	5,001 - 10,000	10,001 - 20,000	More than 20,000	
Udon Thani	7	19	12	5	43
	35.0%	32.2%	46.2%	41.7%	36.8%
Nakhonratchasima	3	11	3	1	18
	15.0%	18.6%	11.5%	8.3%	15.4%
Chiang Rai	4	20	8	4	36
	20.0%	33.9%	30.8%	33.3%	30.8%
Phayao	--	--	2	1	3
	--	--	7.7%	8.3%	2.6%
Pattani	2	1	--	1	4
	10.0%	1.7%	--	8.3%	3.4%
Satun	4	7	1	--	12
	20.0%	11.9%	3.8%	--	10.3%
Petchaburi	--	1	--	--	1
	--	1.7%	--	--	.9%
Total	20	59	26	12	117
	100.0%	100.0%	100.0%	100.0%	100.0%

TV Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	25	2,000	200,000	27,156.00	12,000.00
Taiwan	42	3,000	40,000	11,869.05	10,000.00
Malaysia	16	3,000	32,000	8,687.50	6,000.00
Singapore	34	3,300	67,000	12,758.82	10,000.00
Total	117	2,000	200,000	14,958.97	10,000.00

Refrigerator Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	16	5,000	50,000	10,656.25	8,000.00
Taiwan	35	800	90,000	12,282.86	8,000.00
Malaysia	9	5,000	10,000	8,222.22	8,000.00
Singapore	28	4,000	70,000	10,107.14	8,000.00
Total	88	800	90,000	10,879.55	8,000.00

Electricity Appliances Prices Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	19	2,000	225,000	26,261.79	11,000.00
Taiwan	26	300	80,000	12,488.46	10,000.00
Malaysia	9	800	15,000	5,366.67	3,000.00
Singapore	16	5,000	55,000	12,218.75	10,000.00
Total	70	300	225,000	15,249.63	10,000.00

Goods Price Remittances

Destination Countries	N	Minimum	Maximum	Mean	Median
Japan	17	3,000	55,000	22,858.82	20,000.00
Taiwan	30	4,500	58,500	17,850.00	11,000.00
Malaysia	4	5,000	18,000	10,250.00	9,000.00
Singapore	6	3,500	30,000	12,666.67	9,250.00
Total	57	3,000	58,500	18,264.91	12,000.00

Laws and International Agreements: Impact on Thai Migrant Workers in Destination Countries

Pornchai Danvivathana

I. Introduction

1.1 Objectives

As the situation of Thai labor migrants is becoming trans-boundary in nature and it is not confined within the domestic arena, it is high time to look into the international regulation, including the protection, of labor force within the context of international law which applies to all states as subjects of international law.¹ This situation is a normal phenomenon, and has created many problems, whether social, political or economic, which go beyond the extent to which a national government can handle. It is thus necessary to examine if international law has a role to play in providing appropriate solutions, or at least mitigation at the international level, which would have an influence on domestic repercussions.

Apparently, Thailand is serving as a sending state of migrants abroad. In the meantime it is serving as a receiving state as it accepts immigrant populations.

On the factual premises, Thai migrant workers are to be regulated by the domestic laws of the destination countries. The same could be said in the case of the foreign work force coming into Thailand, that they have to abide by Thai laws and regulations. In addition, in either case mentioned above, those workers enjoy the protection provided for by international law. This is simply because states, being the destination or sending countries, are subject to observe and recognize international law.

1.2 Scope

This paper is aimed at exploring the relevant laws and international agreements, having impacts on Thai migrant workers, which the major destination countries – Japan, Malaysia, Singapore and Taiwan (Republic of China) – are to comply with. This includes the overview study of several conventions under the auspices of the International Labor Organization (ILO), the so-called ILO conventions, some agreements under the World Trade Organization (WTO) and the principles of customary international law, together with the existing bilateral agreements on labor protection, as the case may be. However, it is appropriate to touch upon the relevant laws in force in the four destination countries, for example, immigration law, labor relations law, and so on, in order to ascertain whether the laws in force are promulgated in compliance with international law and whether international labor standards are properly met.

It is noted that the in-depth study of the domestic laws in the four destination countries will be incorporated in other papers under this project, entitled “Thai Migrant Workers in Southeast and East Asia: The Prospects of Thailand’s Migration Policy in light of the Regional Economic Recession”, and certain points under the laws relevant to this paper will be addressed as appropriate.

It is also noteworthy that the roles of the government agencies responsible for labor protection will be discussed, in order to give a clear picture of labor protection and management, which happen to be two sides of the same coin.

1.3 Assumption

This project perceives, based on literature review and analysis, that labor migration is a normal phenomenon. However, when Thai workers are sent to fill in vacancies abroad, criticisms have come to the forefront, particularly the government agencies concerned, namely the Ministry of Labor and Social Welfare, the Ministry of Foreign Affairs, and so on, that Thai workers have been given bad treatment and, more often than not, have to work below international minimum standards, tantamount to the terms coined in this project as “subhuman.” Such government agencies are called for to deal with the problems

¹Ian Brownlie, “Principles of Public International Law” (New York: Oxford University Press, 1990): 60-66.

in an efficient manner, which in the end, had led to the establishment of the Ministry of Labor and Social Welfare. On the other hand, a large number of foreign migrant workers in Thailand have been reportedly mistreated as well. They have been recruited for difficult, dirty and dangerous jobs, the so-called "3-d jobs" and, as a result, treated in violation of international labor standards.

As illustrated above, this paper wishes to prove the following two hypotheses:

1. That states are legally bound by international law, including the ILO Conventions to which they are party to enact appropriate laws for labor protection. Conversely, the laws in place in the four destination countries and Thailand are to be in accordance with international law;
2. Yet, treatment of laborers may differ from country to country due to strict and harsh enforcement of the laws concerned.

1.4 Methodology

The findings in this paper are subject to documentary research and the personal views of the researchers in the four destination countries.

II. International Law and Agreements on the Protection of Workers

First of all, it is necessary to state that international law in this context covers both international labor law and international human rights. In fact, international labor law and international human rights are inter-related as apparent in the Universal Declaration of Human Rights² which recognizes that everyone has the right to work and to protection against unemployment.³ Moreover, the International Covenant on Economic, Social and Cultural Rights of 1966 reaffirms its significance by prescribing that full and productive employment is guaranteed, while conditions may be set as long as fundamental political and economic freedoms to the individual are safeguarded.⁴

That being so, this paper will elaborate on the legal obligations applying to all states under international law. To that end, this paper will point out what obligations are considered customary international law, which applies economics,⁵ both in the fields of labor and human rights.

2.1 Sources of International Law and Agreements on the Protection of Workers

In general, the sources of international law are described in Article 38 of the Statute of the International Court of Justice,⁶ which provides:

- i. international convention, whether general or particular, establishing rules expressly recognized by the contesting states;
- ii. international custom as evidence of a general practice accepted as law;
- iii. the general principles of law recognized by civilized nations;
- iv. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of "rules of law."

The first source on the list refers to treaties or international agreements as defined by the Vienna Convention on the Law of Treaties of 1969.⁷ The second source is usually known as customary international law which needs "*opinio juris*" or legal convictions as a qualifying element in this respect.⁸

²Adopted by the United Nations General Assembly on December 10, 1948 (herein after referred to as "Universal Declaration")

³Article 23 of the Universal Declaration.

⁴Article 6, paragraph 2. of the Covenant.

⁵Oscar Schachter, "International law in Theory and Practice" (Dordrecht: Martinus Nijhoff Publishers, 1991): 336.

⁶Rosalyn Higgins, "Problem and Process. International law and How We Use It" (Oxford: Oxford University Press, 1994): 336.

⁷Oscar Scharber, in *supra* note 5. p. 12.

⁸Ian Brownlie, in *supra* note 1. p. 16.

The next source on the list is the general principles of law which are regarded as "the principles in terms of rules accepted in the domestic law of all civilized states." Yet, general principles of law could be based on certain fundamental principles as adopted by state practice and thus constitute "general principles of international law," for instance, the principle of consent, domestic jurisdiction, and the freedom of the seas.⁹

According to the provisions of Article 38 (1 c), judicial decisions are treated as "subsidiary means for the determination of rules of law." The problem arises as to whether this proviso would cover decisions of international or national courts, and whether decisions of arbitral tribunals are qualified for inclusion in this category. It is, however, crystal-clear that this type of source of law refers to decisions of international and national courts, as well as awards rendered by arbitral tribunals, as evidenced by judicial precedent where a number of cases of this qualification are cited.¹⁰ Again, the writings of publicists are other subsidiary means for the determination of rules of law. This source of law, though subsidiary, is widely used in the dissenting and separate opinions of the International Court of Justice.¹¹ Needless to say, treaties, which "have a direct influence on the content of the law,"¹² are the very first source for the determination of the rules of law. That being so, the conventions adopted by the ILO would serve as an important and relevant source of law in the field of international labor. However, this study would be incomplete if certain principles and rules of customary international law are not equally emphasized since such principles or rules always prevail unless overridden by other sources of law.

2.2 Specific Multilateral Conventions

Insofar as international labor law is concerned, it is not incorrect to state that the International Labor Organization (ILO) is the longest mandated international body engaging in labor protection.¹³ International labor standards lie within the ILO Conventions and Recommendations.¹⁴

There are altogether nearly 200 Conventions adopted by the ILO Conference, among which there are altogether fundamental conventions endorsing basic principles and rights with respect to international labor standards. These rights and principles have achieved universal support in the international community.¹⁵ The ILO Conference has recently adopted the ILO Declaration on Fundamental Principles and Rights at Work, 1998, with a view to promoting the fundamental principles and rights enshrined in the ILO Constitution and the Declaration of Philadelphia.¹⁶

The seven fundamental Conventions are as follows:

1. Convention No. 29 Forced Labor Convention, 1930.
2. Convention No. 87 Freedom of Association and Protection of the Right to Organize, 1948.
3. Convention No. 98 Right to Organize and Collective bargaining, 1989.
4. Convention No. 100 Equal Remuneration, 1951.
5. Convention No. 105 Abolition of Forced Labor, 1957.
6. Convention No. 111 Discrimination (Employment and Occupation), 1958.
7. Convention No. 138 Minimum Age, 1973.

Details of the above-mentioned Conventions are summarized as follows:¹⁷

1. Convention No. 29 is aimed at suppressing "the use of forced or compulsory labor in all its forms,

⁹Ibid., p. 19.

¹⁰Ibid., p. 19-24.

¹¹Ibid., p. 25.

¹²Ibid., p. 12.

¹³ILO was established by the Treaty of Versailles in 1919 and in 1946 became the first specialized agency of the United Nations ("International Labor Standards," International Labor Organization, 1990, p. 6-9.)

¹⁴Nicolas Valticos, "International Labor Standards and Human Rights: Approaching the Year 2000" 137 (2) International Labor Review (1998): 135.

¹⁵International Labor Conference, 86th Session, ILO document, Geneva, June 1998.

¹⁶See text of the 1998 ILO Declaration, in *supra* note 15.

¹⁷See generally in "Summaries of International Labor Standards," International Labor Organization, Geneva, 1991 (ISBN 92-2-107812-4)

with the exception of five categories of work or compulsory service, namely compulsory military service; certain civic obligations; prison labor; work exacted in cases of emergency; and minor communal services.

2. Convention No. 87 recognizes the right of workers and employers, with no distinction, to establish and join organizations of their own choices for the purpose of extending and defending their respective interests. However, they are to abide by the municipal laws at all times, which in no case may impair the guarantees provided for in the Convention.
3. Convention No. 98 protects workers against refusal to employ them on account of their trade union membership and against dismissal or any prejudice on the same account or by reason of participation in trade union activities.
4. Convention No. 100 governs the States Parties to this Convention to apply the principle of equal remuneration for workers, regardless of sex, for work of equal value. In other words, the convention endorses the concept of "equal pay for equal work." The main crux that is dealt with in the Convention is the objective appraisal of jobs on the basis of the work to be performed.
5. Convention No. 105 prohibits the recourse to forced or compulsory labor in defined cases, namely as a means of political coercion or education or as a punishment for expressing political views; as a method of mobilizing and using labor for purposes of economic development; as a means of labor discipline; as a punishment for participation in strikes; and as a means of racial, social, national or religious discrimination.
6. Convention No. 111 is to promote equality of opportunity and treatment through a national policy orientation with a view to eliminating all forms of discrimination in respect of employment and occupation. Under Article 1 of the Convention, discrimination means any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, having the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. However, it excludes any distinction, exclusion or preference in respect of a particular job based on the inherent requirements.
7. Convention No. 138 aims at the effective abolition of child labor by specifying the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young person, i.e. not less than the age of completion of compulsory schooling (normally not less than 15 years old). The minimum age is set at a high level – not less than 18 years old – for employment likely to jeopardize the health of persons.

Despite being a member state of the ILO,¹⁸ Thailand is treaty-bound by only two of the above Conventions, namely Convention No. 29¹⁹ and Convention No. 100. It is a pity to state that Thailand has adopted quite a slow move to keep pace with other member states of the ILO in terms of commitment to certain basic Conventions adopted by the ILO, especially the basic Conventions where over one hundred states are parties thereto. Nevertheless, Thailand is party to other ILC Conventions, i.e. Convention No. 14: The Application of the Weekly Rest in Industrial Undertakings 1921; Convention No. 19: Equality of Treatment for National and Foreign Workers as Regards Workmen's Compensation for Accidents 1925; Convention No. 116: Final Articles Revision Conventions, 1960; Convention No. 122: Employment Policy 1964; Convention No. 80: The Final Articles Revision, 1946; Convention No. 84: The Organization of the Employment Service, 1948; Convention No. 104: The Abolition of Penal Sanctions for Breaches of Contract of Employment by Indigenous Workers, 1955; Convention No. 123: The Minimum Age for Admission to Employment Underground in Mines, 1965; Convention No. 127: The Maximum Possible Weight to Be Carried by One Worker, 1967. In addition, there are three principal international human rights treaties that Thailand is party to, i.e. the International Convention on Civil and Political Rights (CCPR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CPC). In the process, the International

¹⁸Thailand has become party to the ILO since 1919.

¹⁹Thailand deposited the Instrument of Ratification to these Conventions in 1969 and 1998 respectively.

Convention on Economic, Social and Cultural Rights (CESCR) is under consideration for Thailand's accession in the near future.

In the case of Singapore, Convention No. 29 and Convention No. 98 have entered into force for the country since 1965; Malaysia has become party to Convention No. 29 since 1957, followed by becoming party to Convention No. 98 in 1961, and Convention Nos. 100 and 138 in 1997. Japan seems to be quite progressive as it becomes party to Convention No. 29 in 1932; Convention No. 87 in 1965; Convention 98 in 1953, Convention No. 100 in 1967 and convention No.138 in 2000. According to the latest information, Taiwan is not party to any fundamental ILO convention.

This study observes that sometimes Thailand is quite hesitant to become party to a convention or treaty as the convention or treaty in question could secure very few parties and it is not an easy task to identify whether such obligations contained in the convention or treaty would serve the interest of Thailand insofar as her security, economy or society are concerned. Some conventions or treaties are so complex that many government agencies have to organize several meetings, seminars, even public hearings, to identify the issues addressed by the said conventions or treaties. Again, it would be a major step to proceed in cases where domestic labor standards are to be improved although an implementing legislation is required according to Thai law and practice to comply with the obligations set forth in the conventions or treaties.

At this point, this study deems it appropriate to get acquainted with Thailand's constitutional requirements. Section 224 Paragraph 2, of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) reads: "A treaty which provides for a change in the Thai territories or the jurisdiction of the State or requires the enactment of an Act for its implementation must be approved by the National Assembly."

It is construed that the obligation under a treaty to which Thailand is going to become party needs careful and thorough consideration as to whether they would affect the territory, national jurisdiction, or require an implementing legislation. The difficulties lie within the last requirement, in how to determine what obligations need an implementing legislation. In the meantime, past experience indicates that the first two requirements under the same Article do not give rise to ambiguity or a long debate. Precedent is set in Thai practice that an obligation under a treaty that affects any right of freedom or duty of the Thai people, shall be implemented by law in place. In other words, an administrative measure is not sufficient to carry out such obligation. It happens from time to time that there is no specific law in this respect or even any existing law that is relevant to the same subject matter. In this regard, an implementing legislation is a necessity.

