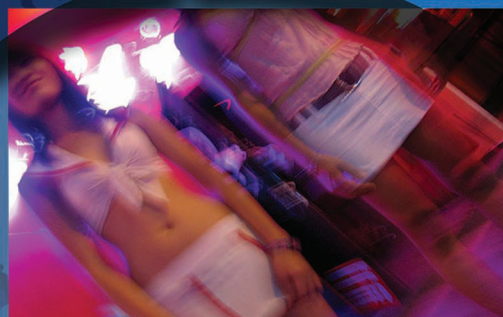


A case study of Thai migrant workers in Sweden



International
Labour
Organization



Regional Office for Asia
and the Pacific

Economic and Social Empowerment of Migrants, Including Victims of Trafficking
Returned from the European Union and Neighbouring Countries

A Case Study of Thai migrant workers exploited in Sweden

By Chitraporn Vanaspong

**International Labour Organization–European Union Project:
Going Back–Moving On: Economic and Social Empowerment
of Migrants, Including Victims of Trafficking, Returned
from European Union and Neighbouring Countries**

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Acronyms

ARCM	Asian Research Center for Migration
DOE	Department of Employment
MOL	Ministry of Labour
MOFA	Ministry of Foreign Affairs
NAT	Network Against Trafficking and Exploitation of Migrant Workers
SBIF	Sverige Bar Intress Forening (Sweden Forest Berries Association)
TOEA	Thailand Overseas Employment Administration

I. Case study series

A Case Study of Thai Migrant Workers Exploited in Sweden is one of the two case studies produced under the International Labour Organization–European Union project *Going Back–Moving On: Economic and Social Empowerment of Migrants, Including Victims of Trafficking, Returned from European Union and Neighbouring Countries (2009 –12)*. The project extended technical support to government and non-government service providers offering return and reintegration assistance to victims of labour exploitation and human trafficking.

One component of the project has involved producing publications that document the services provided and the processes used in that delivery for future benefit. The documentation includes case studies of Thai migrant workers exploited in Poland and Sweden (reflected in this publication).

The objective of the case studies is to review workers' entire migration experience to draw lessons

from the returnees that would be useful to improve the protection and service provision offered to other workers going to work overseas.

The case studies look at:

- socio-economic context of migration from Thailand
- pre-employment and pre-departure
- working life and on-site support in Poland and Sweden
- pre-return services: workers' needs and responses
- upon return – what happened next and who provided assistance
- good practices, lessons learned and recommendations.

II. The escalation of the labour exploitation of Thai migrants

2.1 Thailand's labour migration

Thai workers began migrating abroad for employment in response to the construction boom in the Middle East in the 1970s. Thousands of Thai workers, especially from the north-eastern region of Thailand, went to work in the oil-rich countries of Iraq, Kuwait and Saudi Arabia. According to the Network Against Trafficking and Exploitation of Migrant Workers (NAT), the migrant workers worked well, the companies in the hosting countries paid their travel and lodging costs and were grateful for the good work. Remittances from this first wave of migrant workers had a significant, positive impact on the well-being of their families, farms and villages (NAT, 2010).

Since then, the export of Thailand's migrant workers has become a large business. According to Ministry of Labour statistics (cited in NAT, 2010), from 1975 to 2010, 3.8 million people sought work abroad through the formal government channel. Some 70 per cent of them originated from the North-East, and 60 per cent of them had only a primary school education. According to the government data for 2010, of the 5.4 million families living in the 18 provinces that constitute Thailand's North-East, around 2.5 million had family members working abroad – 45 per cent of the region's 20 million population. This did not include those who travelled abroad outside government schemes, many of whom were tricked into paying large broker fees and then abandoned. This second group of people is estimated to have been as large as the official migrant group.

Government data as well as information from various banks indicate that over the past 20 years, Thai migrant workers abroad have made significant contributions to the Thai economy. According to the Bank of Thailand, for instance, Thai migrant workers abroad remitted around 50–60 billion baht per annum between 2000 and 2010 (55 billion baht in 2000, 53

billion in 2006, 56 billion in 2007, 63 billion in 2008, 56 billion in 2009 and 55 billion in 2010). From January to July 2011, remittances had already reached 43 billion baht (through banking channels), which did not include the cash they carried back home.

Conditions have changed considerably since the early days of overseas migration. Millions of rural Thais have been motivated to join the global labour market by the propaganda of recruitment agencies. In Thailand, there has for years been a constantly changing pool of 200–300 recruiting agencies registered with the Ministry of Labour that are responsible for sending out 90 per cent of the 150,000 Thais who are “legally” contracted each year.

For a short while, the Government aggressively promoted the phenomenon of working abroad by adopting within its Fifth National Economic Plan (1982–86) explicit provisions for the export of Thai workers. However, later national economic plans turned backed such provisions. According to the Asian Research Center for Migration (2010):

It became clear that Thai workers often experienced difficult circumstances abroad. In particular, private employment agencies charged high fees for workers and promised false high-paying jobs with good work conditions, but many workers later discovered that these promises would never come true. In some cases, they found that the jobs promised to them never even existed.

