

Fact Sheet No. 2
October 2023

Wage Deductions of Workers in Fishery Sector

Human Rights and Development Foundation (HRDF)



The Fact Sheet No. 2 on “Wage Deductions of Workers in Fishery Sector” aims to present the problems stemming from the case studies of migrant workers in fishery sector who have been subject to Wage Deductions and have incurred debts related to their employment. The finding from the case studies in this factsheet has derived from our on-site legal training and exchange as well as our legal assistance given to the migrant workers by the Human Rights and Development Foundation (HRDF)¹.

This factsheet compiles and analyzes concerned legislations including legal frameworks concerning the payment in fishery sector, Wage Deductions, recruitment fees, and indebtedness and forced labour in order to develop recommendations to propose to those concerned with the law enforcement and to develop policies to enhance labour protection in Thailand’s fishery sector.

Wage Deductions, bonded labour and debt burden among migrant workers in Thailand’s fishery sector

Wage Deductions among workers in fishery sector occur when an employer or a broker or any person engaged in committing Wage Deduction of the workers causing them to not receive the full payment as agreed. Wage Deductions have often been justified for the “servicing of debt” the employee owes to their employer and it is often called “debt service.” Wage Deductions or debt service should therefore be subject to an investigation in terms of their transparency and even their legality to verify if it is eligible for the employer to deduct the payment of the employee for a debt service or not.

Bonded labour is another term often referred to as a part of forced labour. It occurs when a person has incurred debt burden and been forced to work to service the debt involuntarily and unwillingly. The International Labour Organization (ILO) defines bonded labour as a form of forced labour in which the job or activity is associated with (i) advance payments or loans or excessive fees from recruiters and/or employers to the worker or to a person’s family members; (ii) a financial penalty, and (iii) some form of coercion until a worker or family member has repaid the loan or payment advance.²

¹ Human Rights and Development Foundation (HRDF) is a civil society organization which offers legal assistance to migrant workers. Its Ship to Shore Rights project has been sponsored by the International Labour Organization (ILO) and aims to instill knowledge and offer legal assistance to workers facing litigations and to advocate for policies concerning migrant workers in fishery sector and seafood processing sector in Thailand’s coastal provinces.

² Guidelines concerning the measurement of force labour, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf

Wage Deductions, bonded labour and debt burden among migrant workers in Thailand's fishery sector



From our on-site survey of the problems among migrant workers in fishery sector in various parts of Thailand from July 2022 until June 2023, HRDF has found migrant workers in fishery sector have incurred debt related to their work, which can be divided into four major categories;

1 Travel-related debt: The travel-related debt of migrant workers can occur at variable times from the embarking on the trip from the country of origin to Thailand, or expense incurred when changing to a new job. The travel-related debt may include costs related to broad and lodging and food during the trip and when changing to a new job. In some cases, the workers owe the broker who brought them to work, in others, they owe the employer who has paid for the costs and asked to get reimbursed from the worker making them become indebted to the employer.

2 Debt incurred from fees related to the migrant worker's personal document application: Given the complicated process of the application for work permit of the migrant workers and the workers themselves are unable to work this out by themselves, they have to depend on either the employer or the broker. In addition, it is only possible to apply for work permit and the right to stay for a short period of time. Therefore, the migrant workers are required to pay quite a lot for document processing and the employer or the broker offers to help them and to pay for such expense for them and to seek the reimbursement later from the workers. The workers with debt burden are therefore restricted from changing their jobs since they are obliged to write off the debt of their employer first.³

3 Debt incurred from advance payment or requesting for advance payment to cover expenditure: In fishery sector, the employer traditionally pays in advance to the employee prior to the commencement of their work. For example, an employer may pay the employee 10,000 baht when the employee agreed to work, even before they get on border to work in the fishing vessel. The migrant employee often uses the money to buy their personal products and send as remittance to their family in the country of origin. After one month, the employer would continue to make the advance payment to the employee. In addition, if the employee requests for money during the month, or the employer uses petty cash to pay them, when the boat runs ashore, all the payments shall be recorded and deducted from the employee's

salary of the next month. It is natural in fishery work for them to work to service the advance payment and to any advance money for expenditure.