It is sometimes difficult for the Government to seek approval from the Parliament, as the Parliament may approve or disapprove the agreement in question and the Government may have to decline to reveal some confidential information, which of course is running against the national security. It should be emphasized that the Executive has the sole authority under the Constitution of B.E. 2540 (1997).

The above-mentioned practice has long been recognized since Thailand adheres to the Dualistic Theory which regards that international law cannot override domestic law or vice versa. The rights and obligations arising under international law may be recognized before the municipal court, if only such rights and obligations are transformed into municipal law.⁵⁰

Apart from the seven basic Conventions, the ILO has adopted certain Conventions aimed at addressing the issue of social security for foreign and migrant workers, namely Convention on the Equality of Treatment (Accident Compensation) of 1925 (No. 19); Convention on the Maintenance of Migrants' Pension Rights of 1935 (No. 48); Convention on the Migration for Employment of 1949 (No. 97); Convention on the Equality of Treatment (Social Security) of 1962 (No. 118); Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (No. 143); and Convention concerning the simplification of the inspection of emigrants on board ship (No. 21). It should be noted that Convention No. 97 is unique in its application in

⁵⁰Martin Dixon, "Textbook on International Law" (London: Blackstone Press Limited, 1990): 37

the sense that the States Parties thereto undertake to apply the Convention to migrant workers without discrimination and regardless of their nationalities. Under the Convention, migrant workers are entitled to get appropriate medical services. Facilities shall be accorded, as appropriate, to facilitate the departure, journey and reception of the migrant workers. The most significant element of its application is the adoption of a national treatment (NT) clause, whereby immigrants lawfully remaining in the territory of a State Party shall be treated with equal standards as applied to its own nationals in respect of certain matters, e.g. social security, employment tires. Another relevant instrument dedicated to foreign workers is the Social Security (Seafarers) Convention (revised) of 1987 (No. 165). In fact, it does not matter how many international instruments there are to protect foreign workers, but to what extent states are serious to provide such protection. It should be emphasized once again that the above-mentioned conventions are not considered the basic Conventions within the framework of ILO and have received limited parties thereto.

Apart from the basic Conventions, Thailand feels that Thai society is susceptible to the basic human rights. For example, Article 44, paragraph 1, of the Constitution reads: "A person shall enjoy the liberty to assembly peacefully and without arms." These provisions are the gist of Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize. Moreover, all Thai laws apply on the basis of non-discrimination, regardless of sex, age, religions, and so on. An emphasis should be placed on the Labor Protection Act, B.E. 2541 (A.D. 1998) Chapter 3, dealing specifically with the employment of female labor, and Chapter 4 of the same Act referring to the treatment of child labor.²¹

The facts reveal that some employers try to abuse their employees as the lacuna in the relevant laws so permits, for example, employees who are under age may not be hired as forbidden by Thai law, but the employers could easily claim that they are not employed but are trained with rewards. This lacuna is something the authorities concerned may not ignore.

All in all, priority is not given in the case of Thailand to become party to the Conventions adopted by the ILO since there are a lot of issues to overcome.

2.3 Agreements within the Framework of the World Trade Organization (WTO)

The World Trade Organization (WTO), a successor of the General Agreement of Tariffs and Trade (GATT), aims to formulate "a common code of conduct in international trade."²² The functions of WTO as inherited from GATT are to provide the machinery for reducing trade barriers, and for settling trade disputes.²³

Efforts have been made to link labor standards and international trade as evidenced in the failure of the International Trade Organization at Havana in 1947.²⁴ Yet, the United States and the European Union (EU) prefer making a new international trade agreement inclusive of labor standards which is known as a social clause.²⁵ At this juncture, it is to be noted that there are differences on this link. One may understand that the WTO is not an appropriate forum for international labor standards setting because common labor standards are incompatible with the principles of free trade.²⁶ That is to say, the best way to protect workers is to follow the market mechanism in that employers who offer low wages or unsatisfactory employment conditions will lose skilled or experienced workers.²⁷ On the other hand, there is another argument that "optimal social protection requires political negotiation and standard-setting and cannot be left entirely to market forces."²⁸ It portrays that international labor standards have to be discussed within the WTO framework.²⁹

²¹Promulgated in the Government Gazette, Vol. 115, Part 8 Kor, 20 February 1998.

²²D.W. Bowett, "The Law of International Institutions" (London: Stevens and Sons Limited, 1982): 117.

²³Christopher L. Erickson and Daniel J.B. Mitchell, "Labor Standards in International Trade Agreements: The Current Debate" *Labor Law Journal*, December 1996, p. 763.

²⁴Erika de Wet, "Labor Standards in the Globalized Economy: The Inclusion of a Social Clause in the General Agreement on Tariff and Trade/World Trade Organization" 27 *Human Rights Quarterly* (1995): 445.

²⁵*Ibid.*

²⁶*Ibid.*, pp. 446-447.

²⁷*Ibid.*, p. 447.

²⁸*Ibid.*

²⁹*Ibid.*

This study has no intention to determine if the inclusion of the so-called “social clause” in the WTO discussion would serve the purpose of its establishment, or if such inclusion would defeat the object and purpose of GATT in the first place, since the scope of this paper does not permit. It is to be noted, however, that there is small room to interpret that GATT was intended to cover labor standards as one of the trade-related aspects, i.e. Article XX of GATT, since the same Article provides general escape clause for any contracting party to GATT to adopt or enforce measures relating to the products of prison labor.³⁰ This GATT principle has been endorsed and recognized as one of the principles adopted when the WTO was established.³¹

Another view which is worth mentioning as food for thought in the context of “the social clause” is that there were a series of discussion on whether intellectual property, labor and environmental standards resulted in “market disruption” as provided for in the Multi-fiber Agreement (MFA).³² It was, however, concluded that “[t]here was no accusation that the exporting low-wage country was doing anything improper.”³³

With respect to the General Agreement on Trade in Services or GATS, a multilateral framework under the WTO, members are required to adopt measures to facilitate market access, including presence of natural persons, and conditions for their national treatment. However, in its Preamble, the GATS recognizes the rights of members “to regulate, and to introduce new regulations, on the supply of services...to meet national policy objectives and... the particular need of developing countries...” It means that, even though members are to abolish limitations on the total number of natural persons that may be employed in particular service sectors and shall accord national treatment to services or service suppliers of any other member under Articles XVI and XVII, such members are still permitted to apply certain rules and regulations, one of which may include economic needs test as qualifying their national treatment commitments.

Whatever the case may be, the WTO is not competent to handle labor standards, especially when the WTO members have to resort to remedial measures or settlement of disputes according to Article 23 of the GATT/WTO, but the role of the ILO will be called upon in this regard.³⁴

In conclusion, it is not clear cut whether labor standards may be discussed and resolved under the WTO Agreements. It is, indeed, subject to interpretation of the WTO members until a WTO Panel established under the dispute settlement provisions so permits.

2.4 Customary International Law

As international labor standards are embraced in the human rights sphere, the ILO has listed three international labor standards which have been crystallized as essential elements for workers, i.e. freedom of association; freedom from forced labor and freedom from discrimination.³⁵ These three standards are protected under the International Covenant on Civil and Political Rights, 1966. Article 8 of the International Covenant prohibited forced or compulsory labor. Articles 21 and 22 of the International Covenant protect the freedom of association. They guarantee that an organization to look after the interests of workers or employers may be established and that appropriate activities for the protection of their interests may also be carried out without interference from the public authorities. The freedom from discrimination forms another corner stone of the International Covenant as appears in Article 2, paragraph 1. This principle is formulated and seen in several Articles of the International Covenant, e.g. Article 3 regards that men and women shall have equal rights; Article 26 emphasizes that each individual shall be equally protected by law without any discrimination whatsoever.

³⁰See Article XX (e) of GATT; Erika de Wet in *supra* note 24, p. 457.

³¹See Article II, paragraph 4, of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994.

³²Diana Tussie, “The Policy Harmonization Debate: What Can Developing Countries Gain from Multilateral Negotiations?” *UNCTAD Review* (1994), p.7.

³³*Ibid.*

³⁴Erika de Wet, in *supra* note 24, p. 460

³⁵“International Labor Standards,” in *supra* note 13, pp. 43-45; see also Nicolas Valticos, in *supra* note 14, p. 138-139.

This international instrument is widely recognized as the most important instrument having a legal-binding force in the field of human rights.³⁶ It reaffirms the principles envisaged in the Universal Declaration of Human Rights. These two instruments also echo the fundamental principles enshrined in the Charter of the United Nations.³⁷

Since the principles embodied in the United Nations Charter are regarded as customary international law.³⁸ As international law is dynamic in nature, such principles are also non-static. It is reported that these three principles have been adopted by the International Labor Conference with slight amendments and formed the basic principles of the ILO's fundamental Conventions, as follows.³⁹

- a) freedom of association and the collective bargaining ;
- b) the elimination of all forms of compulsory labor;
- c) the effective abolition of child labor; and
- d) the elimination of discrimination relating to employment and occupation.

These principles are not treated as rights of workers and have been expressed in the ILO Declaration on Fundamental Principles and Rights at Work, adopted at the International Labor Conference on 18 June 1998.⁴⁰ The adoption of the 1998 Declaration is to highlight "the universality of fundamental principles and rights at a time of widespread uncertainty and questioning of those rights."⁴¹

The effect of customary international law is binding on all states.⁴² Therefore, Thailand and all destination countries where Thai workers are residing have to apply the above-mentioned rights to all workers on a non-discriminatory basis, regardless of nationality, religion, sex, and language.

2.5 Bilateral agreements on labor protection

There is no bilateral or even multilateral (regional) agreements on labor protection between Thailand and any of the four destination countries, namely Japan, Malaysia, Singapore and Taiwan. It is presumably because the migration of workers is a very sensitive issue as there is an influx of workers in all the respective countries – Japan, Malaysia, Singapore, Taiwan and also Thailand. It is a matter of policy-orientation to deal with this issue. The conclusion of an agreement on the protection of migrant workers might be regarded as a stimulus for an overflow of migrant workers into the respective countries, as they would have assurances at the government level for the protection of labor standards agreed upon in an agreement when they are motivated to work in the destination countries by wages of higher rate of returns than those in their country of origin.

However, it is noted with satisfaction that there may be an agreement reached between the Office of the Labor Attaché accredited in a destination country, Taiwan--with the local authorities regarding hospitalization for Thai workers in case of emergency whose payments there will be made by

³⁶Theodor Meron, "Human Rights Law-Making in the United Nations. A Critique of Instruments and Process" (New York: Oxford University Press, 1986): 83.

³⁷Article 55 of the U.N. Charter reads: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a) a higher standard of living, full employment, and conditions of economic and social progress and development;
- b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

³⁸Opinion of Circuit Judge Kaufman, in *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980); (1980) 19 I.L.M. 966. U.S. Circuit Court of Appeals, 2nd Circuit, cited in D.J. Harris, "Cases and Materials on International Law" (London: Sweet and Marwell Limited, 1998): 731-732.

³⁹Hilary Kellerson, "The ILO Declaration of 1998 on fundamental Principles and Rights: A Challenge for the future" 137 International Labor Review (1998): 223.

⁴⁰Article 2 of the 1998 Declaration.

⁴¹Hilary Kellerson, in *supra* note 39 p. 227.

⁴²North Sea Continental Shelf Cases, J.C.J. Reports (1969), para. 70.

the workers themselves and guaranteed by the Office of the Labor Attaché. Even though it cannot be treated as a treaty or international agreement in the strict sense of the word, but it shows commitment and accountability of the government agency in charge of labor to provide protection which could possibly be managed within their authority.

III. Relevant Laws in the Four Destination Countries

This part of the research examines the two basic laws – labor protection law and immigration law – in the four destination countries and in Thailand. As Thailand is the departure country as far as this project is concerned, emphasis is given mainly to the relevant laws in Thailand.

3.1 Thailand

The Labor Protection Act B.E. 2541 (A.D. 1998) came into force on 19 August 1998.⁴³ This Act has repealed the Announcement No. 103 of the Revolutionary Party, dated 16 March 1972 and the Act Amending the Announcement No. 103 of the Revolutionary Party, dated 16 March 1972 (No. 1), 1990.⁴⁴

In fact, the first labor protection law in Thailand was the Labor Act B.E. 2499 (A.D. 1956) which prescribed limitations on hours of work, holidays, welfare benefits, employment of women and children, and workers' compensation. This Act was repealed and replaced by the Announcement No. 103 of the Revolutionary Party, dated 16 March 1972. The Ministry of Interior was empowered to issue ministerial regulations for labor protection. This power is now vested in the Ministry of Labor and Social Welfare when it was founded in 1993.

For the benefit of those who are not familiar with Thai laws, it is noteworthy that employment contracts are governed by the Civil and Commercial Code. A person will be called an employee or worker if he agrees to render services to another person who is called an employer in return for remuneration for the period of services.⁴⁵ According to the Code, an employment contract is governed by the maxims of "freedom of contract" and the sanctity of contract. However, it was reported that the hire of services for workers was not normally concluded in writing and the employer usually dictated the working conditions, particularly the duties and responsibilities of employees.⁴⁶ Nonetheless, minimal protections for employees, e.g. either the employer or the employee may terminate the employment contract with indefinite duration by giving notice at or before any time of payment;⁴⁷ the employee is entitled to receive the cost of the return journey if he has been brought from elsewhere, upon termination of employment, unless the termination is caused by the employee's fault.⁴⁸

The Labor Relations Act, B.E. 2518 (A.D. 1975) is aimed at establishing in order a labor management system. Within the preview of Article 18 of the said Act, the terms and conditions of labor contracts have to be registered with the Labor Department.⁴⁹ Labor disputes shall be settled by mutual consent of both employers and employees. Afterwards, they shall be resolved by a conciliation officer of the Labor Department. In case a resolution is not made within 5 days, the employers and employees may agree to resort to arbitration.⁵⁰ Labor disputes involving public utilities, hospitals or other types of employers designated by Ministerial Regulations shall be referred to a Labor Relations Committee for resolution.⁵¹

The Labor Relations Committee has a significant role to play in the good government of labor

⁴³See supra note 21.

⁴⁴Section 3 of the Act.

⁴⁵Section 545 of the Civil and Commercial Code.

⁴⁶Nikom Chandravithun and W. Gary Vause, "Thailand's Labor and Employment Law: A Practical Guide" (Bangkok: Manager Publishing, 1994): 18.

⁴⁷Section 582 of the Code.

⁴⁸Section 586 of the Code.

⁴⁹At that time, the Labor Department was attached to the Ministry of Interior until 1993 when it was transferred to the Ministry of Labor and Social Welfare.

⁵⁰Articles 21, 22 and 25 of the Labor Relations Act.

⁵¹Article 23 of the Labor Relations Act.

management as it comprises a chairman and at least eight but no more than fourteen committee members.⁵² Among them, at least three members must represent employees. The same also applies in the case of employers.⁵³ This composition adopts the concept of a tripartite mechanism for labor disputes. It is noteworthy that the tripartite mechanism is also used at the labor courts where there are associate judges appointed from the selected employers and employees in equal numbers.

Even so, it is reported that the tripartite mechanism does not work as well as it is supposed to, because there are a lot of factors involved, for example, all committee members should disregard their status as representatives of any party, but strictly observe impartiality, so as to render award fair and equitable for the disputants.

When the Constitution of the Kingdom of Thailand, B.E. 2540 was promulgated, there were many provisions embodying the protection and guarantees of human rights, including the labor standards. It was high time to pass a new law on labor protection under the changing circumstances when the economy was moving in the upward trend, whereas the Thai society has adapted itself to a lot of innovations as a result of globalization. On this basis, it was mandatory to pass a new law on labor protection. The Labor Protection Act, B.E. 2541 (1998) took effect on August 19, 1998.