As the prominence of recruiting agencies grew, so too did the fees for their “services”. The fees now charged by the legal agencies as well as those not registered with the Government have led workers wanting to go abroad to mortgage their land, homes and belongings or to borrow funds at high interest rates in order to come up with the cash to cover the

upfront fees (NAT, 2010). Acquiring huge debt before they ever leave Thailand means workers must earn a tremendous amount to cover both their debt and their dreams. For many migrant workers seeking overseas employment these days, the money they can earn is no longer enough to cover even the recruitment fees, let alone improve the living conditions of their family.

Stories of fraud and exploitation are now commonplace. And yet, hundreds of thousands of rural Thais continue each year to take the risk and apply to be sent into what they want to believe will be a positive life-changing opportunity in a far-away land.

2.2 Factors facilitating labour migration

Personal motivations are typically complex, and this is true for people who decide to go abroad for temporary migrant work. According to Wickramasekera (2002, as cited in Kallstrom, 2011), the traditional explanation of migration as a movement from poor to richer countries has nowadays become too simplistic because both economic and non-economic factors, such as social networks of family and friends or a desire to explore or seek adventure and opportunity clearly also influence the decision to migrate.

The lure of higher wages in receiving countries remains a strong factor. In general, high levels of unemployment and poverty in source countries act as a push factor. This factor applies in the Thai context, according to Kusumal Rachawong, a National Project Coordinator with the International Labour Organization, who explains that most migrant workers tend to be economically disadvantaged farmers driven to look for greener pastures. Far more typical are workers seeking short-term seasonal work after a harvest season, often in Thai cities. But more and more struggling villagers are willing to go beyond the national borders.

Massey et al. long ago pointed out what appears to remain true still regarding their migration networks theory, in which such informal networks as community ties and mutual help in economic and social matters are prominent factors in decisions to migrate for work. As well, migration decisions are usually made not by the individual but by the family; and that group may decide to send one or more members to work in another region or another country to maximize income and survival chances. Most economic migrants are young and economically active and characterized as “target earners” who want to save up enough to improve conditions at home by buying land or improved housing, set up a business or pay for the education of siblings

with the income earned from overseas employment (Massey et al., 1993, cited in Kallstrom, 2011).

In the Thai context, the “family” and “community” are vital factors influencing individuals’ decision to work abroad. People who have migrated tend to pull along other family or community members eventually. Rachawong points out returning migrants often talk of beautiful and profitable experiences (whether true or not). Their stories of success may well be illustrated with a new house, a truck or other commodities as evidence, which then shines as a motivating charm to others.

According to Haas’ institutional theory (2007, cited in Kallstrom, 2011), when the international migration flow reaches a large scale, it induces a proliferation of profit and non-profit organizations, which can operate legally or illegally to benefit from the phenomenon. These organizations provide such services as labour contracts, documents, dwellings, legal advice or transportation for migrants. The large international migration flow thus becomes institutionalized. Generally, this theory refers to the role of private institutions that step in to assist the migration process, providing migrants with a source of social capital while they get established in destination countries.

In the Thai context, “recruitment agencies” have filled that role. The Thai Immigration Act of 1979 and the Employment Recruitment Act of 1983 allowed private entities to operate employment recruitment services that send Thai workers abroad if they register with the Ministry of Labour. Most workers find private recruitment agencies more proactive, faster and more efficient than government services in finding them a job abroad, despite the malpractice that some agencies are known to engage in.

According to the Thailand Overseas Employment Administration (TOEA), as of December 2009 there were 218 registered recruitment agencies (ARCM, 2010). Their operations for overseas employment are largely unregulated and thus market driven, with minimal input from government bodies. Most jobseekers comply with the agency demands and are willing to pay unnecessarily high recruiting fees to secure a job.

The role of recruitment agencies is illustrated in more detail in the following case of exploitation of Thai workers sent to northern Sweden in 2009 and 2010. The case study represents a common story of what many hopeful jobseekers actually experience when going abroad anywhere. It describes the whole process, from recruitment to employment, the work conditions

in Sweden and how the workers fought for some justice upon returning to Thailand.

Many jobseekers are vulnerable to the exploitation and unfair conditions because they generally do not check the authenticity of the agencies; some workers patronize unlicensed job placement services, accept inordinate risk in the conditions required by some services and often do not report to any proper authority upon arrival in the destination country.

According to the Asian Research Center for Migration (2010), victims may go so far as to allow themselves to be duped repeatedly, paying more money each time on the hope of an eventually ‘decent’ and highly paid job. They tend to trust community-based recruiters more than they do representatives of big recruitment agencies or government labour officials who are regarded as outsiders; but it is the community-level recruiters who often lie to or mislead them. Rachawong (2011) attributes this to their lack of skill to analyse and synthesize information they receive from recruiters.

2.3 Institutional framework

The Government promotes outmigration through legislation and transnational commitments that provide the framework for management within Thailand. Legislation of outbound labour migration is grounded in the Recruitment and Job-Seeker Protection Act of 1985, revised in 1994 and 2001. The Act, which regulates the employment and recruitment services for workers wanting to go abroad, calls for the protection of Thai workers overseas and sets the conditions for carrying out foreign employment services, including pre-departure examinations and training, the establishment of an aid fund for overseas workers and the provision of a written employment contract between jobseekers, employers and, when applicable, representatives of an employment agency. Additionally, the Act stipulates that recruitment agencies must be responsible for taking care of their workers and requires monitoring measures; it includes sanctions in the event of violations.