4 Debt incurred from medical costs: Sea fishery work involves many risks including having a machine falling on one's limbs, having one's limbs entangled in the nets or winches, or falling into the sea or getting disappeared during the work. When a worker is subject to work-related injury or illness, in some cases, the employer might foot the bill for them and ask for reimbursement from the employee later. Such debt burden indicates how a fishing worker has impeded access to the Workmen's Compensation Fund and the Social Security Fund or Health Insurance even though it is eligible for them to have access to such benefits.

In addition to the sources of debt aforementioned, the definition of "debt" according to the Civil and Commercial Code does not apply to money borrowing only. It also applies to other obligations and the right to seek claims according to the law including debt incurred from wrongful act, debt incurred according to the law, etc.

In the context of labour in fishery sector and seafood industry, bonded labour may occur when a worker is subject to debt obligation related to job recruitment, either with the employer or the broker. As a result, the employee is deprived of freedom to change their job. The employer may also exercise their power as the debtor to force the employee to work or to compel them to agree to an agreement or a condition imposed by the employer. Otherwise, it could be arranged to subject the employee to a condition in which they shall never be able to pay up the debt. This could amount to forced labour. Such bonded labour may occur regardless if the worker has legal or illegal work permit.⁴

Therefore, debt burden of the migrant employees may stem from various sources. A lack of clarity in terms of payment, debt and the retention of receipts regarding the receiving of payment, the payment, and debt service, remains a key challenge to any attempt to fathom the truths. In various cases, such challenges may stem from the attempt to verify the documents and the inconsistent information given between the employee and the employer making it difficult to calculate the outstanding unpaid wage and debt burden when the employee wants to seek a recourse through the grievance mechanism.

³ Report on the implications of reprieve programs by the Thai government for the migrant workers and the risk of forced labour, <http://hrdfoundation.org/?p=3009>

⁴ Good Labour Practices Guidelines for Primary Processing Workplaces in the Shrimp and Seafood Industry of Thailand, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_221482.pdf

Case studies of Wage Deduction among workers in fishery sector

During the one-year-period that HRDF assisted the workers in fishery sector (July 2022- June 2023), HRDF has offered counseling to 22 fishing workers. Of this, nine of them appear to suffer from Wage Deduction, debt burden and illegal payment of wage.

Case studies	Province	Wage Deductions	Indebted	Wage payment / deduction / document fees / debt burden	Status
1 Mr. K: Paid part of the wage, destruction of personal belongings	Pattani	n.a.	Yes	Paid in cash / Paid part of the wage / document fees: 18,000, not having to pay if completing two-year-stint	Worker changing to new job and not willing to take legal action
2 Mr. T: Threatened with physical abuse	Chumphon	Yes	Yes	Paid in cash / debt incurred from document fees: 6,000 baht / borrowing from employer: 9,000 baht / other debts: 6,000 baht / Not knowing of total debt	Proven that employee receiving advance payment, and thus having no outstanding unpaid wage, Case mediated by Provincial Office of Labour Protection and Welfare
3 Mr. S: Unfair dismissal, wage unpaid	Phuket	Yes	Yes	Paid in cash / Wage partially paid / Debt incurred from document fees at 12,700 baht, Deducted 500 baht/month	Case mediated by Provincial Office of Labour Protection and Welfare
4 Four crew members: Retention of personal documents	Phuket	Yes	Yes	Paid in cash / Deducted for document fees for 500-1,000 baht/month / Not knowing of total debt	Case mediated by Provincial Office of Labour Protection and Welfare
5 Mr. M: Threatened with physical abuse, document retention	Ranong	Yes	Yes	Paid in cash / Paid part of the wage / Owed to previous employer, paid up by new employer: 16,000 baht / debt incurred from document fees with new employer for 9,000 baht / borrowing from employer: 21,000 baht	Provincial Office of Labour Protection and Welfare instructing employer to pay, Case settled by Provincial Office of Labour Protection and Welfare
6 Mr. M: Document retention	Chumphon	Yes	Yes	Paid in cash / inconsistent payment depending on port in/port out timing / deducted for medical treatment for 6,000 baht / Wage Deducted during sick days / Debt incurred from document fees	Worker refusing to pursue complaint mechanism after receiving personal documents from previous employer