The main features of the Act can be enumerated as follows.⁵⁴

1. An employer includes a person who pays wages in a lump sum to a subcontractor who will employ a worker and supervise him on behalf of the employer;⁵⁵
2. No guarantee or surety ship is required, except the nature or condition of the work so warrants;⁵⁶
3. In case of change of employers, the acquired rights of the employee shall be retained and recognized by the new employer;⁵⁷
4. New criteria of working hours and rest periods are set;⁵⁸
5. New criteria of leaves are stipulated;⁵⁹
6. Non-discrimination against sex is guaranteed;⁶⁰
7. Women shall be better protected against sexual harassment and shall enjoy maternity rights;⁶¹
8. Remuneration shall be paid during temporary close-down of business;⁶²
9. The law sets forth new criteria of excluding employees who are not supposed to claim the overtime due to their positions;⁶³
10. The Act stimulates new deductibles from the wages or overtime payment;⁶⁴
11. This Act establishes the Committee on Labor Welfare and Committee on Safety, Occupation Health and Working Environment;⁶⁵
12. Conditions to terminate an employment contract;⁶⁶
13. Extra severance pay due to removal of the working site are provided for;⁶⁷
14. Severe criminal sanctions as well as civil liability on any violation of the Act are imposed.⁶⁸

For non-Thai workers, a work permit is needed. It shall be issued under the Alien Work Permit Act, B.E. 2521 (1978). It was reported that a work permit was granted on a discretionary basis in order to

⁵²Article 37 of the Labor Relations Act.

⁵³Ibid.

⁵⁴Articles 5 (3) of the Act.

⁵⁵Article 10 of the Act.

⁵⁶ Pongrat Kruaklin, "Analysis of the Main Features of the New Labor Protection Law," in Thai version, 17 Taxation Document (1998) 100-109.

⁵⁷Article 13 of the Act.

⁵⁸Article 28 of the Act.

⁵⁹Articles 32, 33 and 36 of the Act.

⁶⁰Article 15 of the Act.

⁶¹Article 16, 34 and 43 of the Act.

⁶²Article 75 of the Act.

⁶³Article 65 of the Act.

⁶⁴Articles 76, 77 of the Act.

⁶⁵Articles 116-117 of the Act

⁶⁶Article 17 of the Act

⁶⁷Articles 120 of the Act.

⁶⁸Article 144-159 of the Act.

restrict the employment for Thais.⁶⁹ An expatriate coming to work for a promoted investor under the Investment Promotion Act, B.E. 2520 (1977) as amended in 1991, will certainly enjoy more benefits and protection. Such persons need to obtain a visa issued in accordance with the Immigration Act, B.E. 2522 (1977). The problem arises that the validity of the visa will be subject to the expiration of the work permit but not exceeding one year at a time.⁷⁰ Generally speaking, the Immigration Act conforms with the international practice since it contains the objective of expulsion of any illegal immigrant at the port of entry, plus the same imposition of penal sanctions. Nonetheless, these illegal immigrants are protected under Thai labor law when they remain on Thai soil, regardless of their immigration status.

3.2 Japan⁷¹

It was observed that Thai workers in Japan could be those who traveled to Japan with counterfeit passports, or those who remain in Japan after the visas expired, or those who were categorized as unauthorized labor as they obtained a valid visa for other purposes but were illegally employed as unskilled labor.

All foreign workers are governed by the Immigration Court and Refugee Recognition Law or ICRRL which prohibits foreigners to work in Japan unless otherwise specified on account of skills or knowledge requirements, for instance, professor, artist, legal and accounting services, and so on. Any violator of the law shall be subject to imprisonment and deportation to Thailand after the sentence is served.

It was reported that many illegal Thai workers had been lured to work in the so-called "3-D" jobs. Female workers are usually forced to work as prostitutes, entertainers, and so on and they are under-paid.

So far, it seems that the assistance from the Thai authorities concerned, especially the Royal Thai Embassy or Consulate General, could be made in a limited manner since such authorities have to observe the domestic laws in Japan and the protection may be made with the consent of or in consultation with the local authorities. It is usually the case that the official at the Royal Thai Embassy or Consulate General would pay a visit at a penitentiary and arrange the return to Thailand after the sentence was served. In this respect, it may be misunderstood that Thai officials in Japan have done nothing but enjoyed their luxurious lives abroad. In fact, the grass root of this problem should be eradicated and a lot of campaigns to attract public awareness should be encouraged.

3.3 Taiwan⁷²

Migrant workers would have a better chance to find job opportunities more accessible in Taiwan because of insufficient workers, especially for public works of heavy duty.

The research revealed that the labor law in force had provided adequate protection to Thai workers, or else the employers would face severe penalties. Yet, about 59.5% of Thai workers in Taiwan are not satisfied with the employers' strict control and limitations imposed on them. As a general practice, travel documents, e.g. passports, of Thai workers will be kept in custody of the employers or the employment agencies, so as to prevent the Thai workers from escaping from one work place to another.

It was shown in the research that most of the Thai workers would receive lower minimum wages than Taiwanese workers. In other words, the Thai workers are somewhat discriminated against in

⁶⁹Nikom Chandravithun and W. Gary Vause, in *supra* note 46, p. 55.

⁷⁰Article 35 (3) of the Immigration Act.

⁷¹Noriyuki Suzuki and Phanee Chunjitaruna, "Thai Migrant Workers in Japan," paper presented at the International Workshop on Research Project on Thai Migrant Workers in Southeast and East Asia, held at the Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, Bangkok, Thailand, August 5-7, 1998, with the support of the International Organization for Migration (IOM), Bangkok. [This workshop shall be referred to as "the International Workshop"]

⁷²N.B. It was reported that the Alien Registration and Immigration laws were amended recently to abolish fingerprinting for all foreign residents and make illegal stays in Japan a separate offense from illegal entry. (The Japan Times, August 14, 1999)

⁷³Samarn Laodumrongchai, "Thai Migrant Workers in Taiwan," paper presented at the International Workshop.

Taiwan for years. The problem is that many Thai workers have a language barrier since they did not speak Chinese or English. It is thus difficult for them to communicate with the foreman or other colleagues. The problem is compounded by the fact that some Thai workers knowingly or unknowingly accept maltreatment which could be even below the minimum standard guaranteed under the labor law.

We could draw a conclusion at this juncture that Thai workers still find it difficult to live in Taiwan since there were cases of Thai workers escaping from their work places. However, after the entry into force of the new labor law in 1997, certain rules have been relaxed in favor of migrant workers. Yet this does not mean that this situation is in reversal unless there are cases indicating otherwise.

3.4 Malaysia⁷³

Immigrant workers in Malaysia are governed by several laws. As regards the entry into, residence and employment in Malaysia, the Immigration Act of 1959 (amended in 1963) prescribes that an Entry Permit shall be obtained. In any case, a passport with a valid visa for Malaysia shall be available for inspection. Any person who is to engage in any form of employment is required to apply for an Employment Pass issued by the Controller of Immigration. Under the Act, any employer could be proceeded against if he employs a person not in possession of a valid Entry Permit. It is interesting to note that "a person performing any act normally performed by an employee in a place of employment whether or not for payment shall be presumed, unless the contrary is proved, to have been employed." This legal presumption would be costly for illegal Thai workers to afford a lawyer to defend their cases.

Apart from the above-mentioned law, the Malaysian law of employment, based on English common law, has a major role to play in this respect. The Employment (Amendment) Act of 1998 forbids an employer to terminate the contract of service of an employee merely for employing a foreign worker. In the case that the employer needs to reduce his workforce, the services of the foreign employees would be terminated prior to the termination of services of the local employees. Under this law, discrimination against foreign workers is denied, but in any case there is no minimum wage guaranteed. In fact, an employee shall enjoy support and protection, e.g. maternity benefits, provision of rest days, regulation of working hours, etc.

There exists in Malaysia the Occupational Safety and Health Act of 1994 providing the standards of safety, health and welfare for workers against risks at work.

All employees are allowed the minimum standards of housing in places of employment beyond a municipal area, for example, the provision of electricity, piped water, medical facilities, recreational facilities, etc.

All foreign workers shall be given an extra benefit in terms of insurance to cover compensation for accident arising out of and in the course of their employment, including expenses incurred in the delivery of their bodies in the event of death or repatriations to the countries of origin when they are permanently handicapped.

3.5 Singapore⁷⁴

It was highlighted that the Singapore Foreign Worker Policy was a dichotomy between the harsh restriction for the unskilled and the favorable conditions for the professional. In this light, professionals, skilled workers and entrepreneurs are more than welcome to settle down and be assimilated into Singapore society.

There are many laws relating to the employment of migrant workers, for example, the Employment Act, the Workmen's Compensation Act, the Employment of Foreign Worker Act, and so on. Every foreign worker is required to hold either a work permit for stay and employment in Singapore in

⁷³Sharifah Suhana S. Ahmad, "An Overview of the Law Pertaining to Foreign Labor in Malaysia," paper presented at the International Workshop

⁷⁴Porntipa Atipas, "Thai Workers in Singapore," paper presented at the International Workshop.

approved sectors including manufacturing, construction, marine and domestic service sectors, or an employment pass if he is qualified as skilled labor. It is noteworthy that a work permit holder may marry a Singaporean only upon the approval of the Minister of Labor. Their dependents may not be permitted to reside in Singapore. A female work permit holder will be deported if found pregnant.

Under Singapore's immigration laws, both employers and employees are subject to fines, imprisonment or caning in violation of immigration offences. Severe penalties will be imposed on the perpetrators. In order to discourage illegal immigration into the country, a series of publicized warnings are made on a regular basis.

As reported by the official channels of the recruitment process for Thai workers, there are three channels, namely the formal channel of the Labor Affairs, Royal Thai Embassy in Singapore, the informal channel and the illegal channel. The formal channel involves the management of the employment agencies. The informal channel refers to any personal contacts available for foreign workers to have access to their job opportunities, without resort to the service of the employment agencies. The last channel of recruitment occurs as a result of overstay in Singapore beyond the validity of visa. The statistical information reveals that in any case the Thai workers have to pay extra cost for such recruitment, for instance, service fees to the employment agencies, commission to their friends who help them out with the job positions.

According to the paper entitled "Thai Workers in Singapore", it seems that some requirements under Singaporean law are contradictory to the human rights principles. For example, a marriage between a work permit holder and a Singaporean needs an approval by the Minister of Labor. It might be a deterrent measure to control the number of foreign workers, but it captures this author's attention whether such requirement is in violation of the right to marry.⁷⁵ Caning could be, in someone's opinion, "inhuman or degrading treatment or punishment."⁷⁶

As a summary of this part, it appears that the concept of human rights has been permeated in the societies of the four destination countries, as well as Thailand. However, the human rights standards differ from country to country, as a result of different cultures, customs, ways of life, religious beliefs, etc. One should take account of the fact that human rights should be emerging intrinsically and cannot be imposed predominantly from the outside. Anyway, the legal sanctions are severe in all countries as they are the appropriate deterrent measures for the efficient control of foreign workers. Yet, the law enforcement implemented in each country could allow some loopholes for the perpetrators to continue to disobey the laws, e.g. the employment law, the immigration law. The only suitable way to tackle the influx of immigrant workers is to educate the workers not to go abroad illegally or be swayed by fraudulent offers of good jobs from anyone.

IV. Roles of Government Agencies responsible for the Protection of Workers

There are many government agencies in charge of labor protection and management in Thailand. The following are the government agencies responsible for the protection of Thai migrant workers:

1. The Ministry of Labor and Social Welfare is directly responsible for the protection of Thai migrant workers. In fact, the process of sending Thai workers to work abroad begins with the Ministry and the protection to be provided to Thai migrant workers for their return to homeland, in the case of illegal workers or non-performance of the employment contracts by the employers also starts with the Ministry. The Ministry is equipped with the Recruitment and Job-seekers Protection Act, B.E. 2528 (1985), amended by the Recruitment and Job-seekers Protection Act (No.2), B.E. 2537 (1994). However, to implement this law is another issue. It should be remembered that the issue of implementation is observed in other papers under the present project.

⁷⁵Article 16 of the Universal Declaration of Human Rights; and Article 23 of the International Covenant on Civil and Political Rights, 1966. (ICCPR)

⁷⁶Article 5 of the Universal Declaration of Human Rights; Article 7 of the ICCPR.

Under the Act, an applicant for a permit to export workers shall be a limited or public company with a fully-paid and registered capital of at least 1 million baht. In any case, a bond or security of at least 500,000 baht is to be deposited with the Central Recruitment Registrar, or sanctions shall be imposed in accordance with the Provisions of Article 33 of the said Act.

The applicant shall ensure that the employment conditions, e.g. wages, hours of work, have been fulfilled. In the case that the workers have to be sent back to Thailand due to non-compliance with the terms and conditions under the contract, the applicant shall be responsible for the expenses of their returned trips and in this regard the service fees to be paid by workers could be overcharged.

It was reported that most employees were satisfied with their career paths and promotions, the workplace environment, except for those working in the food processing, plastics and chemical industries.⁷⁷

In the field of labor relations, the Ministry of Labor and Social Welfare is urged to amend the State Enterprise Labor Relations Act as the employees of state enterprises deserve to be protected in the same manner as the employees in other sectors.

The Ministry of Labor and Social Welfare may not be able to resolve the problems without the full support of its officials who should have a comprehensive understanding of the laws in force. The Ministry should be well-equipped with high technology. It should also be assisted with sufficient funding to run an extensive vigilant system to ensure that immigration workers are properly protected.

2. The Ministry of Foreign Affairs is vested with the functions to protect Thai nationals, both individuals and bodies corporate when they are abroad. In this context, a Thai embassy or consulate-general is to engage in the protection of the interests of its nationals, and helping and assisting the Thai nationals in the receiving state.⁷⁸ In any case, its assistance is quite limited since it has to be undertaken within the limits permitted by international law and in accordance with the laws and regulations of the receiving state in which the Thai nationals in need of help are staying. To put it another way, assistance could be made through or with the consent of the local authorities. An Office of the Labor Attaché which forms part of a Thai embassy is supposed to provide no better assistance than what the Embassy could do itself since the office is working under the aegis of the Royal Thai Embassy. In other words, they are working under the name "Team Thailand" as projected by the Government.
3. The Immigration Bureau which works under the Office of the National Police is the law enforcer as far as the Immigration Act is concerned. The immigration officers are empowered to take appropriate measures to prevent the entries of illegal immigrant workers and to ensure that there are no overstayers after their visa expirations. It occurs that, from time to time, this government agency is called upon for proper observance of the human rights principles, for instance, the deportation of illegal immigrant workers should be strictly made under the provisions of the Immigration Act; thereby deportation may not be used as a disguised form of extradition. Unfortunately, as there are many illegal immigrant workers held in custody of the Immigration Bureau while waiting for deportation, the confinement places or jails might not have enough room for accommodation of all the illegal immigrant workers. As a result, such jails are usually found to be overcrowded. This could of course give rise to some concerns by non-governmental organizations or those who are human rights-oriented. The situation would differ from country to country. The best way to avoid these problems is to adopt as many deterrent measures as possible, instead of any attempt to upgrade the human rights standards applicable in the penitentiary.
4. The Ministry of Interior is in charge of the administration of the whole country. It is not directly responsible for the protection of Thai immigrant workers abroad. On the contrary, it will look after

⁷⁷ "Executive Summary: Guidelines on Labor Development and Protection at a Time of Changing World Trade Flows," Department of Welfare and Labor Protection, September 1997, pp. 33-34.

⁷⁸ See Article 5 of the Vienna Convention on Consular Relations, 1963, to which Thailand is party as of May 15, 1999 (U.N. Doc. No. LA 41 TR/221/1 (3-6) (3-7) dated May 18, 1999 addressed to the Permanent Representative of Thailand to the United Nations)

foreign immigrant workers in Thailand since the administration is authorized to serve as the law enforcer if a crime is committed. The local administrator may arrest and investigate an illegal immigrant worker since any violation of the immigration law is a crime under Thai law. In such a case, the administrative official has to make sure that the illegal immigrant worker has been brought to justice and that due process of law is guaranteed.

One should take note that there might be some other government agencies that have been involved with the sending of Thai workers to be employed abroad, but they are not taking part in the protection of Thai immigration workers since they have no jurisdiction as long as Thai workers are outside the territory.

Another point that should not be overlooked is the role of non-government organizations (NGOs). NGOs can best serve as watchdogs and provide any necessary assistance government agencies cannot afford.

Concluding Remarks

The paper reflects the fact that states are committed to abide by the international labor law prevailing in the forms of customary international law or the ILO Conventions to which they are parties. Thailand and the other four destination countries are no exceptions. In this light, it appears that human rights are embedded in international labor law in the passage of time. It is interesting to note that some ILO Conventions have gained no popularity among states, as opposed to the ILO Declarations or recommendations.