The Thailand Overseas Employment Administration, set up under the Department of Employment (DOE) of the Ministry of Labour (MOL), is the primary agency for managing outmigration. Its functions include regulating the practices of private recruitment companies, centralizing overseas employment information, administering to Thai workers overseas, facilitating overseas employment opportunities and providing overseas employers with suitable and experienced Thai workers.

Five channels for going abroad to work

Under the Recruitment and Job-Seeker Protection Act, there are five legal channels for Thai workers to go overseas for employment:

- **Through private overseas recruitment agencies** – with permission from the Department of Employment, recruitment agencies can match Thai workers to jobs with foreign employers.
- **Through the Department of Employment** – an overseas employer who wants to employ Thai workers may recruit Thai workers by authorizing the Department of Employment to recruit workers for them. The jobseekers are responsible for paying the expense of air tickets and appropriate visa, the Overseas Worker Welfare Fund fees and any other travel-related costs.
- **Through self-arrangement** – Thai workers who have an employment contract with an overseas employer through personal connections must report to the Overseas Employment Administration Office with the certified employment contract at least 15 days prior to departure. Likewise, anyone extending their contract but wanting to make a visit home must also report to the Overseas Employment Administration Office once back in Thailand.
- **Through local employers who send their employees to work overseas.**
- **Through local employers who dispatch their employees to be trained abroad.**

These five channels are not well known to jobseekers. Most of them pay recruitment fees and leave their future in the hands of recruitment agencies.

Licensed agencies risk having their license suspended or revoked if they fail to meet the following TOEA criteria:

- Agencies must issue a receipt when they accept money from jobseekers.
- Agencies that receive payment from jobseekers must send workers abroad within a limited period of time specified in their contract.
- To receive their license, agencies must deposit 5 million baht (US\$164,000) into an insurance fund with the TOEA; should money need to be used from that deposit to cover the costs of irregularities, the responsible agency must repay the money within 30 days.

- Agencies must register both their company and their employees with the TOEA.
- Agencies must not charge their clients more than double their monthly wage (based on the first month or the first 30-day period after work commences) for employment contracts of one year or longer. This amount is to cover only the service fee and does not include travel expenses or visa fees.¹

These stipulations also are not well known to jobseekers.

August Declaration

The Department of Employment and the National Committee to Combat Human Trafficking have acknowledged the need to regulate recruitment practices to better protect Thais from abuse and exploitation. In 2010, the MOL announced the 3 August Declaration for Work with Dignity, which aims to reduce recruitment costs, suppress unlicensed recruitment actors and protect the rights and welfare of migrant workers and members of their families.

Soon after this announcement, 87 recruitment agencies signed the Declaration; 100 individual brokers were registered, 50 officials participated in a training workshop on labour trafficking, a fast-track channel for migrant workers was opened at Suvarnabhumi Airport in Bangkok and a task force team was appointed to monitor possible incidents of labour trafficking. In addition, the Government began to review the protective legislation, with ensuing revisions proposed to the Recruitment and Job-Seeker Protection Act.

In 2011, a Letter of Understanding under the Cooperation Framework on Improving Recruitment Practices and the Protection of Migrant Workers between the Department of Employment and the International Labour Organization was developed. A technical working group was established to monitor and follow up on the letter of understanding. For the purpose of strengthening the legal and policy framework and ensuring its enforcement, the Department of Employment, with ILO support, organized a workshop to develop a code of

conduct in sending Thai workers for employment abroad in compliance with international standards.

Support to Thai workers overseas

The Department of Employment deals with jobseekers in Thailand. When abroad, workers are the responsibility of the Bureau of Labour Inspection and Protection of Workers of the Ministry of Foreign Affairs. Migrants are supported by the Office of Labour Affairs, formed under the Permanent Secretary of the Ministry of Labour, in 13 offices in 11 countries and territories. The offices provide support services through the labour attachés, who have responsibility for helping to protect the rights of overseas Thai workers.

The Government recently increased the level of protection afforded to Thai workers overseas by setting up an MOU between the Department of Employment (within the Ministry of Labour) and the Department of Consular Affairs (within the Ministry of Foreign Affairs). This cooperative agreement, signed in 2010, aims to increase coordination between the two departments and achieve consistent standards in the levels of protection extended to migrants overseas.

The MOU encompasses a number of specific commitments, including: establishing a specialized committee to monitor the problems of Thai workers abroad and to act on those problems appropriately and promptly; the use of a range of media activities to raise awareness among migrants about the potential risks and dangers associated with working abroad; and to seek additional opportunities for Thais wanting to work abroad.

Problems in protecting migrant workers persist

Despite all efforts to protect migrant workers, Thai migrants continue to be exploited and deceived during multiple stages of the migration process; many experience difficulties upon their return to Thailand. The difficulties in managing and regulating outmigration from Thailand stem from a number of factors, including the huge profits that can be made from exploiting the hopes of Thais seeking better employment opportunities abroad, the failure to sufficiently educate Thai jobseekers of their rights and responsibilities overseas and the risks involved; and inadequate enforcement of the law, particularly regarding the recruitment of workers in Thailand.