Case studies	Province	Wage deductions	Indebted	Wage payment / deduction / document fees / debt burden	Status
7 Two crew members: human trafficking (failure to pay wage, document retention, physical abuse)	Pattani	Yes	Yes	Paid in cash / Paid part of the wage / Debt incurred from document fees 30,000 baht/person, travel-related debt: 30,000 baht/person and other debts as claimed by employer, but not knowing total debt	Provincial Office of Labour Protection and Welfare instructing employer to pay
8 Two crew members, failure to pay wage, document retention, physical abuse	Pattani	Yes	Yes	Paid in cash / Deducted for advance payment / Deducted for outstanding debt from previous boat / Deducted for document fees / Debt incurred from document fees at 5,000 – 6,000 baht/person	Provincial Office of Labour Protection and Welfare instructing employer to pay, Case settled by Provincial Office of Labour Protection and Welfare
9 Mr. K : Missing during the work	Trang	Yes	Yes	Paid in cash / Deducted for document fees 2,000 baht/time / Debt incurred from document fees: 13,000 baht	Relatives in country of origin unwilling to pursue an action



From the above table, it indicates that Wage Deduction, debt burden and illegal payment of wage are interrelated.

Firstly, wage payment: Despite being required by law to pay wage to employees via their bank accounts, in practicality, the employers in fishery sector often pay them in cash. The workers often receive the payment not equal to the amount indicated in the employment contracts. In addition, due to advance payment and other small cash payment, there is less clarity as to the wage the workers should be paid.

Secondly, Wage Deduction: Fishing workers often get paid less than the amount indicated in the employment contracts. The debt burden between the employee and the employer is often the key reason that cited by the employer to conduct Wage Deduction.

Thirdly, debt burden between the employee and the employer: It is extremely dubious since such debt burden can stem from various factors, i.e., document application of the migrant workers, expense related to their travel to Thailand, outstanding debt from previous employer paid up by the new employer, medical costs, Wage Deduction for leave days and sick leave, advance request for wage, and advance payment, etc.

A key observation from our HRDF's work to assist the fishing workers is the facts and evidence pertaining to the payment, Wage Deduction and debt incurred on the workers are rather dubious. Most of the workers have no evidence regarding the receipt of the payment, debt service, and the total amount of debt burden which they can produce to the authorities. As a result, the employee lack the credible evidence when filing the complaints.



Mediation cases concerning unpaid wage and debt from document fees

At the Phuket Provincial Office of Labour Protection and Welfare

Mr. S who worked on a fishing vessel in Phuket was dismissed without advance notice and was denied payment of last salary of 10,100 baht. Mr. S wanted to work a new job, but his personal documents were retained by his employer. The employer claimed he owed him 12,700 baht. HRDF brought Mr. S to complain with the Phuket Provincial Office of Labour Protection and Welfare. The officials have summoned the employer for an inquiry. It has led to a mediation between the employer and Mr. S at the Provincial Office of Labour Protection and Welfare. Eventually, while the employer agreed to write off debt incurred from document fees at 12,700 baht. Mr. S agreed to withdraw the complaint concerning the failure to pay his last monthly salary for 10,100 baht.

Later, it was found four other fishing workers working with the same employer also faced the same problem like Mr. S. The four of them were dismissed without advance notice and denied payment of their last monthly salary. **The employer claimed that the four workers still owed him for document fees and as a result he had to retain personal documents of the workers.** After filing complaint with the Phuket Provincial Office of Labour Protection and Welfare, the officials have summoned the employer for an inquiry and asked them to return the documents to the workers. A mediation was conducted on the outstanding debt and the payment of the last monthly salary. Similar to the case of Mr. S, the four workers agreed to withdraw the complain and pursued no other action.

Case of the Ranong Provincial Office of Labour Protection and Welfare's order On deduction to serve debt

Mr. M was a fishing worker in Ranong. It was verbally agreed with the employer that he would be paid 12,000 baht/month. In practicality, he was not paid regularly every month. Instead, Mr. M would request for his pay from time to time. After six months, the employer would calculate the outstanding payment and pay the rest to Mr. M in cash without a receipt or a payment slip. During his work, Mr. M's personal documents were retained by the employer. When he resigned from his job since he could no longer bear it, he asked for the payment of the rest of the money from the employer. Mr. M claimed he should be paid 11,400 baht for the outstanding wage. But the employer refused to pay him claiming there was no longer any outstanding wage since Mr. M owed him for expense incurred from the renewal of his person document and the employer had paid for that in advance for 9,000 BAHT. Besides, Mr. M still owed the employer another 16,000 baht, since the employer had paid up the outstanding debt he owed to the previous employer.