It is observed that the laws in force in Thailand and the other four destination countries are in accordance with the human rights principles and standards, particularly the obligations set forth in the ILO Conventions to which they are parties. In the case of Thailand, the Royal Thai Government is in the process of becoming a party to some other ILO Conventions with a view to improving the domestic labor standards to meet the internationally recognized level. It is, in fact, the law enforcement in all four countries, which has to be rationalized and strengthened. The government agencies in Thailand do have a major role to play, but there are a lot of shortcomings, especially in terms of the law enforcement, including public awareness.

It should be noted that serious action is warranted to resolve the problem of Thai immigrant workers. Assistance and facilities could be properly accorded to them if only there is an agreement between Thailand and the four destination countries. The agreement as such should be made on a bilateral basis since the situations and problems faced by Thai immigrant workers are always varied from country to country. It would, thus, be appropriate if a bilateral approach were adopted. The agreement would provide for a framework for the local authorities in each destination country to undertake. Any action to the contrary will be a breach of treaty and would result in any remedial measure and state responsibility by the violating state. In the meantime, Thai authorities responsible for the protection of the Thai nationals' interests would feel comfortable to deal with their counterparts and would know where the right channel is for them to go through.

At this juncture, it should be noted that even though some destination countries and Thailand are members of the Association of South-East Asian Nations (ASEAN) and could initiate a conclusion of such framework, it is sometimes easier said than done since some other ASEAN members would have different concerns and thus it would be difficult for ASEAN to reach a consensus to conclude a multilateral agreement, let alone the fact that this issue is always treated as a sensitive one among ASEAN members. In any case, ASEAN members could come up with common views to deal with this issue in a collective manner for this region.

On top of that, the agreements, if concluded, would ensure that all Thai workers would be legally working in the destination countries and that their rights will be protected and meet the international standards at all times. If this is the case, Thai illegal immigrant workers should be regulated and kept reduced to the minimum, if not to nil.

Comparative Study on Labor Regulations in Three Destination Countries

Pornchai Danvivathana

Introduction

This paper is a comparative study on how the three destination countries - Japan, Malaysia and Singapore - control and regulate migrant workers from Thailand in their respective countries. It aims to investigate and compare systematically the functioning of the recruitment of Thai workers for foreign labor markets only in the three countries, in the Research Project, titled "Thai Migrant Workers in Southeast and East Asia: The Prospects of Thailand's Migration Policy in Light of the Regional Economic Recession". The outcome of this study is based on the information received as of August 29, 2000 from the researchers in such countries.

As this study is structured to portray the recruitment and the labor conditions Thai migrant workers are likely to experience in the three destination countries, certain laws and regulations will be referred to, as they are relevant to Thai workers' status and living conditions in those three countries. In the process, an international framework may be available which has laid down the foundations for labor regulation acts in some of the three countries and Thailand. Intensive observations and comments will be offered in passing, which may be useful for further analysis and assessment of the current labor situations.

Recruitment of Thai Migrants

Labor migration in all three countries is mainly governed by immigration law and employment (or labor) law. There may be some other laws relevant to some particular problems or for a particular purpose, for example, the Central Provident Fund Act was promulgated in Singapore to provide for appropriate funds for retired workers.

It is interesting to note that foreign labor issues are governed by 10 statutes in Singapore, while there are only a number of the relevant laws in Malaysia and a few in Japan.

Under normal circumstances, migrant workers are required to apply for an appropriate visa to go to any destination country for employment. A work permit is also required, which is to be issued subject to the validity of the employment contract.

Illegal entry or employment is a commission of a crime, which shall be subjected to a fine or imprisonment, as the case may be. In Singapore, the law enforcement is very strict. In the past, employers were allowed to withhold their workers' passports and work permits. As new work permit identification cards are in use, workers are to be prepared to hold these cards at all times. The immigration laws in Singapore and Japan forbid unlawful engagement in smuggling of illegal immigrants. The same can be said in the case of Malaysia by way of induction, even though it is not clearly pointed out in the research.

It was reported that there were always ways and mean for foreign workers to seek illegal employment in the four destination countries, since this business could generate a lot of lucrative benefits for foreign workers, employers and recruitment agencies from one end to another. Police raids and site inspections are conducted on a regular basis and proven to be effective mechanisms to suppress illegal foreign workforce. Registration of aliens, including taking fingerprints of foreigners residing in Japan for one or more years, is a stringent measure adopted to enhance the surveillance capacity of the government agencies.

Importance is attached to this problem in Malaysia in such ways and means no less than that the other two countries have engaged in. The Department of Immigration, Ministry of Home Affairs is assigned with tasks pertaining to foreign labor issues. It should be noted at this juncture that many laws relating to foreign labor governance were passed in the early 1900s. Under the Immigration Regulation 1963, different kinds of passes are used to categorize people remaining in Malaysia for different purposes.

It seems to be common practice that executive power is subject to discretion of officials in charge of the Immigration Act 155.

Employment Conditions and Welfare

Employment conditions are the core issue of labor relations. However, this is not the case for Thai workers seeking employment in the three destination countries. In fact, for those who are lured to work abroad, they would be offered high pay and fringe benefits, including propaganda of excellent employment conditions or welfare. They could not care less about welfare as long as they are well-paid. It is interesting to note that any job can be considered "well-paid" only if the pay check covers the expenditure and satisfies the employee's needs.

Welfare in Japan can be claimed by any person living in that country, regardless of his or her nationality. However, aliens may enjoy these benefits under the welfare system if they are lawfully registered. Under the Japanese National Health Insurance Law and the National Pension Law, visitors or foreigners are not, by and large, eligible to participate in such terms and conditions applicable therein. It appears from administrative practice that some terminologies are subject to interpretation.

In case of emergency, some local governments may bear medical costs for temporary workers as stipulated in the Treatment of Sick Wayfarers and Wayfarers Found Dead Law. Even though Japan is party to the International Covenant on Civil and Political Rights of 1966, there is a tendency that migrant workers may not be granted the same rights and treatment as bestowed to the Japanese. For instance, foreigners who are non-residents are excluded from the National Health Insurance Law, as well as the National Pension Law. This practice is a non-issue as far as human rights are concerned, since in this writer's perspective Japan has not done anything in breach of her treaty obligations. In fact, this may be construed as normal practice elsewhere.

It was submitted, however, that even foreign workers could be entitled to free maternity leave and medical treatment for physically handicapped children or premature babies. This interpretation awaits the Court's ruling for confirmation.

In Malaysia, rights and duties entitled to employers or employees will be protected under Malaysian law of employment. According to the Malaysian Industrial Court, emphasis is put in favor of the employer's prerogative to organize his business, including the deployment of contracted labor, to improve productivity. However, Section 60 of the Employment (Amendment) Act, 1998 allows the Director General of Labor to inquire into any complaint if a foreign employee is discriminated against, in relation to a local employee, by his employer. Despite no minimum wage being provided for in the Act, employers are required to provide maternity benefits, rest days, control over hours of work, annual leave, and protection against termination of contract on the ground of misconduct.

There are some other laws in force relating to labor protection, e.g. the Industrial Relations Act of 1967 permitting employees to claim against their employers for reinstatement of employment on account of dismissal with just cause; the Occupational Safety and Health Act of 1994 aiming to ensure the safety, health and welfare of persons at work against risks to safety or health arising as a result of the work place or activities of persons at work, the Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order of 1998 mandating that employers shall annually allocate 96 Ringgit to an insurance scheme for each worker; the Factories and Machinery Act of 1967 dealing specifically with the supervision and regulation of factories and machinery for the safety of employees; and the Workers' Minimum Standards of Housing and Amenities Act of 1990 setting standards of places of employment outside any municipality to be maintained under the supervision of the Department of Labor.

It should be noted, however, that only some laws are in place to provide protection and assistance to foreign workers in all three destination countries.

Status of Migrant Workers

It is quite clear that migrant workers without an appropriate visa are considered illegal entrants according to the immigration laws in the destination countries. They could thus be subject to imprisonment, fine and deportation. Many of them may have obtained appropriate visas upon entry. As they have finally overstayed, they are then called "illegal immigrants". These workers are in violation of the immigration laws and will be subject to sanctions. Under normal practice, they will be blacklisted and may not be allowed to apply for a visa for a period of years.

There are cases where workers have obtained inappropriate visas, thereby are unable to apply for work permits as required. They are also considered illegal workers. However, imposition of sanctions may be less severe than those under the above-mentioned category. It should be noted that illegal workers without work permits may not work in the destination countries but they are still allowed to remain there until the visas previously obtained expire.

It is usually the case that illegal workers may not claim social welfare, save legal protection as international minimum standards recognized under international law.

Only legal proceedings are used as a way and means to deal with illegal workers. The relevant laws in Singapore and Japan seem to be tougher than those in the other two destination countries. Over and above these laws, punishment imposed in some countries could be construed as a deterrent measure, among others, to discourage illegal entry of workers.

International Regulations

There are a few issues to be discussed under this heading:

International Control

In the sense of the term, states are governed by international law which includes customary international law and international agreements. In the purviews of customary international law, states are legally bound to provide legal protection as envisaged in the international law of human rights.¹ One might go a bit further by applying the national standards as advocated in the Montevideo Convention on the Rights and Duties of States, 1933 which ensures non-discrimination against foreigners.² There are also certain international labor standards to which foreign workers, whether legal or illegal, are entitled, i.e. freedom of association and freedom from forced labor.

As regards international agreements, the three destination countries are to perform obligations under treaties or international agreements to which they are parties.³ Interestingly enough, the three countries are parties to the International Labor Organization (ILO). Therefore, the laws promulgated in their respective countries need to be consonant with international labor law.

However, the standards of enforcement are in practice a separate issue. This may have to be addressed in the context of human rights as international labor law, and international human rights laws are really coherent in terms of concept and application, including their progressive development.⁴ The

¹ Timothy Hiller, "Principles of Public International Law" (London: Cavendish Publishing Limited, 1995): 172.

² Ibid

³ The seven fundamental Conventions are as follows:

1. Convention No. 29 on Forced Labor;
2. Convention No. 87 on Freedom of Association and Protection of the Rights to Organize;
3. Convention No. 98 on Right to Organize and Collective Bargainings;
4. Convention No. 100 on Equal Remuneration;
5. Convention No. 105 on Abolition of Forced Labor;
6. Convention No. 111 on Discrimination (Employment and Occupation);
7. Convention No. 138 on Minimum Age.

⁴ See Article 23 of the Universal Declaration of Human Rights.

three destination countries may adopt harsh laws to punish illegal workers insofar as such laws are not inconsistent with international law – international labor law, international human rights law, and so on. For example, capital punishment may be imposed subject to the gravity of conduct or commission of offense. Yet, a State Party to the International Covenant on Civil and Commercial Rights, 1966 may not impose capital punishment on any person who is under the age of 18 years. A person may not be caned as caning may be considered a measure against human dignity.

Issuance of Passports and Visas

Everybody has the right to freedom of movement and residence and the right to leave any country, as well as his own, and to return to the country of which he is national or resident.⁸³ Any person is entitled to hold a passport which is not only for use as a travel document but for the establishment of identity.⁸⁴ In countries where this right to freedom of movement is guaranteed under the constitution, e.g. the United States, Thailand,⁸⁵ no one may be denied a passport. It is then quite difficult for Thai authorities concerned to resort to the issuance of passport as a deterrent measure to control labor migration. In fact, the Royal Thai Government is required to provide diplomatic assistance and protection, as necessary, to Thai nationals stranded abroad.

Issuance of visas signifies that visa-issuing states have consented to visa applicants' entries into their countries subject to the immigration laws of the same.⁸ It purports that the applicants or visa holders may proceed to the visa-issuing states within the time-frame specified, but these entries may be granted only by immigration officials at ports of entry. If careful and appropriate scrutiny of visa applications can be maintained by the destination countries, the influx of illegal migrant workers should be reduced. In the case of Malaysia and Singapore, as members of the Association of Southeast Asian Nation (ASEAN), visa is not required for Thai nationals. It is thus difficult to detect at any port of entry who are illegally entering these two countries for employment purposes. The idea to abolish visa exemption for Thai nationals proceeding to either of the two countries would diminish the true spirit of cooperation of all ASEAN members, on the one hand, and would affect genuine or bona fide travelers in the tourism industry, on the other hand.

It should be noted that it is very difficult to obtain an appropriate visa to Japan. The requirements for supporting documents to obtain a visa shall be strictly observed. The research study reveals that those illegal Thai workers, among others, obtain a valid visa to visit Japan, but they are considered illegal when working without a permit or overstaying. To put it in another way, issuance or non-issuance of a visa may not be the right approach to address the issue of illegal workers in Japan.

Conclusion of International Agreements

There is no policy approach adopted by any destination country to conclude a treaty or international agreement with Thailand on labor migration. As this issue of illegal workers becomes critical, it is thus very timely to explore ways and means to reach agreement between or among the countries concerned. This approach is consistent with the views suggested at different for at the global level to deal specifically with international or transnational crimes. In the context of the United Nations, a draft convention on the suppression of transnational crimes is under consideration. It is internationally recognized that illegal migration is a serious offence, among others, which can be suppressed if international cooperation prevails in the form of an international agreement. If an agreement is in place, recruitment of Thai workers on a government - to - government (G-to-G) basis may materialize and lead to no set back. In that light, remedies and state responsibility shall be guaranteed for the benefit of both employers and employees.

Concluding Remarks

⁸³ Article 12 of the Universal Declaration of Human Rights.

⁸⁴ B.Sen, "A Diplomat's Handbook of International Law and Practice", (Dordrecht: Martinus Nijhoff, 1988):395

⁸⁵ Section 36 of the Constitution of the Kingdom of Thailand, B.E.2540.

Labor migration is a common concern of the states in Southeast and East Asia. The economic downturn in Thailand has called for the Government to take action and introduce a plan of retrenchment. It is in the meantime expected that Thai workers would seek more employment abroad. The three destination countries are always the desired targets for Thai workers. In the process, the Royal Thai Government may wish to encourage Thai workers to work abroad. (8 B. Sen, in note 6 supra, p.399.)

It should be concluded that Thai workers in the destination countries are governed by immigration and labor laws. Such laws in force are generally enacted in accordance with international law. It is only a matter of standards-setting and law enforcement, which might be consonant with international standards recognized in a universal character. It is evident that the laws in force in such countries provide for different levels and scope of protection from one country to the others.

It is always the case in any country, and Thailand is no exception, that stricter laws will be introduced as labor migration becomes more severe. This may be a good strategy for the three destination countries since they are in need of foreign workers. It is only a matter of how to properly regulate the employment of Thai workers abroad on a long-term basis.

Prospects for employment of Thai workers in the three destination countries are still bright. The business of sending Thai workers abroad is very lucrative for employment agencies in Thailand and in the three receiving states. It goes without saying that the business also generates a source of income for Thailand. As this issue becomes more and more serious, since it is reported that many of them are engaged in illegal employment, greater attention from the public and the private sectors are required. Effective and continued measures are called for as the number of illegal Thai workers is growing rapidly. Follow-up action should not be overlooked.

An international agreement should be concluded between or among the three destination countries and Thailand. It would be an instrument to ensure that appropriate protection is provided for between the Governments concerned. The agreement to be concluded should make sure that any rogue employment agency is put out of business. The government agencies concerned may request the right to regular visits at working sites to observe the employment conditions, as well as according facilities and providing assistance to Thai workers as necessary.

It should be underlined that since illegal migrant workforce is a result of transnational organized crime, as reconfirmed in the United Nations draft convention on the suppression of illegal migration, international cooperation seems to be the only measure for now to resolve this problem effectively. As the discussion has demonstrated, emphasis should be placed on urging the countries concerned to enter into an agreement for the purpose of labor protection. Failure to do so could cause problems of mistrust and misunderstanding at the government level. Perhaps Thailand should take the initiative in this direction for the benefit of Thai workers residing in such countries, which could be a resolution to the same problems existing in any other region in the future.

Thailand's Overseas Employment and Recruitment Law

Phunthip Kanchanachitra Saisunthon

1.1 Objectives

This research paper was written as a report on the results of the study forming part of the research project entitled "Thai Migrant Workers in Southeast and East Asia: The Prospects of Thailand's Migration Policy in Light of the Regional Economic Recession" conducted by Asia Research Center of the Institute of Asian Studies, Chulalongkorn University. The paper was specifically aimed at enumerating the important factors contributive to the legal problems concerning Thai laborers going to work in foreign states.

As legal factors form part of "the problem" of this matter and may simultaneously present a solution to the problem, legal research has its role in the research project. Legal problems concerning going to work in foreign countries are varied.