¹ This ceiling varies by: a) length of contract: in cases in which the contract is for a period of less than one year, the service fee is to be reduced in proportion to the contract duration; for an employment contract that last two years or more, recruitment companies cannot charge more than four times the first month's wage; b) destination country: for example, recruitment fees for workers going to Taiwan Province of China cannot exceed four times the first month's salary, primarily due to the fact that the territory is a very popular destination with a minimum wage considerably higher than other countries in Asia.

III. Picking blueberries in Sweden

3.1 The changing situation

There has been a drastic decline of Swedish labour in the wild berry-picking industry (Wingborg, 2011, as cited in Kallstrom, 2011). The drastic drop in Swedish nationals picking wild berries is attributed to social and cultural reasons; apparently there has been a tremendous change in lifestyle away from such traditional activities as picking berries and mushrooms.

Today the Swedish berry-picking industry is dependent on foreign seasonal migrant workers from China, Thailand, Viet Nam and such Eastern European countries as Latvia, Lithuania, Poland and Ukraine, among others. Foreign workers represent more than 80 per cent of the labour force in the berry-picking industry (SBIF, 2010).

Outside of the European Union, Thailand sends the largest number of migrant workers to Sweden to pick berries (berry picking season runs from early July to early August, with first blueberries then blackberries and lingonberries) (Wingborg, 2011, cited in Kallstrom, 2011). The numbers have been heavily increasing since 2000, especially among farmers from the North-East of Thailand (Phetchabun, Chaiyaphum and Udon Thani provinces). The “first generation” of Thai berry pickers going to Sweden were largely relatives of Thai women who had married Swedish men. In those early days, several hundred farmers travelled to Sweden and Finland with tourist visas to pick wild blueberries over a two- to three-month period, which fell between cultivation seasons in Thailand.

The interest in berry picking abroad then spread among neighbours. According to the Network Against Trafficking and Exploitation of Migrant Workers (2010), the second generation of pickers were people from the same or nearby villages who were assisted in their arrangements by those first-generation pickers – who charged a small fee (5,000 baht) for their assistance.

Data from the Asian Research Center for Migration (2010) indicates there were at least 450 Thais engaged in such work in 2003, between July and September, from which they earned about 185,000 baht per person. Many had good memories of the work, which included time off for recreation and visiting tourist attractions. Successful stories were told and retold among relatives and neighbours.

A success story from the early days

Pramuann Moowiset and Sura Korn-et, male residents of Ban Siam Pakmor in Chaiyaphum province, were the first residents of their village to travel to Sweden for work picking blueberries (sometime before 2009). Pramuann Moowiset said most Thai berry pickers found the work through Thai women who had married Swedish nationals. They entered the country with a tourist visa and stayed up to three months picking blueberries. Ten years ago, a round-trip ticket to Sweden cost 38,000 baht while living expenses in the country were low.

Both men’s families now have comfortable houses, six-wheeled trucks worth more than 800,000 baht and more than 50 rai of land – all bought with earnings from Sweden’s berries. The two men continue to pick berries in Sweden each year, most likely on their own arrangement, returning home with more than 100,000 baht.

Soon, however, the stories began to change. From 2007 to 2010, an estimated 23,000 Thai and other

2 P. Charoensuthipan: “Pickers reap the fruits of their labour”, in Bangkok Post (Bangkok) 20 June 2010. Available at: www.bangkokpost.com/news/local/39057/pickers-reap-the-fruits-of-their-labour [15 October 2011].

foreign migrant workers flew to Scandinavia (Thais also go to Finland for berry picking, although not on as large a scale as in Sweden) via recruitment agencies that offered formal employment contracts, while some 7,000 arrived as “tourists”; these numbers may be high and are difficult to verify (NAT, 2010).

In 2009, those who returned from Sweden told stories of poor earnings received and the mounting debt problem incurred; many lodged complaints with the Thai Ministry of Labour, claiming they had been cheated by the Thai recruiting agents and companies.

In October 2009, some 400 pickers marched through the centre of Bangkok to the Swedish Embassy to air their grievances. They met with the Swedish ambassador who assured them that the Embassy was in contact with the Thai authorities:

We are interested in as good experience as possible, that you are treated with respect and with dignity.

3.2 Policies and procedures to assist berry pickers in Sweden

To respond to the influx of migrant workers, the wild fruit merchants formed the Sweden Forest Berries Association (Sverige Bar Intress Forening, or SBIF) in November 2000 in Umeå, a major northern town in the prime berry-picking region. The association formed “to provide information about the wild berry trade in Sweden and also influence public opinion concerning this trade”. The SBIF formally sought licensing from the Swedish Government to import Thai workers especially for the purpose of seasonally harvesting wild fruit; in such employment, the workers would be exempted from Swedish requirements for work permits and exempted from paying taxes on their earnings. Thereafter, in principle, workers were only required to pay for their own airfare and visa fee; no commission or operational expenses were to be charged by SBIF members. The SBIF further undertook the responsibility for providing adequate living accommodations and food at reasonable rates for the workers. The SBIF also issued a “letter of invitation” that allowed jobseekers to process travel arrangements on their own.

These new provisions helped 1,527 Thai workers return home with around 85 million baht in earnings in 2004 from selling berries to SBIF members.

