



**23 August 2017**

### **An Open Letter**

**Subject:** Recommendations to the Thai government regarding the review and revision of the Royal Decree on Foreign Workers Management BE 2017

**Dear** Prime Minister,

**CC** Minister of Labour

**Attachment** An open letter concerning the observations and recommendations toward the Draft Royal Decree on Foreign Workers Management BE ....dated 24 May 2017

On 18 August 2017, the Migrant Working Group has held a seminar to solicit input and proposals regarding the review of the Royal Decree on Foreign Workers Management BE 2560. Previously, members of the Migrant Working Group have visited local areas to raise the awareness about the enforcement of the law among communities of migrant workers and some employers. An effort has also been made to keep them informed about access to mechanisms to solve the problems that have arisen after the NCPO had issued the NCPO Order no. 33/2017<sup>1</sup> to mete out urgent measures to solve problems regarding the registration and employment between the employees and employers and to make correct the problems within 180 days. Even though such urgent measures may help to mitigate short term problems among the workers and the employers, MWG is concerned about the management of migrant workers by the state within this limited timeframe of 180 days during which time some workers have to complete nationality verification process in their countries of origin. In addition, MWG and concerned parties are not aware of further measures by the state after 180 days. Therefore, a seminar was jointly organized in collaboration with representatives from the community of migrant workers, civil society, employers, representatives from the Industrial Chamber, lawyers and unionists. The input and proposals from stakeholders regarding the enforcement of the Royal Decree can be divided into sections as follows;

**a. The government's management per the NCPO Order no. 33/2017 (1) to (3)**

- 1. The management of work by migrant workers** the state should place more importance on market mechanism than national security as far as the management of migrant workers is concerned. Also, an effort should be made to streamline and minimize bureaucratic steps in the registration of the workers and to reduce expenses that are incurred to both the employees and the employers. This shall help to prevent exploitation by brokers.

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<sup>1</sup> <http://lawdrafter.blogspot.com/2017/07/translation-ncpo-order-332560-on.html>

2. **The registration of dependents** MWG deems that these urgent measures by the state fail to address issues concerning the dependents of the workers since there is no chance for the dependents (a spouse, a child, and an older person) to get registered as a dependent. Therefore, it has been proposed that the timeframe for registration should be extended and dependents should be made eligible for registration as dependents of the migrant workers. Also, coordination should be made with the countries of origin to have the dependents undergo nationality verification there. This will help to prevent the use of forced child labour or corruption.
3. **Workers without permanent employers** MWG has found some workers who work without permanent employers in the service sector, i.e. tourism, agriculture and domestic workers. MWG would like to propose to the state to allow the workers to get registered with more than one employer in response to the real situation of employment.
4. **Information dissemination and awareness raising among the employers and the employees** Since the Royal Decree on Foreign Workers Management BE 2560 has been promulgated in haste, the Migrant Working Group has found information dissemination by the state lacking in certain areas. As a result, the employers are not able to get their workers registered in time. It is recommended that a better effort be made to disseminate such information widely among the employers and the employees using the languages that are understandable to the migrant workers.
5. **Nationality verification process that will follow the registration of the workers** Even though the Thai government has facilitated the efforts by the governments of the countries of origin to set up a center for nationality verification in Thailand to accelerate the process. For example, the Myanmar government has set up a nationality verification center for Myanmar migrant workers and to issue to them Certificate of Identity (CI). But from the information gathered by MWG, it has been found that the current nationality verification system does not enable the workers to undergo the process by themselves. Instead, they are compelled to rely on help from the brokers or have to spend too much money. This is contrary to the policy of the Thai state and the countries of origin. It is therefore proposed that the state promptly and seriously communicate with representatives of the governments of the countries of origin to find a solution to the costly involvement of the brokers. Such practice has become a daunting obstacle to a large number of workers who have decided to turn their backs to the Thai state's registration process and it would impede an effort to ensure safe migration.
6. **For workers who have completed nationality verification, but their passports are about to expire per the cabinet resolution dated 25 October 2016** It is deemed that the state should make an attempt to negotiate with the governments of the countries of origin to enable the workers to not have to return to their countries of origin to renew their passports, but to be allowed to apply for Cis at the CI Center in Thailand.