Basing the classification of the legal problems on their sources led to the conclusion that the problems are of two categories: (1) problems in the source country and (2) problems in the destination country. This research paper, however, focuses only on the problems in the source country regarding the legal aspects of going to work abroad by Thai laborers.

In conclusion, the purposes of this research paper are as follows:

1. To report on the survey of Thai laws concerning this matter.
2. To report on the study of legal problems faced by Thai laborers in the source country
3. To report on the legal feasibility study in solving the problems that will lead to the end of controversy on "the prescriptive policy" that should be adopted by Thailand concerning Thai laborers going to work abroad in the economic recession.

1.2 Perspectives

Like other problems relating to international migration, the problems can never be solved through the application of knowledge of any single field of study. Causes and effects of the problems regarding Thai laborers going to work abroad are complex. Interdisciplinary study is thus required. Nevertheless, as this research paper is a legal paper, the legal theme is thus its starting point.

1.3 Framework of Study

In the survey of legal problems faced by the source country in sending its workers abroad, we found 12 aspects of legal problems that need discussion.

First, after the preliminary understanding is established (the first topic), the research paper should at first make it clear "Who are Thai laborers? What sorts of persons are to be identified as Thai laborers? Do Thai authorities protect all Thai laborers or just some of them? Do Thai authorities protect all Thai laborers equally?

Second, the study should find out the answer to the question "Do Thai laws accept the right of Thai laborers to go to work in foreign states? This issue will lead to the study of the existence, the categories, and the quality of right of Thai laborers in going to work abroad.

Third, with the relevance of the first topic to the matter that we are going to discuss and with our realization of the fact that laborers who want to go to work abroad are required to seek the assistance of agents involved in recruitment service, the legal problem faced by workers at this stage is concerned with their legal relation with agents. Legal researchers have to take into consideration "existence of the problem, categorization of the problem of this nature, severity of the problem, and the method of problem-solving adopted by the Thai state." The last objective of this stage of study is to find out

whether the Thai law provides the measures to control recruitment agents and how?" As the recruitment process exists in the national and the provincial level and involves state and private business organs, the study is to be conducted on "classification of the ways of exporting Thai laborers (the fourth topic) and the process of exporting Thai laborers (the fifth topic).

Fourth, as the study is focused on the problems in the source country, it is necessary to explore the roles of the source country. There is no doubt that the source country does not limit its action within its own boundary. As the source country, Thailand harbors its intention to protect Thai laborers in foreign states. The question raised by us is whether the law allows Thailand to be engaged in transnational or cross-border actions to protect Thai laborers and how? The Thai authorities chiefly resort to control over the operation of recruitment agents, believing that efficient control over recruitment agents results in the effective protection of Thai laborers in foreign countries. Thus, the study to be conducted at this stage focuses on the laws allowing the Thai state to protect Thai laborers in foreign states. The study is to be conducted on "the control of recruitment agents" and "state organs involved in exporting Thai laborers abroad" (the seventh topic).

The study at this stage lays stress on the relation of Thai authorities and Thai laborers working in foreign states. The legal issue to be discussed is concerned with what the Thai law says about Thai laborers working in foreign states who are considered the ones having moved out of Thailand. In general, the application of the law of certain sovereign states cannot extend beyond their territory as the state can only exercise its absolute power over its own territory. Extraterritorial validity of the law of certain sovereign states only has effect on the citizen of those states who live in foreign states but only under the consent of the foreign states. The question raised at this stage is whether Thailand has laws determining the right and system for protecting the interest of Thai laborers in foreign countries. The matters to be investigated are:

1. Duties and responsibilities of authorized recruitment agents (the eighth topic),
2. Responsibilities of authorized recruitment agents as conditioned by recruitment contracts (the ninth topic), and
3. Duties of laborers who go to work abroad (the tenth topic).

Fifth, as the possibility and the efficiency in providing assistance to laborers depend on the existence of funds, the "Fund" to serve this purpose has been set up. Thus, reference to the "Fund" for the assistance of laborers who go to work in foreign countries is unavoidable.

Sixth, we then deal with the problem of human rights abuse as experienced by Thai laborers in foreign states (the twelfth topic).

The whole picture of the current state of the problems portrayed by the legal research serves as "a social mirror" that reflects "the rules of law" contributing to the problems concerning "Thai laborers going to work in foreign states".

1.4 Benefit of the Research

First, the research leads to the discovery of the solution to the puzzle about the migration of Thai nationals to other countries from the point of view of the source country, in the other words, from the point of view of the Thai law. We believe the research sheds light on the whole point of view of the Thai law concerning this matter. Research of this kind thus belongs to "Legal Science Proper or Normative Legal Science".

Second, after completing our research in the Normative Legal Science, we take into account the social fact and we then notice the causative relation of positive law and social reality. The degree of efficiency of the state mechanism in controlling recruitment agents is thus revealing to us as well as the degree of efficiency of punishment on those taking part in illegal recruitment effort. It is impossible for this research paper to investigate all aspects of the relation between law and society concerning this matter, due to budgetary constraint. However, the research paper serves as a "bridge" to other legal research works related to the "Legal Science of Fact".

Third, although the research belongs to "Legal Science Proper", not focusing on the relation of law and social fact, it brings to light the value of the laws governing the process of exporting Thai laborers abroad. Thus, it serves as "a bridge" to another research work belonging to the same research project which focuses on the state mechanism for solving the problems with Thai laborers through the international agreement between Thailand and foreign states that recruit Thai laborers.

2. Persons Identified as "Thai Laborers"

2.1 Definition of "Thai Laborers"

Who are Thai laborers? According to Thai law, "aliens" means the persons who do not hold Thai nationality;¹ thus "Thai laborers" means laborers who are of Thai nationality. This interpretation makes it necessary for us to accept those persons holding multiple nationalities, including Thai nationality, as Thais. On the contrary, those holding no nationality cannot be considered as Thais.

Thus, the study requires us to clarify the term "Thai laborers" that are the subject of our study before we can probe into other aspects of the problem. In reality there are many aspects of the problems concerning ethnic minorities yet to be granted Thai nationality, foreigners in Thailand and Thai laborers in foreign states.

2.1.1 Problems Concerning Ethnic Minorities without Thai Nationality

As Thailand has land borders with its neighboring countries, the legal status of those living along the borders is hard to determine. There are still hill tribe people officially referred to as "highlanders".² A large number of them are waiting to be granted nationality. The authorities have viewed hill tribe people living in the highlands since the beginning of the history of Thailand as Thai citizens. But, as their identities are difficult to prove, the highlanders not with proven identities are yet to be granted Thai nationality³. In addition, there are undocumented persons who can be viewed as stateless persons.

The problem arose when those persons went abroad to find jobs but were refused work permits. Their legal status was thus illegal immigrants. They were punished for entering into those states and doing their jobs without permission. Having been punished, they were sent back to Thailand. In the cases where they held identity cards for the minority groups issued by the Thai Department of Local Administration, Thailand had to accept their return. Though they were not Thai nationals, their holding of the identity cards issued by the Thai authorities signified their connection to Thailand. But in many cases, Thailand did not accept their return as there was no evidence of their awaiting for their being proved of their identity and of their being stateless persons living in Thailand. As a result, they were detained in the place used for detaining illegal immigrants in foreign states.

2.1.2 Problems with Laborers Who Are Foreign Minorities living in Thailand

In addition, there are people leaving Thailand who are not of Thai nationality but have lived in Thailand for a long time. For practical reasons, the Thai authorities view them as aliens and did not grant them the permission to enter Thailand but allows them to live in the country temporarily⁴ for

¹ Article 4 of the Nationality Act B.E. 2495 and the Nationality Act B.E. 2508.

² "Highlanders" are hill tribe people dwelling and making their livelihood in the highlands with the average inclination of more than 35% and the height of 500 meters above sea level onwards in 20 provinces as follows: Chiang Mai, Machongsom, Chiang Rai, Phayao, Nan, Lampoon, Lampang, Prac, Tak, Petchaboon, Loey, Pitsanuloke, Sukhothai, Kampongpetch, Kanchanaburi, Uthaithani, Suparnburi, Ratchaburi, Prachuabkirikhan and Petchburi (Article 5 of the Order of Prime Minister's Office concerning community development environment and the control of narcotic plants in highlands. B.E. 2540).

³ Report on the study on order, law and policy concerned with the personal status of highlanders by the Subcommittee on the Granting of Personal Status to Highlanders by the Order No. 1/B.E. 2542 of the Committee on the Granting of Personal Status of Highlanders set up by the Cabinet Resolution dated May 11, B.E. 2542. Submitted to the Committee on the Granting of Personal status by the Order No. 1/B.E. 2542 of the Committee on the Granting of Personal Status to Highlanders set up by the Cabinet Resolution dated May 11, B.E. 2542.

⁴ According to Article 17 of the Immigration Act B.E. 2522.

humanitarian reasons, as they are likely to face persecution if sent back to their home countries. These foreigners are Chinese, Laotian, Vietnamese and Burmese. Many of them were born in Thailand and many were not. When they leave Thailand to work in foreign countries, are they to be identified as Thai laborers?

There are stateless minority laborers working in Thailand. When the Thai authorities planned to send them back, problems arose, mostly with the Burmese nationals who were minorities in conflict with the Burmese government and thus unacceptable to the Burmese authorities. The minorities themselves were not willing to return to their native land for fear of being punished by the Burmese. There has been controversy regarding this matter in Thailand. Those sensitive to human rights abuse argued that the minority laborers should be allowed to return to Thailand. They held that those minority laborers had developed their ties with Thailand as the place for inhabiting. Those preoccupied with the security problem argued that those minority laborers should not be allowed to return to Thailand. They held that those laborers were illegal immigrants who were to be expatriated.⁵ Once expatriated, their ties with Thailand were automatically cut and there was no reason for Thailand to allow them to return to Thailand.

The arguments of both sides are plausible. In the case of alien laborers leaving Thailand, they have no residence in Thailand and just use Thailand in transit, thus Thailand is not obliged to accept their return. In the case of the laborers who live and have their families or were born in Thailand, Thailand should accept their return for humanitarian reasons although it is obvious that they are not Thai nationals.

2.1.3 Problems with Thai Laborers in Foreign Countries

At present, there are persons of Thai nationality without dispute who do not live or were not even born in Thailand. They are offspring of Thai immigrants in foreign countries. They may not be able to speak Thai, nor do they have psychological ties with Thailand. They just hold Thai nationality. Children born to illegal Thai immigrants in Japan have never been granted Japanese nationality. They are just illegal immigrants as their parents are. The case is similar to that of the offspring of Burmese illegal laborers in Thailand whom the Thai authorities regard as illegal immigrants. The question is whether Thailand should recognize them as Thai laborers deserving its protection.

⁵ Articles 53-54 of the Immigration Act B.E. 2522.

2.2 Categorization of Thai Laborers in Foreign Countries

2.2.1 Thai Laborers in Public and Private Sectors

Thai laborers can be categorized as laborers in public sectors and laborers in private sectors as in other countries. In Thailand, job performance in public sectors is not governed by the same laws as those applied to the private sectors. The standard of the quality of works of the same nature done by public sectors and private sectors is viewed in different ways. As there are Thai nationals working in public and private sectors in foreign states, Thai law applied to the public and private sectors have their effect on those Thai nationals, due to the accepted principle of the international law that the states have personal jurisdiction over their citizens, no matter where on earth their citizens appear.

2.2.2 Legal and Illegal Immigrant Laborers

In going to work abroad, Thai laborers are required to seek permission to enter foreign states from the foreign states where they intend to go to work. When they get permission to enter foreign states, they gain their status as legal immigrants. When they enter foreign states without permission, they gain their status as illegal immigrants. They are subjected to punishment and expatriation according to immigration law of those states. As long as laborers still hold Thai nationality, the Thai embassy and consulate in those states must realize that the laborers still hold rights and duty as Thai nationals no matter who they are, and no matter whether they are legal or illegal immigrants in those countries. They thus deserve complete protection from Thailand.

2.2.3 Skilled and Unskilled Laborers

There are skilled and unskilled laborers. In fact, the majority of them are unskilled laborers. Working in foreign countries does not mean that they receive less protection than that received by Thai nationals working in Thailand. Unskilled laborers working abroad are to be offered training programs that help improve their skills as unskilled laborers in Thailand. Nevertheless, Thailand cannot offer them full protection of this kind enjoyed by Thai laborers in Thailand.

3. Law Determining the Right of Thai Laborers to Work Abroad

3.1 The Law Endorsing the Right of Thai Nationals in Going to Work Abroad

Although the Thai Constitution does not endorse the right of Thai nationals to leave Thailand, there is no Thai law prohibiting Thai nationals from going to work abroad.

In addition, promulgation of the law prohibiting Thai nationals from leaving Thailand is impossible as Thailand has ratified International Rules on Civil and Political Right, 1966⁶. Article 12 (2) of the rules states that “Everyone shall be free to leave any country, including his own”. Exception to this rule appears in Article 12 (3) that states: “the above-mentioned right shall not be subject to any restriction except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant”.

In general, Thailand is obliged by the principle of International law not to promulgate the law prohibiting its citizens from going to work abroad, except when the prohibition exists to serve the purpose of: 1. national security, 2. public order, 3. public health, 4. public morals, and 5. rights and freedoms of others. The question is what are Thai laws serving those purposes and do they result in the prohibition of Thai laborers from going to work abroad?

⁶ Thailand became a party to the Rules on Civil and Political Right on October 29, 1996. See Nopnithi Suriya, International Rules on Civil and Political Right 1966, the accession of Thailand, Thammasart Law Journal 4 (2539) 764-779.

3.2 Thai Laws Restricting or Eliminating Rights of Thai Laborers to Go to Work Abroad.

In principle, the Thai authorities are not allowed to promulgate the law that restricts the right and freedom of its nationals to go to work abroad. However, there exist laws empowering the state to restrict or to deprive Thai nationals of their right to go to work abroad.

From our survey, we found that prohibition and the imposition of constraints on the ability to go to work abroad of Thai nationals exist under the following conditions.

3.2.1 Restriction under Immigration Law

The departure of Thai laborers from Thailand is only considered legal when it is made in conformity with Article 11 of the Immigration Act B.E. 2522 and Article 62 of the Recruitment and the Protection of Laborers Act B.E. 2528 amended by the Recruitment and the Protection of Laborers Act B.E. 2537.

Article 11 of the Immigration Act B.E. 2522 states: "Persons entering or leaving the Kingdom are required to take the designated paths and passes through checkpoints and specific areas in the fixed time as proclaimed in the Government Gazette by the Minister." In leaving the country, Thai laborers are required to pass through "EXIT" determined by the Minister of the Interior through his exercise of power in accordance with the Immigration Act. In addition, the time for leaving the country is also fixed by the Minister. The ability in going abroad of Thai laborers needs to meet some conditions. Violators of this rule shall be punished with fine not exceeding 2,000 baht.⁷

The problem that may arise, and in fact, occurred in the past, has to do with the order by the Minister of the Interior to close checkpoints for going to particular countries that make it impossible to travel to those countries. The closure of checkpoints for going to Myanmar (Burma) makes it impossible for Thai laborers to go to work in Myanmar and for Burmese laborers to come to and find their jobs in Thailand. However, closure of checkpoints is very unlikely now as Thailand is not involved in violent conflict with any country. Termination of international contact is very unusual; and if it occurs, the right of Thai laborers to go to work in the countries having no more relations with Thailand is thus revoked in case departure through other permitted channels is impossible.

3.2.2 Restriction under Recruitment and Labor Protection Law

The law requires Thai laborers going to work abroad to pass through checkpoints and to hand over documents⁸ (as determined by the Director of the Department of Recruitment) to officials. The checkpoints were set up in accordance with the proclamation in the Government Gazette by the Minister of Labor and Social Welfare.⁹ When the officials find that a person has no document regarding going to work or to apprentice abroad, they may use discretion to stop the departure of the person from the country. However, they are required to record the reason for stopping the departure.¹⁰ The right to go to work abroad of a laborer is revoked until it meets the conditions made by the law.