In 2005, the Thai Government issued a special directive, the DOE Procedures for Processing Thai Workers for Employment as Wild Fruit Harvesters

in Sweden, to facilitate Thai workers seeking such employment. The directive also permitted the Government to gather statistics and better control the process. The revised regulations designated procedures for Thai job applicants seeking the seasonal work, including presenting the SBIF “letter of invitation” to the proper authorities for processing.

After receiving complaints from businessmen and berry pickers in 2006 regarding a tax of 57.28 per cent on wild fruit sales, the Swedish Government struck a compromise. The following year the Swedish Government regulated the labour migration flow of foreign berry pickers from countries outside of the Nordic countries and non-European Union member countries by introducing a requirement for work permits and resident permits (Government Office of Sweden, 2008, cited in Kallstrom, 2011).

The SBIF and the Swedish Immigration Board formalized this activity through the requirement for a contract between the recruiting agency and the berry pickers. The SBIF set quotas on the number of berry pickers each season. Swedish agencies then teamed up with Thai agencies to recruit berry pickers and facilitate the following:

- employment contracts
- logistical arrangements for hired pickers
- negotiations with the Thai Ministry of Labour’s Department of Overseas Employment and with the Swedish Embassy in Bangkok (visa applications)
- airplane ticketing.

The Swedish immigration authorities began to authorize the country’s diplomatic missions abroad to issue visas and temporary three-month work permits for nationals of certain countries to pick wild berries during the summer. In 2007, the first year of the change, 1,129 Thais were allowed to travel to Sweden to pick wild berries. In 2008 3,582 Thais were given permits; the increase was attributed to increased popularity because by then word had spread that it was possible to make a small fortune (by Thai standards) in only a couple of months in a remote forest camp in Sweden’s northern provinces (NAT, 2010).

Unfortunately, this formalization – plus the grass-roots advertising of the purported lucrative opportunity – turned the activity into a money-making opportunity for both Thai and Swedish recruiting agencies, as the next section details.

IV. The 2009 blueberry fiasco

4.1 Overview

The debts incurred, the stories of hardship and the struggles for justice by the thousands of Thai berry pickers who went to Sweden in 2009 should be a sufficient spur to wake up the Thai Government authorities on how farmer communities are being targeted by the highly profitable labour exploitation businesses.

According to both the Network Against Trafficking and Exploitation of Migrant Workers (2010) and the Asian Research Center for Migration (2010), by 2009 the attractive tales of the “first generation” of berry pickers previously earning hundreds of thousands of baht (after paying expenses of 40,000–60,000 baht per person for visa, airfare and expenses in Sweden) had become nightmare stories. Partnerships between private labour recruiting agencies in Thailand and Sweden targeted farmers in the North and North-East of Thailand and the recruiting fee – or “operational expense” – had doubled (75,000–120,000) per person.

Unfortunately, the blueberry season in Sweden went through bad spells of production, and workers did not pick as much as expected; at the same time, the living expenses increased while the berry selling price fell. Consequently, around 80 per cent of the some 6,000 Thai villagers returned from Sweden in debt (NAT, 2010).

4.2 Pre-employment and pre-departure

According to the ARCM (2010), most of the 5,911 Thais who went to Sweden for berry picking in

2009 used a recruitment agency. The Ministry of Labour categorized such recruitment as “arranged and escorted by the employer”, or occasionally as “employers in Thailand taking them to work in Sweden”.

Swedish agencies paid Thai agencies to recruit workers. All jobseekers (berry pickers) signed an employment contract with one of four Thai licensed agencies (NAT, 2010):

- Siam Royal Service Group Co. Ltd., which recruited 2,372 workers
- Sinsunchai Co. Ltd., which recruited 1,668 workers
- Blueberry Service Co. Ltd., which recruited 738 workers
- T.S. Law and Business Co. Ltd., which recruited 1,133 workers

The process begins with a broker, who is employed by the recruiting agency, seeking out potential workers and offering them what NAT (2010) calls a “false dream work package”. One of those workers, Pramuan Prasert recalled when interviewed in August 2011:

Picking berries in Sweden...I had never heard of such a job before. The person who encouraged me to go was not exactly an “agent”. He was someone from a nearby village who used to go to Sweden with this company and he introduced me to them. At the time, there were other friends who wanted to join with me but they couldn’t find the money for the broker’s fee. They also did not have a land title to guarantee a loan from the company. The broker company charged 75,000 baht to send each worker to Sweden. We gave our land title to the company to guarantee a loan from the agency for 85,000 baht each for me and my wife. I understood that the money was for the broker’s fee, plane ticket, visa fee,

3 There are five categories of how workers can go to work overseas legally according to the law: 1) self-arrangement; 2) government to government; 3) with employers; 4) with recruitment agencies and: 5) as trainees.

4 A local job broker whose task is to encourage people to apply for a job with a broker company. The “agent” could be a community leader or a person who used to go working abroad.

other arrangement costs and the three-month loan interest because the working period in the contract was three months. I also had to borrow around 70,000 baht from my relatives for expenses during the preparation. Most people do not realize they need to spend money during the waiting period – apart from the broker's fee – and that should be included when we calculate our investment.

The recruiting fee typically covers processing of the work contract, airfare, visa, health insurance and a few hours of cultural orientation just before the flight (as well as profit for the agency).

