

Personal Document Retention among Migrant Workers Employed on Fishing Vessels

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Preamble

A civil society organization working to offer legal assistance to migrant workers, the Human Rights and Development Foundation (HRDF) has been founded since 2000 with five chapters in Bangkok, Samut Sakhon, Chiang Mai, Tak (Mae Sot District) and Phuket. One of its programs, the Ship to Shore Rights, has been receiving funding from the International Labour Organization (ILO) to raise the awareness and offer legal assistance as well as to advocate for policies concerning migrant worker in fishery sector and its downstream industries in coastal provinces in the Andaman Sea and the Gulf of Thailand in Thailand.

The Fact Sheet No.1 on “Personal document retention among migrant worker working on board fishing vessels” aims to disseminate information acquired through our provision of legal assistance and visits to raise awareness of fishing workers in various areas. HRDF has found a pressing issue encountered by workers in the fishing industry, specifically concerning migrant workers who face personal document retention and struggle to have access to their documents when needed. As a result, the workers are deprived of various personal rights and freedoms including being prevented from changing their jobs, impediment of their freedom of movement, deprivation of their negotiation leverage with their employers and a risk of becoming victims of trafficking in person and forced labour. The document sheds light on the issues of document retention among migrant workers in fishery sector, a systematic problem which does not happen on specific cases, but rather a widespread problem that happens predominantly and regularly. This has led to our offering of recommendations to solve the problem. This document is therefore an attempt to explore and compile information concerning legal provisions which may be useful for the law enforcement and policymakers to ensure the rights protection among migrant worker and to enhance working condition in fishing industry.

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Case studies

Between July and December 2022, HRDF provided vital legal assistance to a total of nine cases involving migrant workers employed on fishing vessels. . Eight of the nine cases have had their personal document retained by either their employers or agents. Additionally, these works encounter the problem accessing their personal documents and are unable to retrieve their documents even when a request has been made to the parties responsible for withholding them.

According to HRDF's experience, the workers did not complain with us directly about personal document retention. Rather, it started from their request for legal assistance on other issues initially, i.e., unfair termination of employment and not receiving the payment from their employers, facing obstacles when changing their jobs, suffering from work-related injury, facing intimidation or physical assault or property damage, etc. However, after some fact-finding, HRDF has found common issue present among the cases is they have had their personal documents retained or have an obstacle to access their personal documents.

Table: A summary of fishing workers receiving HRDF's legal assistance during July-December 2022

Case	Complaint	Violations related to forced labour							
		Physical violence	Intimidation	Document retention	Wage theft	Long working hours	Debt	Deception	Restrict Freedom of movement
Mr. K. Fishing Pattani	Property damaged by agent / employer failing to make payment		/	/	/	/	/		
Mr. T. Fishing Chumphon	Being intimidated, physically abused	/	/	/	/	/	/		/
Mr. S. Fishing Phuket	Unfair termination of employment, not receiving payment, debt incurred from documents		/	/	/		/		
4 fishing workers Phuket	Document retention		/	/	/		/		
17 fishing workers Pattani	Being intimidated, physically abused, document retention		/	/	/				
Mr. Ta. Fishing Ranong	Death during custody			renewing documents					
Mr. M. Fishing Ranong	Being intimidated, document retention		/	/	/	/	/		
Mr. H. Fishing Trang	Loss of father due to work-related accident			/					
Mr. A. Fishing Trang	Work-related accident		/	/					

Cases of fishing workers in Chumphon

Mr. T, a fishing worker on Boat B in Chumphon, sought legal assistance to have him rescued from his workplace since his employer threatened to physically abuse him and to throw his body into the sea. According to Mr. B, he has made four requests to resign, but the employer forced him to continue working by retaining his personal documents. He used to ask for the documents when getting on shore from his employer, but his employer only allowed for a photocopy of his personal documents to be given. This photocopy served as a desperate measure to avoid police arrest. As a result of the document retention, the employee was deprived of his freedom of movement since he feared being arrested by the police. He has thus involuntarily agreed to work in such bad working condition. In addition, Mr. B's experience working on Boat B could constitute a danger to his life and body since he has faced several incidences of physical abuse to inflict fear in him. The physical abuse was also inflicted when the employer was not satisfied with his performance. In addition, he was scolded with foul words and profanity and threatened many a time. The payment was made in cash with the deduction of document-related debt monthly. Mr. B had no idea that he had a bank book or an ATM card. And the cash he received did not match the record of the bank transaction.