Mr. M complained with the Ranong Provincial Office of Labour Protection and Welfare which later decided to issue an order indicating that as to the deduction for debt service, according to the Labour Protection Act B.E. 2541's Section 76 (3) provides that an employer may deduct wages and overtime pay of the employee for the purpose of servicing debts which are for the beneficial welfare of the employees solely, wherein consent has been obtained in advance from the employees. But such deduction shall not amount to more than 10% and the total deductions may not be more than one fifth of the money which the employee is entitled to receive on the date for payment, unless consent has been obtained from the employee. Such consent is required to comply with the Labour Protection Act B.E. 2541's Section 77 whereby the employer is required to prepare the letter of consent and have the employee sign their name to indicate their consent or must have a clear and specific agreement between them. But in this case, the employer and the complainant did not arrange for a specific agreement between them. Therefore, it is **not eligible to invoke such debt to deduct the complainant's wage for debt service** as it shall not comply with the legal provisions. In addition, there are no legal provisions which authorize the labour inspector to use their discretion and allow such debt service. Therefore, it is deemed fit that the employer has to file such case with the Civil Court to compel the employee to service their debt. And invoking Section 124 of the Labour Protection Act B.E. 2541 and its amendments, the labour inspectors ordered the employer to pay the complainant the amount of 11,400 baht plus the interest rate at 15% per annum since the day of the late payment within 10 days since receiving this order or since when it is presumed the order has been received.

Case of illegal Wage Deduction and the use of debt bondage to compel workers to work in fishing vessel Pattani

The two migrant employees have been recruited by the broker to work on mending drag nets at a fishing market in Pattani for February 2022. They were only paid 200 baht/day by the broker on the days they worked. After mending the nets for around one month, the broker has taken the two workers to apply for work in the fishing vessel. It was agreed between them that the two workers shall be paid 9,500 baht/month each and it would be paid directly by the broker.

After working in the fishing vessel for around ten months, the two employees wanted to quit the job as they wanted to return to their homeland in Myanmar. They have thus requested for the payment of their outstanding wage and asked for a return of their personal documents retained by the broker. The broker, however, refused to neither give them their personal documents nor pay them the outstanding wage. Instead, they even physically abused the two employees by punching several times at the face of one of the employees while hitting another worker with a piece of wood. The broker even destroyed the two employees' mobile phones. Both have thus complained with the authority asking the broker to pay them compensation for the physical abuse, the destruction of their personal belongings, and the payment of the outstanding wage.

As to the physical abuse and destruction of property, the employees have reported the case against the broker to the Pattani Police Station demanding compensation worth 14,000 baht including 10,000 baht for medical costs and 4,000 baht for property damage. The broker agreed to pay all the compensation with the presence of the police.

As to the outstanding wage, the two employees have complained with the Pattani Provincial Office of Labour Protection and Welfare demanding the payment of 63,900 baht each for the outstanding wage from their work during March 2022 until February 2023.

After investigating the case, officials of the Provincial Office of Labour Protection and Welfare have found that the broker admitted to working as a clerk for the fishing vessel by receiving the payment of the two employees on their behalf for their convenience. The broker will then pay the workers by himself. This could ensure the employees did not have to go to the bank to withdraw the money by themselves. The broker also claimed he could not remember exactly all the payments he has made. The Provincial Office of Labour Protection and Welfare thus ruled on the dispute regarding the unpaid wage and ordered that since the employer, the fishing vessel's owner, has agreed to employ the employees based on an employment contract which indicated that the two employees shall engaged in work on board the fishing vessel as menial labour with the salary worth 10,000 baht/month. It indicated in the contract that the employer shall pay the employees by transferring money to their bank accounts and the employer did transfer the money to his employees' bank accounts. **The employer admitted, however, that he had withdrawn money from the employees' bank accounts and handed it to the broker instead.** As a result, the employees did not receive the pay as agreed in the contract. It is incumbent on the employer to pay the two employees the outstanding wage for the amount of 108,617.34 baht plus the rate interest rate at 15% per annum since the first day of the late payment.

This case study shows that for the payment of wage for workers in fishing vessel, even though the employer has transferred it to the employees' bank accounts to obtain evidence to prove he had acted in compliance with the law, but the employees' bank books had been kept by the employer which enabled him to withdraw cash from the accounts. Therefore, how the employees got paid in cash was still not a transparent case.

In addition to failure to pay wage, the case study also shows the roles of the broker from recruiting the workers to work in the fishing vessels to the control imposed on the employees through his power to make the payment of the wage based on the agreement between the broker and the employees of the employer. Moreover, the use of violence to control the work on board the fishing vessel is reflected by the case studies as well.