With the recruitment fees climbing so high, most jobseekers have had to either mortgage their family's land – in most cases this is all the land they own – or persuade a somewhat wealthier relative or neighbour to mortgage their land. As cited in NAT (2010),

In deciding to pay a recruiting fee, a jobseeker and their family invests all their existing property with the hope that they can earn enough and more to pay back these debts from working abroad.

With the contract, Thai berry pickers were to earn in Sweden the Thai minimum wage of 8,000 baht a month, with a daily allowance of 500 baht (10 euro) for expenses and to receive the level of protection accorded to workers in Thailand who earn the minimum wage. However, as Pramuan Prasert recalled, the brokers and agents told the workers a different story:

As far as I understood, the contract was for three months but the real period of work was about two months. I expected that my wife and I would be able to earn up to 200,000 baht in that time. It would be enough to pay off our debts and put away some funds for the future. That expectation came from the workers' training organized by the company. The instructor encouraged us to have a big hope that we would earn much money. He gave an example of a family that saved a million baht from picking berries in only a few months.

According to Pramuan Prasert, the process of recruitment started in May 2009 and involved many unexpected expenses:

We made several trips to the company's office in Ubon Rachathani town almost every day to apply for a passport, sign a loan contract and

for a worker's training course in Kang Kroh district in Chaiyapum province. The petrol cost me about 400 baht a day. During that time, we could not continue other work so the money borrowed from my relatives was used for living expenses as well as direct costs for such expenses as medical exam fees. The company advised us to buy necessities, such as a good-quality raincoat, overcoat, gloves, socks, big bags for berries, etc. We also needed to prepare dried food, such as instant noodles, coffee and fish paste, for two months while in Sweden. My wife and I carried about 30,000 baht to Sweden. Another 10,000 baht was put in the bank for our children to spend during the time we were away.

The workers left for Sweden in July 2009. Pramuan Prasert remembered:

I was full of confidence and excitement. All that waited ahead was new and exciting to me. I did not spare even a little space in my heart for disappointment.

4.3 While in Sweden

Thai workers arrived in Sweden in mid-July and were placed in camps accommodating 60–200 pickers in North, Central and Southern Sweden. Many of the camps were from 20 to hundreds of kilometres apart. Most camps were assigned a Thai cook who was recruited in Thailand. The pickers were told to form groups of five to eight people. Each group was provided with an old car or minivan and told to include an experienced picker.

Each group was given a map and told to get on with the job, without further orientation. Most of the pickers had never been out of Thailand and very few spoke more than a few words of Swedish or English. The Swedish agencies were in charge of the camps. According to ARCM records (2011), employers did at this point tend to look after the workers they sent abroad more than previously, with a Thai “camp boss” designated by the employment agency or a representative of the employer liaising with the workers to a certain degree. However, there was little or no attempt to provide any cultural or environmental orientation.

The distance to areas where berries were sufficiently abundant to warrant picking often turned into a hundred kilometres each day. (In earlier years it had been just a few kilometres.) The pickers walked

the woods, forests and hills, often covering 10–20 km during the day. They kept in contact with mobile phones and left their buckets of berries beside the road for their Thai driver to collect or hid when there was no one staying with their vehicle (so they could carry more when working on steep hills). Except the drivers, all the workers contributed to the cost of the petrol, about 100 kronor a day, with the drivers picking berries as much as possible as well. Chutima Chaihong, another one of the pickers, recalled the difficulties and disappointments:

On the day we arrived, someone at the labour camp drove us to an area about 20 km away to survey the forest. We saw berries and felt relieved. We were told to go back and rest and come back to pick the berries the next day.

The next morning, our group of about ten people went back to the same place. But shockingly, the berries we saw the day before were all gone. We couldn't find berries anywhere. There were none. I had no idea there were so many Thai workers who went to Sweden that year for the same reason. I felt disappointed.

The next day we were still in good spirits enough to drive as far as 100 km, and then 200 km. But we could only find a few berries. We saw workers' trucks running back and forth. That day my husband and I picked about 10 kilos of berries each. Those with no experience only had about 5 kilos each.

After that, we woke earlier and earlier and drove farther and farther to look for berries. Some days we drove as far as 500 km, which was the same distance between my home town to Bangkok. Then we had very short time to pick the fruit because we had to hurry back to the labour camp before the weigh-scale counter closed. The women were very tired and discouraged. I painfully lost my toenails from walking up the high mountains. A younger woman spoke to me in tears, "I am too tired. I can't go on." She had lost almost 30 kilos of weight.

The berries seemed to be fewer and fewer. Some days I picked only a kilo.

To find good patches to pick enough berries to cover just their living and transport costs, many groups would wake at 2 or 4 a.m. and take their breakfast and lunch with them into the forest. They ate the same thing

every day: boiled eggs, fried chicken and two to three bottles of water. Most would not stop searching for berries before 6 p.m. and they would not return to the camp before 8 p.m. They would not get to bed until around midnight. On arrival at the camp they would often have to queue for the weigh-in. In 2009, this usually amounted to only 30 or 40 kg per person. On average, the pickers would manage around four hours of sleep. Sometimes, in areas where berries were scarce, they would opt to sleep out in the forest, no matter the weather.

The Thai workers took with them their own medicines (mosquito cream, penicillin and amoxicillin) and administered their own health care. Few had adequate clothing, especially not footwear. Most had only thin, high rubber boots used in Thailand's rice paddies. All had severe problems with their feet, but many said they were too cold to feel any pain. Most returned to Thailand with seriously damaged feet and many lost their toenails. The conditions experienced by the great majority of the Thai berry pickers in Sweden in 2009 were far from what they were promised.