3.2.3 Restrictions under the Administration under the Exigency Law

Article 10 of the Administration under Exigency Act B.E. 2495¹¹ authorizes the Prime Minister and the Minister of the Interior¹² to prohibit persons from leaving the Kingdom if it is evident that the

⁷ According to Article 62 paragraph 2 of the Immigration Act B.E. 2522, in case the violators are aliens, they shall be punished with imprisonment not exceeding 2 years and fine not exceeding 2,000 baht

⁸ Violators shall be punished with imprisonment not exceeding 6 months or fine not exceeding 10,000 baht or both (article 87 of the Recruitment and Protection of Labor Act B.E. 2528 as amended by the Recruitment and the Protection of Labor Act (No. 2) B.E. 2537).

⁹ Article 62 of the Recruitment and Labor Protection Act B.E. 2528 amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537

¹⁰ Article 63 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537

¹¹ The 69th Government Gazette in 16th Chapter of dated March 11, B.E. 2495

¹² Article 21 of the Administration under Exigency Act B.E. 2495

departure from the Kingdom of such persons poses a threat to national security. Violators shall be punished with imprisonment not exceeding 10 years or fine not exceeding 10,000 baht or both.¹³

3.3 Do Thai Laws Freely Allow Thais to Go to Work Abroad?

In principle, Thai laws do not pose an obstruction to going to work abroad for Thai nationals. The question is whether Thailand has laws encouraging Thai nationals to go to work abroad. Encouragement means facilitation of departure or providing protection when laborers are abroad.

3.3.1 Law on Going to Work Abroad at the Time When There Existed No Specific Law Concerning This Matter

Thailand first promulgated the law on recruitment during the reign of King Rama VII. The law was referred to as the Recruitment Act B.E. 2475 that took effect on August 29, 2475.¹⁴ The law was aimed at “protecting the interests of laborers”. Before the promulgation of this law, Thailand had no law governing recruitment effort. Recruitment effort to supply workers to the firms in this country and in other countries was thus freely done by the private sector.

3.3.2 Law on Going to Work Abroad During the Time the Recruitment Act B.E. 2475 Was in Effect

Although the Recruitment Act was promulgated in B.E. 2475 to protect the interest of laborers, there was no provision concerning recruitment effort to supply workers to jobs in foreign countries. Thus, during the period of the Act's being in effect, recruitment efforts to supply workers to jobs in Thailand and in foreign countries were under state control. The law stipulates that involvement in the recruitment business must be permitted by the Minister of the Interior.¹⁵ Thus the Recruitment agent in business before July B.E. 2475 or in business after the law was in effect was under the control of the Minister of the Interior.¹⁶

This law was abolished¹⁷ by the promulgation of the Recruitment and Labor Protection Act B.E. 2511 that took effect on June 29, B.E. 2511.¹⁸

3.3.3 Law on Going to Work Abroad During the Period the Recruitment and Labor Protection¹⁹ Act B.E. 2511 Was in Effect

The objective of the Recruitment and Labor Protection Act B.E. 2511 was not only to provide regulation on the establishment of recruitment agents, but also to regulate the recruitment and labor protection. However, there was no provision on the recruitment effort to supply workers to jobs in foreign countries. Involvement in recruitment business required permission by the Minister of the Interior.

3.3.4 Law on Going to Work Abroad During Period When the Recruitment and Labor Protection Act B.E. Was in Effect²⁰

The promulgation of the Recruitment and Labor Protection Act B.E. 2528 resulted in the abolition of the Recruitment and Labor Protection Act B.E. 2511. The main reason for the promulgation of the law²¹ was the inefficiency in the enforcement of the Recruitment and Labor Act B.E. 2511

¹³ Article 17 of the Administration under Exigency Act B.E. 2495.

¹⁴ In the 45th law yearbook B.E. 2475 but published in the Government Gazette on August 31, B.E. 2475. The law was effective on that date as Article 2 of the law stated that the law was effective on the day it was published in the Government Gazette.

¹⁵ Article 5 of the Recruitment Act B.E. 2475.

¹⁶ Article 4 of the Recruitment Act B.E. 2475.

¹⁷ Article 3 of the Recruitment and Labor Protection Act B.E. 2511.

¹⁸ Article 2 of the Recruitment and Labor Protection Act B.E. 2511.

¹⁹ In 85th Government Gazette Chapter 38 dated April 30 B.E. 2511, page 213.

²⁰ In the 102nd Government Gazette Chapter 116, dated September 1, B.E. 2528, page 1.

²¹ The reason of the promulgation of the law as given at the end of the Recruitment and Labor Protection Act B.E. 2528 in the Government Gazette.

concerning problems with Thai laborers in foreign countries.

By the time of the promulgation of the law, there were large numbers of recruitment agents supplying workers to jobs in foreign countries. Many of them tricked job seekers to use their services without the availability of jobs, charging excessive service fees. In addition, laborers reached destined countries but got no job. Employers failed to honor the conditions of job contracts. Female laborers were sexually harassed or even raped by employers and their relatives. Many of them were abandoned. Laborers with these problems sought asylum in the Thai Labor Office or Thai Embassy. Their stay in such places caused problems with shelter and food, not to mention traveling costs to return to Thailand. Most recruitment agents said they had no fund to help such laborers and it was difficult for them to demand the money from guarantors of job seekers in seeking passports as the whereabouts of guarantors was not known.

Further, some laborers committed crimes in foreign countries and it became a must for the Thai authorities to help them. This caused heavy burden on the country's budget as provisions in the Recruitment and Labor Protection Act B.E. 2511 could not protect Thai laborers in foreign countries.

In addition to stricter control on recruitment, the control on recruitment of workers for jobs in foreign countries is separated from the control of recruitment effort for supplying workers to jobs in the country. A Fund for assistance of Thai laborers in foreign countries was set up. Service fees were adjusted to reflect the real economic situation.

3.3.5 Law on Going to Work Abroad During the Period when the Recruitment and Labor Protection Act (No. 2) B.E. 2537 Was in Effect²²

The Recruitment and Labor Protection Act (No. 2) B.E. 2537 did not result in the abolition of the Recruitment and Labor Protection Act B.E. 2528. It is merely the amendment to the law. The main reasons for the promulgation of the Recruitment and Labor Protection Act (No. 2) B.E. 2537 are as follows²³.

First, the Recruitment and Labor Protection Act B.E. 2528 contained improper provisions contributing to the existence of loopholes. Thus, there was a need to have provisions regulating sending workers for training in foreign countries. Provisions on the return of collateral and on the benefits from funds, as well as on punishment need to be improved.

Second, the Recruitment and Labor Protection Act B.E. 2528 could not adequately protect laborers. It thus needed improvement through the setting up of the Committee on Recruitment and Labor Protection to consider and work out the development plan for recruitment and labor protection. Job seekers were to be given more protection, including the cases in which job seekers were not entitled to rights and benefits as laid out in job contracts. And there were to be provisions regulating the testing of skills.

Currently, the main Thai law concerning this matter is the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537. The question is how the law facilitates going to work abroad of Thai laborers.

4. Categorization of Thai Laborers Going to Work Abroad.

Employment in Thailand can be put into two main categories, as in other countries, as follows:

1. employment that is not through recruitment agents and
2. employment that is through recruitment agents.

4.1 Going to Work Abroad of Thai Laborers That Is Not through Recruitment Agents.

²² In 111th Government Gazette (Chapter 28, dated June 30, B.E. 2537, page 40.)

²³ The reason as it was published in the Government Gazette at the end of the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

Currently, the law on recruitment and labor protection regulates only two types of going to work abroad that is not through recruitment agents as follows: 1. Going to work abroad to fulfill the employment contract between employers in foreign countries and employees in Thailand and 2. Going to work abroad to fulfill the employment contract between employers and employees both in Thailand.

The Thai law on this matter does not contain the provision regulating the making of job contract in foreign countries between foreign employers and Thai employees. In this case, there is no need for the state from which the nationality of laborers derives to protect its nationals, as laborers were not sent from the state and the decision to become engaged in employment took place in foreign countries that are beyond the scope of the Recruitment and Labor Protection Act B.E. 2528. Thailand, however, may protect these laborers through the principle of diplomatic protection accepted without dispute by the international community.

4.1.1 Going to Work Abroad to Fulfill Employment between Employers in Foreign Countries and Employees in Thailand

The Employment contract made in Thailand or in foreign countries may not be through recruitment agents. No provision in Thai law requires recruitment agents to act as a medium in all cases. The law just forbids “conducting job application”, that is, the prohibition of foreign employers or their agents from conducting the application for the jobs in foreign countries by themselves. The law requires that the application for jobs in foreign countries be conducted by recruitment agents or the Recruitment Department.²⁴ In case job seekers intend to go to work abroad by themselves without relying on the service of recruitment agents, the law requires them²⁵ to notify the Director-General of the Recruitment Department or those authorized by the Director-General at least 15 days²⁶ prior to their departure. Violators of the law shall be punished with fine not exceeding 5,000 baht.²⁷ In conclusion, although the law does not require job seekers to seek permission to go to work abroad, they are required to inform their intention to go to work abroad to government officials. Punishment will be imposed on them if they violate the law. But it should be noted that the punishment is a fine, not imprisonment. It is questionable to what extent the law is applied in the real world.

4.1.2 Going to Work Abroad to Fulfill Employment Contract between Employers and Employees Who Are Both in Thailand

Going to work abroad of Thai laborers may result from the fulfillment of the employment contract between employers and employees who are both in Thailand. As required by the nature of work, employers may send employees to work or to experience training abroad. Nevertheless, Thai law does not grant employers the full freedom of sending workers to work abroad. To send their workers to work abroad, employers must obtain permission from the Director-General of the Department of Recruitment²⁸. The procedure for seeking permission was determined by the Minister of Labor and Social Welfare²⁹. Violators shall be punished with imprisonment of 3-10 years or a fine of 60,000-200,000 baht or both.³⁰

4.2 Going to Work Abroad of Thai Laborers Through the Arrangement of Recruitment Agents.

Going to work abroad of Thai laborers may be through the arrangement of recruitment agents.

²⁴ Article 50 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

²⁵ Proclamation of the Department of Recruitment on the notification of going to work abroad by ONESELF (No. 3) dated August 4, B.E. 2538.

²⁶ Article 48 of the Recruitment and Labor protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

²⁷ Article 25 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537

²⁸ Article 49 of the Recruitment and Labor Protection Act B.E. 2528.

²⁹ Order of the Ministry of Labor and Social Welfare on the seeking of permission to send workers to work abroad dated March 8, B.E. 2538 (in the 112th of the Government Gazette special Chapter 10 dated March 29 B.E. 2538

³⁰ Article 82 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

The Thai law on recruitment and labor protection imposes strict control on recruitment business as the business may lead to “trade on human beings” that is considered downright human rights abuse. We thus want to determine to what extent Thai law accepts recruitment efforts to supply workers for jobs in foreign countries.

5. Procedures for Sending Thai Laborers Abroad May Be Done by Private and Public Organizations.

The Thai law demands that “Recruitment Office” be set up in the Recruitment Department of the Ministry of Labor and Social Welfare. The Office provides its services to job seekers without charging service fees. The branches of such office can be established if the Director- General of the Department of Recruitment gives his consent to their establishment³¹. The law allows the Ministry of Labor and Social Welfare to establish recruitment offices at the national and local levels. The existence of such offices resulted in the export of Thai laborers by state organizations.

The Thai law since B.E. 2475 allows the involvement of the private sectors in recruitment business. Currently, the Thai law requires private firms involved in two types of recruitment business related to the exportation of laborers to obtain licenses. The two types of businesses are the recruitment business and the testing of laborer’ skills business.

Under the current law, private firms involved in the recruitment business experience strict control. The control exercised over exportation of laborers is even stricter. The firms are required to meet every condition set by the law. The rules concerning the setting up of the firms can be concluded as follows.

5.2.1.1 Entrepreneurs Must Be Legal Entities in the Form of Companies.

The firms involved in the business related to the exportation of laborers must be in the form of companies. They may either be private or public companies.³² The name of the companies must include the words “limited partnership for recruitment or recruitment company.”³³ The words are placed before the names of the firm. On the contrary, the law forbids the companies that are not permitted to be involved in the recruitment business to use the words “recruitment office partnership for recruitment” or “recruitment company” or foreign letters denoting the same meaning.³⁴

5.2.1.2 Companies Must Have Paid-up Capital As Required by Law.

Companies seeking the license to get involved in the business related to the exportation of laborers must have paid-up capital as required by the law. The amount of the paid-up capital must not be less than one million baht.³⁵

5.2.1.3 Majority of the Shares Must Belong to Thai Shareholders and the Majority of Shareholders must be Thai Nationals.

Companies seeking license to get involved in the business related to the exportation of laborers must have capital, three fourths of which belong to Thai shareholders; and Thai shareholders must constitute three fourths of the total members of shareholders.³⁶

5.2.1.4 Companies Involved in the Business Must Never Have Been Given Permission to Get Involved in Recruitment Business.

³¹ Article 7 of the Recruitment and Labor Protection Act as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

³² Article 31 of the Recruitment and Labor Protection Act B.E. 2528.

³³ Article 64 of the Recruitment and Labor Protection Act B.E. 2528.

³⁴ Article 65 of the Recruitment and Labor Protection Act B.E. 2528.

³⁵ Article 31 (1) of the Recruitment and Labor Protection Act B.E. 2528.

³⁶ Article 31 (2) of the Recruitment and Labor Protection Act B.E. 2528.

The law forbids companies already given licenses to get involved in the business to seek license again.³⁷ Also, where the licenses of the companies are suspended, such companies are forbidden to seek licenses again,³⁸ nor will the companies whose licenses are revoked be allowed to seek licenses again.³⁹

5.2.1.5 Companies Must Have Collateral As Required by Law.

Companies seeking licenses to get involved in the business related to exportation of laborers are required to have the amounts of collateral determined by the Ministerial Regulations. The amounts of collateral must not be less than 100,000 baht and are kept by the Registration Office as a guarantee of compliance to the Act.⁴⁰ The collateral as stated in the Article 31 (2) must be cash, bonds issued by the Thai Government or a Bank's letter of guarantee. The companies obtaining licenses may change collateral⁴¹ in case the amounts of collateral decrease as they are expended. Registration Officers may order in writing the companies obtaining licenses to supply additional collateral to compensate for the expended amounts within 30 days after they received such order.⁴²

The collateral supplied by the companies obtaining licenses is not subject to execution as long as the companies do not withdraw themselves from the business or they have withdrawn themselves from business but have yet to be absolved from the responsibilities as specified in the Recruitment and Labor Protection Act B.E. 2528.⁴³

In case the companies obtaining licenses are disqualified or possess unwanted attributes, the law empowers the Registration Official to order for the correction within the fixed period of time or for the suspension of licenses of no more than 120 days each.⁴⁴

In case the companies fail to complete the correction within the specific period of time as ordered by the Registration Officer, the Registration Officer is empowered by the law to revoke licenses.⁴⁵

5.2.1.6 Conduct of the Test of the Skill of Laborers to Be Exported by Private Firms

By the effect of the Article 47 (bis) of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act B.E. 2537, the business related to the conduct of the test of laborers' skills comes under the state control. Entrepreneurs are required to ask for licenses from the Director-General of the Department of Skill Development. The conduct of the test of laborers' skills is required to meet the criteria determined by the Director-General. Entrepreneurs are not allowed to ask for money, properties, or other benefits other than the service charges set by the Director-General of the Department of Skill Development and with the consent of the Committee on the Development of Recruitment and Labor Protection.

6. Control on the Business Related to the Exportation of Laborers

6.1 General Concept in Controlling of the Business Related to the Exportation of Laborers.

Recruitment business is under the state control as the state is concerned about the entrepreneurs' actions that produce ill effects on job seekers.

6.2 Methods of the Control on the Business Related to the Exportation of Laborers

³⁷ Article 31 (3) of the Recruitment and Labor Protection Act B.E. 2528.

³⁸ Article 31 (4) of the Recruitment and Labor Protection Act B.E. 2528.

³⁹ Article 31 (4) of the Recruitment and Labor Protection Act B.E. 2528.

⁴⁰ Article 31 (7) of the Recruitment and Labor Protection Act B.E. 2528.

⁴¹ Paragraph 2 and 3 of Article 33 of the Recruitment and Labor Protection Act B.E. 2528.

⁴² Paragraph 1 of Article 33 of the Recruitment and Labor Protection Act B.E. 2528.

⁴³ Paragraph 1 of Article 34 of the Recruitment and Labor Protection Act B.E. 2528.

⁴⁴ Article 69 of the Recruitment and Labor Protection Act B.E. 2528.