Relevant legal frameworks: Wage payment

Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2565

- **Clause 12** provides that in sea fishery work, the employer is required pay for wage and holiday pay as agreed not less than once a month.

- **Clause 13** provides that the employer shall pay the employee on a monthly basis at the rate not less than the daily minimum wage multiplied by 30.

- **Clause 14** provides that the employer shall pay for wage and holiday pay through the employee's bank account and the transfer fee shall be borne by the employer.

HRDF has found that Wage Deduction and debt burden among fishing workers can be attributed to the employer's failure to pay the full amount of wage and holiday pay as previously agreed, or their failure to pay at the agreed timing, or the delayed payment as well as failure to make the payment through the methods prescribed by law.

Even though the employer is legally required to pay fishing workers via their bank account, but in reality, most employees receive their pay in cash. Failure to act in accordance to the law makes it impossible to verify transparency and of the payment has been made accurately.

In cases where by an agreement has been reached between the employer and the employee for shared remuneration, the employee is unable to have access to data concerning the actual sale of the fish. As a result, the payment based on shared remuneration could be shrouded in vagueness and dubiousness, and the workers may not receive the fair share of the benefit.

In addition, payment in fishery sector has traditionally been done through advance payment, otherwise known as "early money withdrawal" whereby the employer shall pay the employee before the commencement of their work. That money shall be regarded as a debt to be paid off by the worker. Therefore, the payment interval in fishery sector differs from other sectors in which most employee shall only be paid after the commencement of their work. This might confuse labour inspectors when calculating the outstanding wage between the employer and the employee.

A lack of transparency and the illegal payment method as well as the dubious evidence concerning the payment and debt service may give rise to a dispute regarding wage and debt of the workers.



Legal frameworks concerning Wage Deduction

Labour Protection Act B.E. 2541's Section 76

- Provides that an employer shall not deduct wages, overtime pay, holiday pay and holiday overtime pay unless it is a deduction for the purpose of:

- (1) paying income tax or paying other monies as provided for by law, (2) paying trade union dues, (3) paying the debts of a savings cooperative, (4) providing guarantee money under Section 10 of the labour protection law, and (5) depositing money for the employee in a savings fund.

- With regard to deductions under (2), (3), (4), and (5), in each case deductions of more than ten percent are prohibited and the total deductions may not be more than one fifth of the money which the employee is entitled to receive, unless consent has been obtained from the employee.

According to the above legal provision, the Labour Protection Act B.E. 2541's Section 76 does not prohibit the employer from deducting the employee's pay. It provides for the five exemptions under which the employer can deduct the employee's pay, albeit they do not include deduction for document processing fees or Wage Deduction to service debt. Therefore, the employee should be entitled to the protection against Wage Deduction, if such deduction is done to serve other purposes other than the five incidences prescribed by law. In such case, the employee should be entitled to the right to complain with the Office of Labour Protection and Welfare .



The Labour Protection in in Fishing Work Act B.E. 2562

- **Section 11:** In the case where service fees and costs are chargeable in the procurement of jobs for fishing labourers, the job procurer shall demand payment from the vessel owner and the vessel owner has the duty to pay such service fees and costs.

The Labour Protection in in Fishing Work Act B.E. 2562's Section 11 requires that the vessel owner or the employer has to pay for service fees and costs related to the procurement of jobs of the fishing worker. This law does not provide for an exemption under which Wage Deduction can be done. Therefore, the law has to be enforced in the same manner as the Labour Protection Act whereby the employer is prohibited from deducting the worker's pay for debt service. Even though, according to the civil law, it is possible that both parties agree to arrange for such debt service through deduction, but in light of the status of an employer under the labour protection law, such "debt service through deduction" is prohibited by law.

Legal frameworks concerning Wage Deduction and recruitment fees

The Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments' Section 49

- Provides that an employer who brings a foreigner to work with him or her in the country shall not request or accept money or other assets relating to bring a foreigner to work **except if it is for the expenses paid by the employer beforehand, such as, passport fee, health checkup fee, work permit fee, or other fees in the same manner as prescribed in a notification by the Director-General.** The employer shall deduct from the wage, overtime, wage for working during day off or overtime during day off, and the employer shall deduct from the money the foreigner has the right to receive under the actual paid expense but shall not deduct more than ten percent of the money the foreigner has the right to receive each month.