The Swedish agencies also deducted 150 kronor per day from their earnings for food, lodging and the use of the car, whether or not they were sick and unable to go berry picking.

In August, about one month after arriving in Sweden, the workers negotiated for a better selling price with the company. The company finally agreed to 10 kronor a kilo (up from 7 or 8 kronor) and insisted there would be no more increases (that price was still below the market rate). However, after days passed, the workers tried (but failed) to negotiate with the camp leader for a reduction of the living expenses that were collected daily (50 kronor for boarding, 50 kronor for food and another 50 kronor for truck rental per person).

By that time, the workers were concerned about what they could conceivably earn and realized it would not even be enough to cover their debt for the expense of just going to Sweden. Pramuan Prasert explained:

By then, the money my wife and I had brought from home was gone. We had invested all our money and labour for this work. I calculated roughly and found that to pay off all the debt and have a bit of savings, my wife and I needed to pick 200 kilos of berries a day. Most days we managed 20 kilos.

In mid-August, the workers lost all hope they could earn enough to pay off the recruitment fees. A group of Thai workers sent a letter of complaint to the Thai Embassy in Stockholm. According to one of the workers, the Embassy sent a letter encouraging the company to negotiate with workers to improve the work conditions, but no agreement was achieved. The company did not relent to any of the workers' requests.

According to the Network Against Trafficking and Exploitation of Migrant Workers' records, the 5,911 farmers from North-East, North and Central Thailand who went to pick berries in Sweden in 2009 failed to earn enough to pay the cost of going there. Bad crops in the Swedish forests turned out to be a disaster. Many had borrowed heavily to pay for the recruitment fee.

4.4 Pre-return services: Workers' needs and responses

As noted earlier, both the Ministry of Labour and the Ministry of Foreign Affairs are required to provide assistance to Thai workers who experience hardship abroad. The Department of Consular Affairs (in the Ministry of Foreign Affairs) liaises on complaints in countries where there is no Ministry of Labour office. In most cases, a Thai official seeks to arbitrate with related parties as the advocate of the Thai person or persons experiencing the hardship. If that fails, Ministry of Foreign Affairs funds are used to repatriate the worker or workers (ARCM, 2010).

After several weeks of earning less than the bare living costs (150 kronor per day), some 428 Thai pickers, according to the Ministry of Labour, could no longer pay their living expenses. Upon hearing that Thailand's Minister of Labour was visiting Sweden, they all skipped picking berries and drove the town where he was scheduled to meet with Swedish officials (23 August 2009) to submit their complaints – only to be disappointed. Pramuan Prasert recalled:

Our demands were that the berry price should be equal to what the market paid while the living expenses should be decreased. No one talked about quitting the job and going back home. Deep inside our heart, each of us wanted to continue the struggle to get something out of the hardship.

But the negotiation failed. The company did not agree to any of the conditions we proposed. The labour minister seemed to be on the employers' side, saying that the companies also had heavy

expenses of their own, and if the workers wanted to file a complaint, he would help us if we went back to Thailand and followed the procedure there. The Thai labour minister only said, 'Come back and talk in Thailand'.

Worried that there would be trouble with the employers because they had aired their complaints to authorities, the workers decided not to go back to the labour camp but to stay in the town where they had met the Thai officials. A group of Thai housewives married to local Swedish men who had heard of their hardships and offered to help them. They spoke with the town governor to arrange lodging in a gymnasium. They also gathered donations from the Swedish community to buy food and clothes.

A week later, on 28 August 2009, the 200 workers lodged in the gymnasium decided to go home. With a Thai government loan of 9,000 baht each (via the Thai Embassy) they bought their air tickets. In total, about 400 workers returned to Thailand before the end of their contract that summer.

Most of those workers failed to return with the expected 100,000–300,000 baht earnings. They thus formed a committee to submit a class action complaint with the Ministry of Labour and the Thai parliament against three of the recruitment companies (the Blueberry Service Co. Ltd. was not included).

Because they felt they had been deceived and defrauded, the workers wanted the recruiters to return the money they paid for the fees and that criminal charges be brought against the three offending parties (ARCM, 2010).

4.5 Upon return to Thailand – Fighting for justice

In just over two months, the 5,911 Thai berry pickers acquired a total debt of more than 600 million baht (affecting some 20,000 when family members were considered) and, for many, the *loss of a livelihood means on their small farms due to loss of their land; some marriages broke up over the difficulties.*

With the support of the Bangkok-based Thai Labour Campaign NGO, the workers filed a complaint with the Prime Minister, the Minister of Labour, with the parliament and the senate and with the Department of Special Investigations immediately upon their return. In Bangkok they set up a camp outside Government House (where the office of the Prime Minister is

located) for three days in October and organized a rally in front of the Swedish Embassy.

On 9 October 2009, during a negotiation in the parliament with the Minister of Labour, the three recruiting agencies agreed to pay 23,000 baht to the workers who submitted a complaint for restitution of the recruitment fee, outstanding wages and other costs incurred in Sweden (food, accommodation and petrol).