**b. The management of the government per the NCPO Order no. 33/2017**

**(4)** which instructs the Ministry of Labour to review or revise laws concerning the management of work by foreign workers and to propose such revisions to the cabinet within 120 days **(or within 23 September 2017)** since the Order 33/2017 has become effective. The MOL is also urged to review the criteria, methods and procedure concerning the management of foreign workers making them comply with and compatible with international standards to reinforce the prevention of trafficking in persons and to facilitate the implementation of all

concerned parties. MOL is asked to draw up a Draft Law and to issue regulations invoking the Royal Decree on Foreign Workers Management BE 2560 and to organize public hearings to solicit input from concerned parties.

1. The Migrant Working Group would like to reiterate our points which have been raised in the open letter on 24 May 2017 addressed to the Prime Minister and the Minister of Labour, regarding our observations and recommendations toward the Draft Royal Decree (attached herewith). The points have been raised and compiled during a public consultation meeting participated by representatives from various stakeholder groups including employees, employers, academics, Industrial Chamber, labour unions, lawyers and civil society. The letter focusses on the content of the law and it has been proposed that the state should organize a public hearing to review and revise certain provisions concerning stakeholders that are facing the problems, for example, quotas set on certain occupations (Sections 12 and 13), the confinement of residential area for those granted the right to work (Section 15), a review of the time during which the employee has to find a new employer. All these revisions should be made to for the benefits of the employees to ensure that they are eligible for protection as to the Social Security Act BE 2534 (Sections 51 and 53), a review of too harsh penalties on the employers and the employees, among others.
2. **The limitation of occupations that the migrant workers are allow to take** At present, it has been found that certain groups of migrant workers are not allowed to get registered including teaching assistants in the learning centers, volunteers in community-based organizations, and semi-skilled workers. For these workers, the MWG would like to propose to the government to allow them to get registered in such occupations and to revise the list of 39 forbidden jobs to make it respond realistically to employment situation of migrant workers. In an effort to review the list of forbidden jobs and related policies, the state should allow participation of the employers and the employees.
3. **Workers who are still unable to act in compliance with the Royal Decree on Foreign Workers Management BE 2560**
  - **Border based workers** In reality, migrant workers in border area have come from various areas inside Myanmar, not just from adjacent area of neighboring countries. It is proposed to the state to promptly negotiate with the countries of origin to issue, apart from border passes, documents concerning the employment of border-based workers per Section 64 of the Royal Decree on Foreign Workers Management BE 2560. The countries of origin should issue such documents to the workers from other areas in order that they can travel to work in our border towns.
  - **People without access to personal status** including people who have been disposed of from registration such as the Shan workers, the Rohingya. Short-term measures have been issued to allow their employments invoking Section 63, but long-term solutions have not been spelled out. It is proposed that the state review the employment of these workers and to come up with long-term solutions, perhaps based on collaboration with the countries of origin.
  - **Domestic workers** the occupation of which has not been included in the Memorandum of Understanding (MOU). This has given rise to a lack of clarity as to what the future will hold for the migrant workers in Thailand. MWG would like to propose a registration of the domestic workers without affixing them with particular employers and to negotiate with the countries of origin to also include this occupation in the MOUs.

4. **Corruption** Given the bureaucratic procedure of the registration process and the harsh punishment imposed by the Royal Decree which is disproportionate to their criminal offences. It might have given rise to the workers making a decision to seek a more convenient way albeit prone to exploitation and corruption. Therefore, the state should revise the punishment terms which are too harsh to both the employees and the employers.
5. **Forging collaboration on various issues with the countries of origin** including nationality verification, brokering system in the countries of origin, house registration in the countries of origin, policies toward certain populations including the Rohingya to ensure that the management of migrant workers be efficient.

The review and revision of the law should be participated by stakeholders, particularly various groups of workers and employers. This would ensure the spirit and efficiency of the law for the management of migrant workers as a whole making it comply with international standards and measures to combat trafficking in persons as well as the promotion of safe migration.

With respect in human rights and human dignity

Migrant Working Group

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