- In the case where there is no agreement that the employer will be paying for the travelling expense of the employee **and the employer has paid for such travelling expense beforehand, the employer may deduct from the money the employee has the right to receive** under paragraph one".

Notification of the Department of Employment (DoE) dated 17 September 2021 on the types and rates of service fees and expense incurred from bringing a foreigner to work with an employer in the country

- Clause 4 **A person authorized to bring a foreigner to work with an employer** and has the duties concerning bringing a foreigner to work **may charge a fee from the employer** for the sake of bringing in a foreigner to work with them in the country at the actual amount paid as follows;

- The expense the employer is legally required to pay or the employer expresses their intention in the contract to bring a foreigner to work with them in country that such expense shall be borne by them.

- Fees for document preparation including the preparation of documents, document certification, document translation

- Travel costs, food, and accommodation related to the bringing of a foreigner to work with an employer in the country

- **Clause 5** The following expenses to cover person spending of the foreigner

- The expenses the foreigner is required to pay including medical checkup

- The expenses incurred inside the country of origin



Such legal frameworks often cause confusion when the employer deducts the migrant employee's pay to cover fees related to their personal documents by invoking Section 49 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments which provides that the employer may deduct the wage not more than 10% of the money the employee shall be receiving to pay for expenses supposed to be borne by the foreigner including passport fee, medical checkup fee, work permit fee, travel expense and other expenses incurred in the country of origin. Nonetheless, such Wage Deduction invoking Section 49 cannot apply to a migrant worker in fishery sector due to two reasons;

Firstly, Section 49 applies to an employer who brings a foreigner to work in the country and applies specifically to a migrant worker brought in based on the Memorandum of Understanding (the MOU workers). But the 31,133 migrant workers in fishery sector in Thailand⁵ are migrant workers who have not been brought in through the MoU process. They have been brought here thanks to the cabinet resolutions that allow them to live and work in Thailand. There are only 3,392 migrant workers who have been brought in to work in the sea fishery sector through such MoU process.

Secondly, the Labour Protection in in Fishing Work Act B.E. 2562 clearly requires that the vessel owner shall pay for the service fees and expenses incurred from the procurement of jobs.

If the law enforcement decides to apply Section 49 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments with all groups of workers, it will be tantamount to the enforcement of the law incompatible with or in breach of the Labour Protection Act B.E. 2541 and the Labour Protection in in Fishing Work Act B.E. 2562. Moreover, the Labour Protection Act B.E. 2541 is regarded as a law to maintain public order. Any legal transaction incompatible with or in breach of the provisions of the labour protection law shall become void according to the Civil and Commercial Code's Section 150.

⁵ Statistics of foreigners allowed to work in the Kingdom as of July 2023, Foreign Workers Administration Office, Department of Employment (DoE), https://www.doe.go.th/prd/assets/upload/files/alien_th/ec3efde3181d4f51f9ba054193faeede.pdf



Fees and expenses incurred from the procurement of jobs

Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments Section 49 and the Notification of the Department of Employment (DoE) dated 17 September 2021 on the types and rates of service fees and expense incurred from bringing a foreigner to work with an employer in the country

Employer can deduct foreigner's pay but up to 10% of the wage	Authorized broker to bring a foreigner to work can charge the employer a fee.
<ul style="list-style-type: none"> -Passport fee -Medical checkup fee -Work permit fee -Travel costs -Person expense incurred by foreigner (medical checkup fee / expense incurred in country of origin) 	<ul style="list-style-type: none"> -Service fee for bringing in a foreigner to work in the country -Expenses the employer is legally required to pay or the employer expresses their intention in the contract to bring a foreigner to work with them in country that such expense shall be borne by them. -Fees for document preparation including the preparation of documents, document certification, document translation -Travel expense, food, and accommodation related to the bringing of a foreigner to work with an employer in the country

General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs

Definition of recruitment fees and related costs

- Article 6: Recruitment fees or related costs refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.
- Article 7: Recruitment fees or related costs **should not be collected from workers** by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits.
- Article 8: The recruitment fees and related costs considered under this definition **should not lead to direct or indirect discrimination between workers who have the right to freedom of movement** for the purpose of employment, within the framework of regional economic integration areas.