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Cases of fishing workers in Ranong

Mr. M., a fishing worker on Boat C in Ranong, has asked for legal assistance since he wants to have his documents returned including CI, pink card, health insurance card, seabook, work permit, bank book and ATM card and to demand the unpaid salary. Mr. C has been working on the fishing vessel since February 2022 as a mechanic and was promised a salary of 18,000 baht a month. In addition, he demands his employer pay him back the debt he had paid for document renewal while working with the previous employer at 3,100 baht. The previous employer made a deal with the new employer and handed over all his personal documents to the new employer except Border Pass. Since his first day of work, the payment has never been made on a specific day. Rather, he had to ask for the payment from his employer. The employer will then transfer the money to his son and his son will then bring the money to him. His monthly salary was paid in installments, and he had to ask for it several times before the departure of the boat until he received the full sum on 18,000 baht. The accumulation of hardships, including the grueling work schedule without days off on board and being compelled to work on shore for his employer, coupled with the personal document retention and failure to receive complete payment, prompted Mr. M to decide to resign from his job. After leaving the employer, he has constantly been threatened since his previous employer was not happy that he resigned. Eventually, Mr. M decided to return to live in Myanmar. In sum, the case constitutes an offence against labour protection law regarding failure to make payment, debt obligation and an infringement regarding personal document retention of the migrant worker.

The reason that prompts employers to often retain personal documents of fishing workers is as follows;

Documents retained to ensure the workers' servicing of debt: Employers argue that they have to retain the workers' passports because they have paid for fees relating to labour registration or legal status of the workers for over 5,000 baht each. Otherwise, the employers have to pay advance money for the fees to the recruitment companies or the agents, as a result they want to retain the documents as a guarantee that workers will repay this debt.

The employers fear the documents could get damaged or lost: Employers express concern that workers may not be able to safeguard their own document adequately, particularly fishing workers who work in the sea and could lose their documents while working. In addition, the employers need to get hold of the documents to show to the labour inspectors before and after the boat leaving the port for fishing.

Document retention is necessary to prevent workers from changing to a new employer or a new job. Since a fishing vessel may not be permitted to leave the port for fishing if there is insufficient number of workers on board or the number is incompatible with the capacity of the fishing gears of the vessel and when the number of workers on the fishing vessels does not match the demand of the employer. Therefore, employers seek to retain documents to ensure a stable workforce and avoid labor scarcity in the fishing sector.

Laws concerning personal document retention

1. Section 131 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 and its amendments

It prescribes that anyone seizes the work permit or other important document of the *foreign worker shall be liable to the punishment prescribed by the Royal Ordinance.*

However, if the migrant worker consent to having their documents retained, this act is then not an offence against the law. However, upon worker request to have access to their documents for whatever reasons, the employer, agent, or other person involved with the retention of documents is obliged to promptly return them the documents. Failure to do so by refusing to return the documents or preventing access to them can make the person guilty of retaining documents of the migrant worker as well.

Personal documents of the worker including their passport and work permit are documents directly concerned with the legal status of the worker. Without such personal documents, the worker can become an illegal resident and worker.

2. The Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector B.E.'s Article 14

According to the fishery work law, an employer is required to make payment to their employee via their bank account and has to be responsible for expense incurred from such bank transfer pursuant to the Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector B.E. 2565's Article 14.

It has been found that the employer often keeps the worker's bank book and ATM card and prefers to make payment to them by cash for their convenience. As a result, it is impossible for the authorities to transparently verify their payment serving the interest of the law.

3. Section 269/5 of the Penal Code on offence relating to the electronic card

Given that an employer is subject to inspection at the Port-in Port-out (PIPO) Center regarding the payment made to their employee including the bank transaction records, therefore, even if the employer makes the payment to their employee by cash, they are regularly required to produce evidence of bank transfer for inspection. The employee's account therefore often shows the records of deposits and withdrawals.

Nevertheless, the use of an ATM card of that belongs to another person can be held punishable according to Section 269/5 of the Penal Code on offence relating to the electronic card.

4. Section 358 of the Penal Code on offence of mischief

If an employer takes away their worker's passport or work permit claiming the need to have, they renewed or to do other actions to ensure the worker's right to continue staying and working in Thailand, but the employer has failed to do so. The employer even intentionally seizes the documents without returning them to the employee as a result of which the employee is unable to use them and is unable to have them renewed in time and their right to remain in Thailand is therefore deprived. Such incidence could constitute an offence of mischief according to the Penal Code's Section 358.

5. Section 6/1 of the Anti-Trafficking in Persons Act B.E. 2551 and its amendments

If the document retention is committed with an intent to force a migrant worker who owns the documents to work or provide services and if it is committed in such manner that is irresistible by the owner of the documents, it may constitute an offence of forced labour pursuant to Section 6/1 of the Anti-Trafficking in Persons Act B.E. 2551.

The Protocol of 2014 to the ILO Forced Labour Convention no. 29, 1930, ratified by Thailand on 4 June 2019 defines forced labour as "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

Such definition gives rise to a set of 11 indicators determined by the International Labour Organization on forced labour which include personal document retention and debt bondage. And even work that involves one of the indicators may constitute an act of forced labour as well, although in certain cases, multiple indicators have to be considered to determine if such act constitutes the use of forced labour or not.