⁴⁵ Article 70 of the Recruitment and Labor Protection Act B.E. 2528.

The control is characterized by the requirement that the companies involved in recruitment business get the license from the one holding authority over this matter. According to the Recruitment and Labor Protection Act B.E. 2528, the one holding authority is referred to as the "Central Registration Officer".⁴⁶ At present, the Central Registration Officer is the Director-General of the Recruitment Department of the Ministry of Labor and Social Welfare.⁴⁷ Violators shall be punished with imprisonment of 3-10 years or a fine of 60,000 – 200,000 baht or both.⁴⁸

The companies may have managed to get the license but if they violate the law, the officers are empowered by the law to revoke their licenses. The suspension of licenses must be proclaimed clearly to the public. The order of suspension must be in writing and then the licensees must be informed. In case the licensees cannot be found or they are unwilling to accept the order, the order must be posted on an easily visible spot at the offices of the licensees. The licensees are considered as being aware of the order from the day the order is posted at their offices onward.⁴⁹

During the period of suspension, the licensees are prohibited from conducting job application and exporting laborers. However, they are still obliged to bring back the laborers under their responsibilities to Thailand until they are absolved from their responsibilities as specified in the Recruitment and Labor Protection Act B.E. 2529. In addition, they are to report to the Registration Officer on the laborers under their responsibilities.⁵⁰

In case the licensees fail to make correction, the Director-General of the Recruitment Department is empowered by the law to revoke the licenses.

The order of revocation must be in writing and then the licensees must be informed. In case the licensees cannot be found or are unwilling to accept the order, the order must be posted on an easily visible spot at the offices of the licensees. The licensees are considered as being aware of the order from the day the order is posted at their offices onward.⁵¹

However, the licensees are still obliged to bring back the laborers under their responsibilities to Thailand until they are absolved from their responsibilities as specified in the Recruitment and Labor Protection Act B.E. 2528. In addition, they are to report to the Registration Officer on the laborers under their responsibilities.⁵²

The licensees whose licenses are suspended or revoked are entitled to make their petitions to the Minister of Labor and Social Welfare within 30 days after they receive the order.

The judgment of the Minister is final. The petition to the Minister does not result in the stay of execution on the order of revocation.⁵³

6.2.2 Prevention of Recruitment Business from Being Business of Fraud

The law empowers the Minister of Labor and Social Welfare to prohibit the licensees from getting involved in the businesses that are not consistent with the recruitment business.⁵⁴ The reason for this kind of control is to prevent the licensees from making use of the recruitment business in getting workers in fraudulent ways for other kinds of business in which they get involved.

The law facilitates the working out of such various measures to control recruitment business as

⁴⁶ Article 30 of the Recruitment and Labor Protection Act B.E. 2528.

⁴⁷ The Order of the Ministry of Labor and Social Welfare No. 235/B.E.2537 on the appointment of Officers to enforce the Recruitment and Labor Protection Act B.E. 2528 dated November 29, B.E. 2537.

⁴⁸ Article 82 of the Recruitment and Labor Protection Act B.E. 2528.

⁴⁹ Article 71 of the Recruitment and Labor Protection Act B.E. 2528.

⁵⁰ Article 71 of the Recruitment and Labor Protection B.E. 2528.

⁵¹ Article 71 of the Recruitment and Labor Protection Act B.E. 2528.

⁵² Article 71 of the Recruitment and Labor Protection Act B.E. 2528.

⁵³ Article 71 of the Recruitment and Labor Protection Act B.E. 2528.

⁵⁴ Article 12 of the Recruitment and Labor Protection Act B.E. 2528.

⁵⁵ Article 32 of the Recruitment and Labor Protection Act B.E. 2528.

measures to control the management of the recruitment companies (2.2.1), to control the conduct of job application (2.2.2), to control the service charges (2.2.3), to control offices or places for job application, (2.2.4) and to control the documents related to recruitment effort (2.2.5).

6.2.2.1 Control on the Management of Recruitment Companies

The companies seeking the license to operate in the recruitment business related to the exportation of laborers must possess certain qualities and be devoid of certain undesirable qualities. Article 31 (6) of the Recruitment and Labor Protection Act B.E. 2528 demands that companies seeking the license to operate in the business related to the exportation of laborers have the managers who possess certain qualities and be devoid of certain undesirable qualities as specified in Article 9. Undesirable qualities inferred from Article 31 (6) and Article 9 of the Recruitment and Labor Protection Act B.E. 2528 are as follows:

First, managers must be Thai nationals. The law does not allow aliens to be managers of the companies involved in the exportation of laborers.

Second, managers must have full legal capability. The persons must be of at least twenty years of age as the Thai law on recruitment demands that the manager of the companies be the ones who have come of age.⁵⁵ They must also not be incapacitated or quasi-incapacitated persons.

Third, managers must not have been involved in other recruitment companies. They must have never been given licenses to operate recruitment business. They must not have had imposed on them the suspension or the revocation of their licenses. They must not be executives and shareholders of companies. They must not be executives, shareholders, or managers of the companies revoked of their licenses or now making their petition to the Minister of Labor and Social Welfare.

Fourth, managers must not be decadent. They must not be engaged or have used to be engaged in moral misconduct. They must not have been sentenced to imprisonment by the final verdict or sentenced to imprisonment because of getting involved in crimes of which main elements are corrupt behavior. They must also not have been sentenced to imprisonment by being proved guilty of violating the Recruitment and Labor Protection Act B.E. 2528.

6.2.2.2 Control on the Conduct of Job Application

Fraudulent action can occur even in advertising. Thus the conduct of job application is strictly controlled. Advertising for job application must be in conformity with the Minister's Order.⁵⁶ In case the licensees who are engaged in the exportation of laborers intend to conduct the job application in advance, they are required to seek the approval of the Registration Officer. Asking for and granting approval must be done in conformity with the Minister's⁵⁷ order. Approval or refusal of the demand must be made within 30 days after the matter is submitted in detail as required by Ministerial regulations⁵⁸ to the Registration Officer.

6.2.2.3 Control on Service Charges

The licensee operating in the business related to the exportation of laborers is prohibited by law from demanding for and collecting service fees in advance of more than 30 days before the departures take place. In case such action is necessitated, the licensee is allowed to ask for the extension of the period from the central Registration Officer. The Central Registration Officer may use his discretion to extend the period. The extension can be made only once and is required not to exceed 30 days. The law stipulates that the extension is only possible with the contract already approved by the Director-General

⁵⁵ Article 19 of the Civil and Commercial Law Code states "on the completion of twenty years of age a person ceases to be a minor and becomes *sui juris*".

⁵⁶ Article 66 of the Recruitment and Labor Protection Act B.E. 2528.

⁵⁷ Article 35 of the Recruitment and Labor Protection Act B.E. 2528.

⁵⁸ Paragraph of the Article 35 clause 4 of the Recruitment and Labor Protection Act B.E. 2528.

of the Recruitment Department.⁵⁹

6.2.2.4 Control on Offices and Other Places of Job Application⁶⁰

The law empowers the Registration Officer and other authorized officers to enter offices and other places of job application during the day or office hours to carry out the inspection in an effort to enforce the Recruitment and Labor Protection Act B.E. 2528.

6.2.2.5 Control on Documents Associated with Recruitment Effort

The law empowers the Registration Officer and other authorized officers to make seizure of the records of registration and accounts and other documents related to recruitment effort if it is evident that there is a breach of the Recruitment and Labor Protection Act B.E. 2528.

In addition, the law empowers the Registration Officer to summon or order the licensees, managers, agents, employees, job seekers or other persons involved to testify to or supply evidence.

In performing such duties, the Registration Officers or other authorized officers are required to show their identity cards. Those involved must provide due convenience to the officers. The form and content of the identity cards are determined by the Minister.

In performing their duties in accordance with of the Recruitment and Labor Protection Act B.E. 2528, the law regards the Registration Officer and other authorized officers as the officers under the Criminal Code.⁶¹

7. State Organizations Dealing with Going to Work Abroad of Thai Laborers

Before B.E. 2535, the main state organization overseeing the welfare of Thai laborers in foreign countries was the Department of Labor, under the Ministry of Interior. But when the Ministry of Labor and Social Welfare was established, the responsibility regarding this matter was transferred to the Recruitment Department, the Ministry of Labor and Social Welfare. There are supporting organizations, depending on the nature of work, such as the Department of Skill Development and the Immigration Bureau of the Police Department.

In addition, there are two Committees – 1. the Committee on the Recruitment and Labor Protection and 2. the Committee on the Fund. Regarding the Committee on the Recruitment and Labor Protection⁶², the law required its setting up as Thailand was unable to provide adequate protection to its laborers. The Committee on Recruitment and Labor Protection was thus set up to work out a proposal for the development of the proper system of recruitment and labor protection. Job seekers should be given more protection, including the case of the deprivation of their justified rights that are specified in contracts. The Committee thus acts as the coordinator of the agencies concerned. The Committee thus comprises: the Permanent Secretary of the Ministry of Labor and Social Welfare acting as Chairman of the Committee, a representative of the Ministry of Foreign Affairs, a representative of the National Economic and Social Development Board, a representative of the Department of Skill Development, and a representative of the Recruitment Department. These representatives are the members of the Committee. The Cabinet appoints no more than eight other persons as members of the Committee. At least three members of the Committee are specialists in the recruitment and labor protection. One Committee member represents employers while another one represents employees. The Director of the Bureau of Administration of Thai labor in Foreign Countries acts as a Committee member and the secretary.⁶³ The duties of the Committee are as follows: 1. providing opinions regarding recruitment and labor protection to the Cabinet 2. providing opinions regarding the solution to the problem regarding

⁵⁹ Article 38 of the Recruitment and Labor Protection Act B.E. 2528.

⁶⁰ Article 67 of the Recruitment and Labor Protection Act B.E. 2528.

⁶¹ Article 68 of the Recruitment and Labor Protection B.E. 2528.

⁶² Article 61 (bis) of the Recruitment and Labor Protection Act B.E. 2528.

⁶³ Article 61 of the Recruitment and Labor Protection Act B.E. 2528.

recruitment and labor protection 3. providing opinions to the Cabinet regarding measures to cope with cheating of laborers. 4. providing advice regarding the standard of the employment of Thai laborers in foreign countries to the agencies concerned. 5. Providing advice on the promotion of employment and the development of skills of Thai laborers to the agencies concerned. 6. providing advice on the setting of standard and criteria in the test of laborers' skills to the agencies concerned. 7. performing the tasks assigned by the Cabinet.

The Committee on the Fund for Providing Assistance to Laborers Working in Foreign Countries is not required by the law to be characterized by the participation of the agencies concerned. It is thus the internal Committee within the Ministry of Labor and Social Welfare. Thus, according to the law, the Committee only comprises the Director-General as Chairman of the Committee. No more than six other persons appointed by the Minister act as Committee members. The Director of the Bureau of the Administration of Thai Labor in Foreign Countries acts as a Committee member and the secretary.⁶⁴

8. Duties of Recruitment Companies

8.1 Documents of the Licensees prior to the Departure of Laborers

In the exportation of laborers, licensees to operate in the business related to the exportation of laborers are required to follow the following practices:

8.1.1 Control on the Making of Recruitment and Employment Contract

The law requires licensees to submit the recruitment and employment contracts to the Director-General of the Recruitment Department to obtain his approval. Thus, the companies are required to supply the following documents to the Director-General of the Recruitment Department for his consideration:⁶⁵ (a) recruitment contracts between agents and job seekers (b) employment conditions offered to job seekers by employers in foreign countries or by agents who are authorized to do so by employers in foreign countries.

8.1.2 Examination of Laborers' Health⁶⁶

Licensees are required to have job seekers examined of their health by the means determined by the Director-General and at the health centers chosen by the Director-General.

8.1.3 Training for Job Seekers⁶⁷

Licensees are required to have job seekers undergo selection and test of skills in accordance with the criteria set by the Director-General of the Recruitment Department. The subject matter of the training must be on (1) the law and cultures of the countries to which they are going, (2) employment conditions. The training may be held at the Central Registration Office, the Provincial Labor Registration Offices or other places chosen by the Director-General of the Recruitment Department.

In the conduct of the test of skills and training, licensees are allowed to initiate their own programs with their own expenses within the framework of the curriculum and method determined by the Director-General. But they are required to inform the Registration Officer in advance.

8.2 Duties of the Companies That Are Licensees After the Departure of Laborers from Thailand

Licensees are required to take the following action.

⁶⁴ Article 54 (i) of the Recruitment and Labor Protection Act B.E. 2528.

⁶⁵ Article 36 (i) of the Recruitment and Labor Protection Act B.E. 2528.

⁶⁶ Article 36 (2) of the Recruitment and Labor Protection Act B.E. 2528.

⁶⁷ Article 36 (3) of the Recruitment and Labor Protection Act B.E. 2528.

8.2.1 Coordinating with the Central Registration Officer to Facilitate the Protection of Thai Laborers in Foreign Countries

The law demands that companies that have received licenses supply documents concerning information on laborers to the Central Registration Officer.⁶⁸ The companies are required to supply: (1) the list of the names of laborers and their places of work in foreign countries; (2) copies of the employment contracts supplied to the Central Registration Officer within 7 days after the departure of laborers from Thailand; (3) the companies are required to make their monthly report to the Central Registration Officer on current situation within the ten days of next months in case laborers have not yet been employed as guaranteed by recruitment contracts. The format of the report is determined by the Director-General of the Recruitment Department.

8.2.2 Coordinating with State Organizations in Foreign Countries

To facilitate the protection of Thai laborers in foreign countries, the law requires the companies to supply the information on Thai laborers to the Thai Embassy and the Thai Consulate. The companies inform state organizations in writing with the following attachments: 1. The list of the names of laborers and their places of work within 15 days after laborers reach their destined countries, 2. In case there is no Thai Labor Office in that country, the companies there are required to notify in writing to the Thai Embassy or the Thai Consulate within the same period of time.

9. Responsibilities of the Companies under the Recruitment Contract

9.1 Responsibilities of the Companies in Cases Laborers Are Not Offered Employment As Guaranteed by Recruitment Contract

In case laborers reach destined countries but fail to get the jobs as guaranteed by recruitment contracts, the companies are required to arrange for their return to Thailand.⁶⁹ They are responsible for the costs of traveling, lodging, food and other necessary expenses until laborers depart for Thailand. However, as the Director-General considers that the failure to get jobs of laborers is not the fault of the companies and the companies have made every effort to help laborers return to Thailand as soon as possible, the Director-General decides to make compensation for the expenses of the companies. The money used as compensation is drawn from the Fund. The companies may ask the Director-General for the compensation amounting to half of the expenses. The money used as compensation is drawn from the Fund.⁷⁰

In case the companies inform laborers that the companies are ready to arrange for laborers' return to Thailand, but laborers are reluctant to return to Thailand within 60 days after the day they were informed, the licensees are required to deposit their money at the Employment Registration Office so that it can be used for expenditures on traveling, lodging, food and other kinds of costs in bringing laborers back to Thailand. The expenses borne by the authority itself can be compensated by the deduction from the amount of money deposited by the companies. The expenses borne by the authority are in fact derived from the Fund. The amount to be deducted from the money deposited by the companies is equal to the expenses borne by the authority that are in fact derived from the Fund. If the deducted amount is not used up, the remaining amount is to be returned to the companies at once. If the deducted amount does not cover the costs, the excess amount can be deducted from the collateral.⁷¹

In case laborers do not return without good reason to Thailand within 90 days after the companies deposit their money at the Central Employment Registration Office, the companies are not responsible for bringing the laborers back to Thailand. The companies may ask for the return of their

⁶⁸ Article 36 (4) of and (6) of the Recruitment and Labor Protection Act B.E. 2528.

⁶⁹ Article 39 of the Recruitment and Labor Protection Act B.E. 2528.

⁷⁰ Article 40 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

⁷¹ Article 31 (7) of the Recruitment and Labor Protection Act B.E. 2528.

money.⁷²

Finally, the companies are required to inform in writing to the Thai Labor Office in foreign countries within 15 days. In case there is no Thai Labor Office in those countries the companies are required to notify in writing to the Thai Embassy or the Thai Consulate in those countries and then supply the Central Employment Registration Office with copies of the notification.

9.2 Responsibilities of the Companies in Case Laborers Receive Wages Lower than the Amount As Specified in Contracts or Employment Condition

In case laborers reach destined countries but fail to get the amount of wage or job position as specified in recruitment contracts,⁷³ the companies are required to take the following responsibilities.