The definitions divide any fees or costs incurred in the recruitment into three categories including;

- ① **Recruitment fee** refers to any payment to the recruitment service regardless of whom the payment has been made to.
- ② **Related costs** include medical costs, insurance costs, costs for skills and qualification tests, costs for training and orientation, equipment costs, travel and lodging costs, administrative costs including fees for personal documents, passport, visas, work permit, banking services, etc.
- ③ **Prohibited costs** including unreasonable and undisclosed costs



The International Labour Organization (ILO) (International Labour Organization) has published the **General principles and operational guidelines for fair recruitment** to oversee the fair recruitment process at all levels from the responsibilities of the state, business sector and recruitment services. It offers the clear **definition of recruitment fees and related costs** as to how they cover which costs related to the fees and related costs. According to the ILO's General Principles, recruitment fees or related costs should not be collected from workers and should not be deducted from their wage directly or indirectly.

Therefore, in light of the General Principles, the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments' Section 49 and the Notification of the Department of Employment (DoE) dated 17 September 2021 are incompatible with the principles adopted by the International Labour Organization (ILO). And in light of the aforementioned case studies, it even reflects how in reality, migrant workers in fishery sector have been subject to not only Wage Deduction, but also to debt burden as a result of any costs incurred in the recruitment, restriction of their freedom of movement and access to their personal documents as well.



Legal frameworks concerning debt burden and forced labour

Anti-Trafficking in Persons Act B.E. 2551 and its amendments

- Section 6/1 Whoever compels a person to work or provide services through one of the following methods;

- **1** Putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person;

- **2** Using means of intimidation

- **3** Use of force

- **4** Retain important personal documents of the person

- **5** Invoke debt burden of the person or of another person to impose an illegitimate obligation

- **6** Or any other similar practices as aforementioned
If it has been committed to cause such person to be in a state of being unable to resist, shall be culpable for committing an offence of forced labour or services.

By invoking debt burden to create an obligation to work, it is tantamount to committing an offence of forced labour pursuant to Section 6/1 of the Anti-Trafficking in Persons Act B.E. 2551 and its amendments. Even though the interpretation of an offence of forced labour can be complicated when considering external factors related to the act and the method and internal factors related to the intent, but the use of debt burden to create an obligation to work could constitute an offence of forced labour.

In 2015, HRDF offered legal assistance to migrant workers working on board sea fishing vessels in Trang including the 15 migrant workers who were survivors of human trafficking. Our litigation to hold the perpetrators accountable has led to the verdict of the Supreme Court on 30 January 2018 and the Court convicted and sentenced the defendants to an imprisonment of 10 years and a fine of 500,000 baht/ They were also ordered to provide the injured parties 1,992,000 baht as a compensation in the offence of human trafficking and other related offences. It was a major case that demonstrated how debt burden has been used to create an obligation to work and the injured parties were forced to work to service the indefinite debt. Their wage was instantly seized and they were obliged to work so hard in an unhealthy working environment, were detained and deprived of freedom of movement and the right to change to another job.⁶



⁶ Press Release: Supreme Court upholding Appeals Court's conviction of the Trang Fishing Association's Former President and other five defendants who were also ordered to compensate trafficking victims including migrant workers from Myanmar in Kantang District, <http://hrdfoundation.org/?p=2182>

Summary

Based on our findings in our work to offer legal assistance, HRDF has found migrant workers in fishery sector have to face three challenges including Wage Deduction, debt burden and personal document retention.⁷ The three issues are underpinned by debt burden of the workers since debt has become a key factor that have led to Wage Deduction among the migrant workers and the retention of their personal documents as a guarantee.

Debt burdens among migrant workers in fishery sector generally include debt incurred from the travel costs related to recruitment, debt incurred from personal document processing, debt incurred from advance payment and early withdrawal of money, and debt incurred from medical costs.

The recruitment of migrant workers to work in Thailand involves a rather complicated application process and costly expenses. Given the complicated process concerning the application for personal documents, both the employer and the migrant worker are compelled to rely on help from a broker or a service provider who can help to facilitate the application of personal documents and work permit for the migrant worker.

A lack of clarity and frequent change of policies and regulations concerning the management of migrant workers in Thailand are another factor that cause confusion among the employers and the migrant workers. This has given a loophole for the brokers or service providers to exploit the migrant workers.