Thailand applies the definition of forced labour to amend provisions in the Anti-Trafficking in Persons Act B.E. 2551 and its amendments since Section 6/1 of the Act prescribes that "whoever forces another person to work or provide service using any of the following means;

- (1) Threaten to cause injury to life, body, liberty, reputation or property of the
- (2) person threatened or any other person;
- (3) Intimidation;
- (4) Use of force;
- (5) Retention of identity documents;
- (6) Use the accumulated debt burden incurred by such person or any other person as the unlawful obligation;

Causing such person to be in an irresistible situation, the person shall be held punishable as committing an offence of forced labour or service."

The offence of forced labour encompasses treatment of a person in servitude and rendering a person in an undesirable condition through the retention of their important documents or through using the accumulated debt burden incurred by such person or any other person as the unlawful obligation, the definition of which complies with international treaties.

Conclusion and recommendations

Document retention is prohibited and punishable by law. Migrant workers shall have access to their documents at all time. Apart from depriving the worker of having their personal documents with themselves, document retention can restrict their freedom of movement without having to feel concerned about police raid which might make them become illegal workers. It will also deprive them of their right to employment which constitutes as an element of the use of forced labour.

In light of the cases of legal assistance given to aid access to judicial process, it has been found that the problem has often ended through a mediation to ensure the worker receive their documents back. Otherwise, they are required to pay off the debts allegedly owed to their employer before receiving back their documents. As a result, this leaves no clear implicating evidence which can be used to ensure law enforcement and to hold a perpetrator accountable. How can we ensure the employer is held liable for the crime including an offence relating to document retention? This can teach the employer a lesson that such act is not permissible. It has been found the employer can avoid liability through the mediation process. Some extralegal mediation process has been made and everyone can evade their legal liability. Due to the need to get back to work, the worker cannot get stuck for too long in the judicial procedure. Based on the aforementioned information, some recommendations can be made as follows;

Firstly, an effort must be made by concerned authorities to proactively raise the awareness of migrant workers about their rights regarding their personal documents and that they cannot be retained without their consent. Meanwhile, an attempt should be made among the employers that such an act is considered an infringement on the workers. Both the employers and the employees should be informed about their rights and duties regarding document retention to ensure compliance with the law.

Secondly, regarding personal document retention, laws and penalties have been established to clearly prevent the employers from retaining the documents. Although in particular, some employers do get hold of consent letters to have the documents retained by them, but the law enforcement authorities should review guidelines concerning document retention with the employer to ensure if such act is compatible or not with domestic laws and

how to ensure the employees always have access to their documents without being impeded by the employers. Most importantly, in order to help migrant workers whose documents are retained by their employers, the Department of Employment (DoE) must be aware of their duties and roles as far as law enforcement is concerned. Otherwise, there will be problems regarding the enforcement of the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 since DoE is considered a competent officials pursuant to the Ministry of Labour's Order no.115/2564 on the appointment of registrar of the law on the management of foreign workers' employment and the Ministry of Labour's Order no. 237/2560 on the appointment of competent official to enforce the Royal Ordinance Concerning the Management of Foreign Workers' Employment.

Thirdly, regarding salary deduction for debt servicing of fishing workers, the fees imposed on applying for labour registration should be reduced including fees for medical checkup as well. Moreover, the authorities should regulate the practice of the employers and the agents who apply for the documents on behalf of the fishing workers without asking for their consent and imposing extra fees of them. As a result, one fishery worker ends up having to pay up to 10,000 baht for such documents. In reality, the workers cannot afford to pay such exorbitant fees. This has given rise to them being indebted to the employers or having to work to service such debts incurred from applying for the documents. Even though it is clearly prescribed by law against such deduction, but in reality, the workers continue to be subjected to such deduction every month and some of them are not even aware of how much the deduction is. There is no clear proof attesting to the debts incurred on the workers and how much they have serviced them. It is pertinent for concerned authorities to scrutinize the employers on such debt deduction and to ensure such debt obligation does not render the workers in a condition whereby they can be irresistibly compelled to work. Otherwise, this may constitute an element of the use of forced labour by using the accumulated debt burden incurred by such person or any other person as the unlawful obligation.

Fourthly, one of the most important solutions to address the problems of forced labour and trafficking in persons in fishing industry is the inspection of the vessels and fishing workers during the port-in and port-out by labour inspectors and multidisciplinary teams. Such inspections must be carried out carefully, particularly the interviewing of the fishing workers in order to get to the bottom of the facts pertaining to document retention and indebtedness, etc.

Fifthly, an effort should be made to address the problems systematically and through the integration of work and information across the agencies including the legal and law enforcement agencies, such operations should be enhanced to bridge the gaps and to prevent any perpetrators from exploiting forced labour in fishing industry which is considered a heinous and gross human rights violation. It also has the ramification on Thailand's economy as a whole.

Lastly, the enforcement of certain Sections of the Royal Ordinance regarding the duration of legal worker status including Section 63/2 which limits the duration of permit to two years at a time and a longer period of up to five years according to Section 63/1 to prevent the workers from being trapped in the cycle of labour registration and debt cycle in which the employer can deduct the money endlessly, which may give rise to debt bondage and being vulnerable to becoming a victim of forced labour.



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