First, the companies must arrange for the return of laborers if the laborers ask the companies to do so by informing in writing to the companies or authorized agents of the companies within 90 days after they learn that they will receive wages lower than the amount as specified in contracts or will not be given the job positions or fringe benefits as specified in contracts. If laborers are unable to inform the companies or authorized agents of the companies, they can inform the Thai Embassy or the Consulate so that the Embassy or the Consulate will further inform the companies.

However, as the Director-General considers that the failure of laborers to get the amount of wages, job positions, or fringe benefits as specified in contracts is not the fault of the companies and the companies have made every effort to help laborers get the amount of wages, job positions, or fringe benefits as specified in contracts, or the companies have made every effort to help laborers return to Thailand as soon as possible, the Director-General may decide to make compensation for the expenses of the companies. The money used for compensation is drawn from the Fund. The companies may ask the Director General for the compensation amounting to half of the expenses. The money used as compensation is drawn from the Fund.⁷⁴

In case the companies inform laborers that the companies are ready to arrange for laborers' return to Thailand, but the laborers are reluctant to return to Thailand within 60 days after they were informed, the licensees are required to deposit their money at the Central Employment Registration Office so that it can be used for expenditures on traveling, lodging, food and other kinds of costs in bringing laborers back to Thailand. The expenses borne by the authority itself can be compensated by the deduction from amount of money deposited by the companies. The expenses borne by the authority itself are in fact derived from the Fund. If the deducted amount is not used up, the remaining amount is to be returned to the companies at once. If the deducted amount does not cover the costs, the excess amount can be deducted from the collateral.⁷⁵

In case laborers do not return without good reason to Thailand within 90 after the companies deposit their money at the Central Employment Registration Office, the companies are not responsible for bringing laborers back to Thailand. The companies may ask for the return of their money.⁷⁶

The companies are required to inform in writing to the Thai Labor Office in foreign countries. In case there is no Thai Labor Office, the companies are required to notify in writing to the Thai Embassy or the Thai Consulate in those countries and then supply the Central Employment Registration Office

⁷² Article 42 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

⁷³ Article 40 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

⁷⁴ Article 41 of the Recruitment and Labor Protection Act as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

⁷⁵ Article 42 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537 comprising Article 31 (7) of the Recruitment and Labor Protection Act B.E. 2528.

⁷⁶ Article 42 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537.

with copies of the notification.⁷⁷

Thus, the nature of responsibility borne by the companies is the same as that of the responsibility the companies have to bear in case laborers fail to get their jobs.

Second, in case laborers accept lower wages or job positions or fringe benefits not specified in contracts, the companies bear no responsibility in bringing laborers back to Thailand. But they are required to notify in writing to the Thai Labor Office within 15 days. In case there is no Thai Labor Office, the companies are required to notify in writing to the Thai Embassy or the Thai Consulate in that country and then supply the Central Employment Registration Office with copies of the notification.

10. Duties of the Laborers Going to Work Abroad.

10.1 Duty to Notify Their Going to Work Abroad to the Director-General of the Recruitment Department

Job seekers who go to work abroad by themselves without having made contracts with the recruitment agents are required to notify their intention to go to work abroad to the Director-General of the Recruitment Department at least 10 days before their departure. The notification is to be done in the way determined by the Director-General.⁷⁸

10.2 Duty to Take the Designated Path and Pass through Checkpoints and be Subjected to Examination by the Officers at the Checkpoints

Laborers departing from the country are required to take the designated path and pass through checkpoints as determined by the Minister and proclaimed in the Government Gazette. Laborers are required to hand over documents in the way determined by Ministerial Regulations and be examined by the officers at the checkpoints.⁷⁹

In case the officers find that laborers cannot produce the evidence regarding the employment by employers in foreign countries, the officers may use their discretion to stop the departure from Thailand of such laborers. Clear reason for stopping the departure must be recorded.⁸⁰ The responsibility for the costs of damage from the stop of the departures is borne by companies engaged in the exportation of laborers. In case laborers make their trip by themselves without reliance on the service of recruitment agents, the laborers are responsible for the costs of damage.⁸¹

10.3 Duty Regarding Making the Notification to the Thai Labor Office or the Thai Embassy or the Thai Consulate in Foreign Countries⁸²

When laborers reach destined countries, they are required to notify in writing to the Thai Labor Office within 15 days after they reach the destination, specifying domicile, residences, and places of work in the foreign countries. In case there is no Thai Labor Office, laborers are required to notify in writing to the Thai Embassy or the Thai Consulate in these countries.

11. The Fund for Assisting Job Seekers to Go to Work in Foreign Countries

To provide the solution to the problem of the scarcity of funds for assisting the Thai laborers in the foreign countries, the "Fund" to serve this purpose was set up.

11.1 Source of Money and Assets

⁷⁷ Article 40 of the Recruitment and Labor Protection Act B.E. 2528 as amended by the Recruitment and Labor Protection Act (No. 2) B.E. 2537 comprising Article 39 of the Recruitment and Labor Protection Act B.E. 2528.

⁷⁸ Article 48 of the Recruitment and Labor Protection Act B.E. 2528.

⁷⁹ Paragraph 1 of Article 62 of the Recruitment and Labor Protection Act B.E. 2528.

⁸⁰ Paragraph 1 of Article 63 of the Recruitment and Labor Protection Act B.E. 2528.

⁸¹ Paragraph 2 of Article 63 of the Recruitment and Labor Protection Act B.E. 2528.

⁸² Article 51 of the Recruitment and Labor Protection Act B.E. 2528.

Article 52 of the Recruitment and Labor Protection Act B.E. 2528 stipulates that the Fund must be set up in the Labor Department referred to as "the Fund for Assisting Job Seekers to Go to Work in Foreign Countries. The Fund comprises the following.

11.1.1 Government's Subsidy

11.1.2 The Money Supplied to the Fund by the Licensees Engaged in the Exportation of Laborers As Required by the Recruitment and Labor Protection Act B.E. 2528⁸³

The money supplied by the recruitment licensees is derived from two sources:

1. The money supplied by employers in foreign countries at the persuasion of recruitment companies. If the recruitment companies cannot ask foreign employers to supply money to the Fund, recruitment companies are required to supply money to the Fund.
2. The money supplied by employers at the persuasion of the Director-General of the Recruitment Department in case the Recruitment Department arranges for the exportation of laborers by itself. If the Director-General cannot persuade employers to supply money to the Fund, he is empowered by the law to collect money from laborers.

Supplying money to the Fund is based on the method determined by the Ministerial Regulation. The amount of money to be supplied to the Fund may be different depending on the country or region to which laborers are exported.

11.1.3 Gains of the Fund

The Minister of Labor and Social Welfare is empowered by the law to subject the Fund (except the part subsidized by the Government) to the process productive of its gains by depositing it in government-owned banks in the form of fixed or saving deposits or by purchasing government's bonds.⁸⁴

11.1.4 Money or Assets Donated by People

11.1.5 Collateral That Becomes the Asset of the Fund

In case companies terminate the operation of their recruitment businesses, they are eligible to claim collateral only when they have paid off the debt incurred under the Recruitment and Labor Protection Act B.E. 2528. If collateral is not claimed by anyone within five years after the companies terminate the operation of their recruitment businesses, it becomes the asset of the Fund.⁸⁵

In addition, the law demands that money and other assets comprising "the Fund for Assisting Job Seekers to Go to Work Abroad" be directly supplied to the Fund without being supplied to the Ministry of Finance as national revenues. But the management of the Fund must be in the way that is determined by the Minister and approved by the Minister of Finance.

11.2 Purpose of the Fund

Article 53 of the Recruitment and Labor Protection Act B.E. 2528 specifies the activities of which the Fund can serve as follows: (1) bringing back abandoned laborers in foreign countries. (2) providing aids to job seekers going to work abroad. (3) selecting, conducting the test, and providing training to job seekers before they go to work abroad. Drawing money from the Fund to be used in such activities must be done in accordance with the regulations set by the Minister of Labor and Social

⁸³ Article 37 of the Recruitment and Labor Protection Act B.E. 2528.

⁸⁴ Article 59 of the Recruitment and Labor Protection Act B.E. 2528

⁸⁵ Paragraph 2 of Article 34 of the Recruitment and Labor Protection Act B.E. 2528

Welfare.⁸⁶

11.3 Committee on the Fund for Assisting Job Seekers to Go to Work Abroad

Article 54 of the Recruitment and Labor Protection Act B.E. 2528 stipulates that "the Committee on the Fund for Assisting Job Seekers to Go to Work Abroad" must be set up. The Committee comprises the Director-General of the Labor Department acting as Chairman of the Committee. No more than six other persons appointed by the Minister are the Committee members. The Director of the Office of the Administration of Thai Labor in Foreign Countries acts as Secretary. The tenure of office of the Committee members appointed by the Minister is three years. In case new Committee members are appointed while the tenure of the old ones has yet to expire, and whether or not it is additional appointment or replacement appointment, the tenure of office of the newly appointed Committee members is equal with the remaining length of the tenure of the old ones. The Committee members whose tenures expire may be re-appointed. But they must not be appointed more than two times consecutively.⁸⁷ Membership of the Committee members appointed by the Minister ends when they (1) die, (2) give up their membership, (3) are dismissed by the Minister, (4) become bankrupt, or (5) become incapacitated persons or quasi-incapacitated persons or are sentenced to imprisonment by the final verdict, except for the crime committed by the act of negligence or petty offence.⁸⁸

11.4 Meeting of the Committee on the Fund for Assisting Job Seekers to Go to Work Abroad

The meeting of the Fund's Committee can take place only when no less than half of the Committee members attend the meeting. In case the Chairman of the Committee is not present or is present but unable to perform his duty, one Committee member is chosen by the peers to act as Chairman. The resolution of the meeting derives from the unanimity of the vote. Each Committee member has one vote. If the vote regarding the matter turns out to be equal in number, the Chairman of the Committee has one more vote considered as a casting vote.⁸⁹

11.5. Duties of the Fund in Assisting Job Seekers to Go to Work Abroad⁹⁰

The duties of the Committee are: 1. providing advice to the Minister in issuing regulations under Article 52 and Article 53 and 2. providing advice to the Director-General, the Registration officers and other officers in performing their duties regarding the Fund.

11.6 Drawing Money from the Fund⁹¹

The Director-General of the Recruitment Department or other officers authorized by the Director-General are empowered by the law to draw money from the Fund and spend it to serve the purpose of the Fund as determined by the law.

11.7 Report on Receipts and Payments of the Fund

Within 90 days after the end of the Budgetary Year, the Central Employment Registration Officer is required to present the report on payments and receipts of the Fund and the report must be published in the Government Gazette.

12. Conclusion

In principle, no Thai law eliminates or even restricts the right of Thai nationals to go to work abroad, although there is the law promulgated during the exigency that may adversely affect the ability of Thai nationals to go to work abroad. But the law empowering the state to restrict the right to go to work

⁸⁶ Article 53 of the Recruitment and Labor Protection Act B.E. 2528.
⁸⁷ Article 55 of the Recruitment and Labor Protection Act B.E. 2528.
⁸⁸ Article 56 of the Recruitment and Labor Protection Act B.E. 2528.
⁸⁹ Article 51 of the Recruitment and Labor Protection Act B.E. 2528.
⁹⁰ Article 58 of the Recruitment and Labor Protection Act B.E. 2528.
⁹¹ Article 60 of the Recruitment and Labor Protection Act B.E. 2528.

abroad has limited effect. On the contrary, there are laws facilitating going to work abroad of Thai nationals.

In the perspective of Thailand as the source country, all legal problems surveyed by our research encompass the main problems faced by Thai nationals in going to work abroad. However, as they are Thai nationals, Thailand, from which their nationality derives, is to be concerned about legal problems faced by Thai nationals in foreign countries as the national state has political ties to its nationals, no matter where on earth its nationals make their appearance though the ties are not complete under the International Law of Diplomatic Protection. Though not all problems occur domestically, Thailand should take into consideration and search for solutions to the problems its nationals face in working in foreign countries.

12.1 Problems of Human Rights Abuses Suffered by Thai Laborers in Foreign Countries

It is generally thought that Thai laborers in Thailand are less likely to be abused than their counterparts in foreign countries. It may be the abuse of labor rights⁹² or basic human rights.⁹³

The first reason for the severity of human rights abuses imposed on Thai laborers is their ignorance. They are underprivileged and ignorant of their rights. Thus, they do not know how to protect their rights. They left the country without having been subjected to preliminary training. Thus, they are ignorant of their rights and the laws of the destination countries.

Second, they were cheated by persons superior to them in economic status, such as employers, recruitment agents, and governmental officers. Thai laborers have always been cheated by recruitment agents and foreign employers. When they quarreled with employers, they were fired. As a result, they became illegal immigrants although they had entered the countries legally.

Third, they were unable to gain access to aid provided by the State. Although the law demands that the aid be provided to underprivileged laborers, they found it difficult to seek assistance from the State. Seeking assistance from the authority of the State in which they were working was even more difficult as they were ignorant of foreign languages. This further results in their inability to establish friendly relations with the authority of the State in which they work.

Fourth, laborers may get the aid as stipulated by the law. But in reality they failed to get the aid because of the inefficiency of the bureaucracy. Being abandoned in foreign countries is likely to happen to Thai laborers as Thailand adopts the free-trade policy regarding the exportation of laborers. As a result, there are so many firms engaged in the exportation of laborers. In principle, their operation must be under the supervision of the State. The State organ supervising and regulating the exportation of laborers is the Ministry of Labor and Social Welfare. However, the exportation of laborers is not closely watched and supervised. As a result, so many laborers in foreign countries were abandoned.

The State should thus impose tighter control on recruitment companies. The measures adopted by the State should be preventive and aggressively protective. Co-operation with destination countries must be established for the sake of efficiency in solving the problem.

12.2 Existence of Crime Associated with Thai Laborers in Foreign Countries

In addition to the protection of Thai laborers in foreign countries, Thailand should be engaged in the effort to suppress crime associated with Thai laborers in foreign countries. Crimes may be committed by Thais or Thais may be victimized by the criminal groups.

12.3 Existence of Problems of Thai Laborers Who Have Become Displaced Thais

⁹² The right to receive the lowest wages, social welfare, as well as the right to decent housing and the right to labor protection.

⁹³ Newspaper report on the detention of Thai workers in a factory in the U.S. or the rape of a Thai housemaid by a Singaporean employer.

In reality, many Thai laborers decided to settle in foreign countries. Whether they entered the countries legally or illegally, they and their offspring became minorities in those countries. It is possible that they are still Thai nationals if there is no reason for them to lose Thai nationality as specified in the Nationality Act. It is also possible that they have already lost their Thai nationality, but they are still Thais by their blood. Thus, they can be referred to as "displaced Thais".

The question is whether the Thai State should provide assistance to these Thais. Without doubt, the term "Thai laborers" mean Thai nationals. It is clear that the rejection of political rights of the Thai nationals in the foreign country is unconstitutional as long as the displaced Thais still hold Thai nationality.

The next question to be answered is that in case the displaced Thais lose Thai nationality, at what level should Thailand have relations with those persons? It is obvious that the Thai law accepts the right of the persons who used to be Thai nationals to become Thai nationals again, and the process they are required to go through to be granted the Thai nationality is simple.⁹⁴ But while displaced Thais still renounce the Thai nationality, what kind of relations we should develop between the Thai State and the displaced Thais or aliens who are Thais by blood?

12.4 Necessity of International Co-operation in Seeking the Solution to International Labor Problems

Solving problems faced by Thai laborers in foreign countries is impossible without the friendly relations Thailand enjoys with the countries in which Thai laborers work. Under the customary international law, states rely on the principle of reciprocity in conducting their relations with other States. If the states have mutual interests, the co-operation in solving the problems goes on smoothly. The international practice is thus marked by the making of treaties governing the treatment of each other's nationals in each other's territories.

As for Thailand, it has made efforts to make treaties with other countries to protect Thai nationals working in other countries. However, the treaties protect Thai nationals' investment instead of the Thais. Only Thai investors benefit from such treaties. Currently, there is no treaty protecting unskilled Thai laborers working in foreign countries. Protection of the unskilled laborers may be possible only through the customary international law and the general principle of international law that is within the scope of the principle of diplomatic protection and the principle of Human Right.

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