Even though it is provided in the ILO's General principles and operational guidelines for fair recruitment) International Labour Organization (ILO) that recruitment fees or related costs should not be collected from workers, but considering the legal provisions and case studies mentioned in this factsheet, it could be summarized that the regulations in Thailand and their practical enforcement are incompatible with international standards. The case studies reflect how the burden of legal recruitment costs have been imposed on the migrant workers even though they only receive a minimum wage and have to endure risky working environment in fishery sector. As a result, the migrant workers are left in the debt burden cycle and are subject to Wage Deduction. Such debt burden has been invoked to deprive them of their liberty. All these reflect the gross and systematic exploitation of migrant workers.

⁷ For more information about the retention of personal documents of migrant workers in Fact Sheet No.1: Personal Document Retention among Migrant Workers Employed on Fishing Vessels, <http://hrdfoundation.org/?p=3206>

Recommendations

Recommendations to the Department of Employment (DoE)

① There shall be an integration of work among various agencies involving with document processing of the migrant workers to streamline the document application procedure and to ensure the migrant workers can apply for the documents by themselves without having to resort to help from either the broker or the employer including their application for personal documents, obtaining the visas stamps, applying for work permits, having medical checkup and applying for health insurance.

② An effort should be made to regulate and reduce the costs concerning document application of the migrant workers and to extend the duration of work permit in order to reduce costs related to the document procurement since they are a major cause that contributes to debt burden and gives rise to a cycle of Wage Deduction and debt service.

③ An effort should be made to monitor, investigate and prosecute a broker who has broken the law and a broker who illegally requests for the costs concerning the procurement of jobs as well as a broker or a service provider who help to apply for documents of the migrant workers, while appears to defraud them.

④ If facts arise that a person has retained or withheld personal documents of the migrant workers as a guarantee to ensure debt service, the authorities should conduct an investigation and prosecute the wrongdoer according to Section 131 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments. The act of retaining documents as a guarantee impedes access to the documents by the owners of the documents. Therefore, if a worker is deprived of access to their own documents and complains with the authorities, the authorities should not just mediate to ask for the return of the documents. Instead, they should prosecute the perpetrator since such act is part of the elements of crime concerning the retention of personal document according to the law.

⑤ An effort should be made to revise Section 49 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments to disallow Wage Deduction to pay for recruitment costs and costs related to the procurement of personal documents and to disallow the collection of recruitment fees or related costs including document processing costs from the workers in compliance with the ILO's General principles and operational guidelines for fair recruitment) International Labour Organization's Article 7 which prescribes that "Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits".

Recommendations to the Department of Labour Protection and Welfare

① An effort should be made to monitor, investigate and prosecute the illegal payment of wage including the payment made in cash to the workers on board fishing vessel through a sham transaction to generate unlawful payment slips.

② An effort should be made to monitor, investigate and prosecute the failure to pay according to the employment contract and Wage Deductions whether they are committed for debt service, for sick leave, for holiday leave, or any unlawful Wage Deduction. Also, an effort should be made to develop guidelines to investigate any unlawful Wage Deduction for labour protection.

③ An effort should be made to raise the awareness about the regulations concerning wage payment, Wage Deduction and the preparation of payment slip and debt service slip in the language understood by the migrant worker. This can ensure transparency of the payment in the fishery industry and to prevent the cheating of payment of the migrant employees working on board fishing vessels.

④ An effort should be made to investigate Wage Deduction for medical costs, the safety inspection of the working environment on the fishing vessel and the application of health insurance and social security benefits since any work-related injury reflects a lack of occupational safety and perhaps the violation of law which requires that the employer must ensure their employee is registered under the social security system or health insurance.



Recommendations to the multidisciplinary team involved with the screening of survivors of human trafficking or forced labour and labour inspection

① Concerned agencies should monitor any behaviors concerning Wage Deduction and debt burden between the worker and the employer or the broker and analyze the surrounding context and the use of debt burden and the unlawful deduction to justify the deprivation of liberty and the compelling of the employee to work.

② During the inspection of the vessels and the fishing workers, when the boat comes in and out of the shore, the labour inspectors, the employment officials, and the multidisciplinary team should collaborate to carry out the prudent inspection on the issues recommended to the Department of Employment (DoE) and the Department of Labour Protection and Welfare.



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Funded by the European Union



This factsheet has been prepared by Ms. Phenpiccha Jankomol and Polwish Subrisunjai under the Anti-Labour Trafficking Project (ALT), Human Rights and Development Foundation (HRDF). The production of this factsheet has been made possible by the ILO's Ship to Shore Right South East Asia program with funding support from the European Union.

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