However, on payment day, all four agencies offered less payment and ended up paying most workers a varying amount, ranging from just a few thousand baht to 21,000 baht. Only a few farmers received 23,000 as agreed. The pickers who agreed to accept the money offered had to sign a statement saying they would not take any further action against the agencies and that if they did, the agency would have the right to take action against them.

Two of the recruiting agencies pressured workers to allow them to deduct money to give to the money lenders (who work with the agencies in providing loans to jobseekers). The money lenders had also appeared at the Ministry of Labour on “payment day” and began taking cash from the farmers in full view of officials and police. According to Pramuan Prasert:

Most workers were verbally offered 18,000 baht assistance, although in the end they did not receive it. Instead, the company deducted the amount from the debt the workers had with the company. For some cases, the company claimed the debt and expenses had not been calculated yet and the workers needed to wait. Those words were just to buy time.

Court procedures

Of the more than 400 returnees, 47 people decided to jointly sue the recruiting companies. Through a team of lawyers (with support from the ILO), the workers filed a lawsuit charging that the recruitment companies of breaching the terms of the contract.

Siriwan Wongkiatpaisan, the lead lawyer, noted that according to the labour protection law, when workers are recruited by Thai employers and escorted to the job site by them, the employer is not entitled to charge recruitment fee or operational fees. Thus in principle, the Ministry of Labour should take more proactive action to enforce this provision so that workers do not pay the recruitment fee.

The company claimed that it opted to use the method of “recruit workers and escort them to the job

site” so that they could help workers to avoid paying income tax. But, according to Wongkiatpaisan, referring to a Swedish policy, the company and workers would already be exempted for tax because they were doing short-term work.

According to Wongkiatpaisan (2011), the Thai companies don’t want to take any risk and thus rely on the unlawful tactic to ensure profit for themselves. This then leaves the workers’ bearing all the risk. The workers thus pay the recruitment fee and all expenses, including for their own accommodation. In these circumstances, according to the contract, the fruit they pick belongs to the employers, and the employers must cover all costs for the workers, including food, accommodation and transportation while paying at least the minimum wage to the workers.

The Department of Employment is well aware that these companies asked for permission to send workers to Sweden. However, the companies are still permitted to charge recruitment fees as if they were recruited by a private employment agency.

When questioned in court, the Siam Royal Co. owner stated that the company was given a green light from the high-ranking authorities of the Ministry of Labour to charge recruitment fees from workers even though it was clear to them that the method used to take the workers to Sweden precluded such a practice. How could the authorities authorize this, Wangkiatpaisan wondered:

This shows that legal enforcement authorities do not enforce the law effectively. It is an important point that the authorities and the judges need to enforce the law because the companies do not have the right to charge workers any recruitment fee. This problem, however, will continue in Thailand for a long time because nothing is done to stop it.

The workers’ case went to court in March 2010. Many court warrants to continue the case followed, but the recruiting agencies repeatedly requested a postponement due to “incomplete paperwork”. The tactic exhausted the workers and turned them desperate. Many started to give up and, one by one, nearly all took a private settlement, eventually leaving only two workers left to fight the case against only one agency (Siam Royal). According to Pramuan Prasert, one of the two remaining workers, the company regularly contacted all 47 workers to persuade each to compromise individually.

I was told, "Take 20,000 baht and finish!" The amount was so little compared with what we had lost. If they had offered up to a 100,000 baht, I might have seriously considered.

In January 2011, the two workers and the defendants were finally called together for the trial to begin. But after the first witness testified, the agency's lawyer asked for a recess and a postponement of the trial, again claiming the related documents were not ready.

The judge advised us that although we had sufficient documentary evidence, the process would take a very long time if no one compromised. I was exhausted. We wanted it to end.

All the workers had paid the required fees but in various ways: i) some took a loan from others and paid the company in cash, ii) some signed a loan contract with the agency, using an asset (land typically) to guarantee the loan, as Pramuan Prasert did and iii) some did both by signing a 50,000 baht loan contract with the agency and paying the rest in cash. Those borrowed "from" the agency ended up slightly better off. Pramuan Prasert explained:

The judge asked me whether I would accept the company returning my land title that I used to guarantee the loan and repeal the debt. He said it might be too difficult to demand the company to compensate in cash, and even if we insisted on continuing and won the case, the company would probably appeal and the struggle could go on for five to ten years.

I agreed to meet halfway. I would take my land title back with my debt cleared. Although I did not get enough to pay off the debt for what I had borrowed from others, I thought at least the company relented to our demands. The company's representative said to me, "You're not bad, huh? You made me lose over 2 million baht." Unfortunately, many who paid cash to the company received only 25,000 baht compensation because they had signed the compromise agreement with the company.

On 4 July 2011, almost two years after the trip

to Sweden, the workers' struggle for justice ended. Although by then so few workers remained. Chutima Chaihong, one of the returnees, explained:

People with the NGO network that supported the workers during that time asked us whether we wanted to take the case to court. I thought that it was too difficult and impossible to get all the workers from Sweden to fight together. So my husband and I hurriedly entered into a negotiation with the company before the next group of Thai workers returned.

According to Chutima Chaihong, she wanted the company to return the recruitment fees, which she and her husband took as a loan in exchange for their land title as a guarantee. The company finally offered to return the title and clear the debts. This meant that she worked in Sweden for nothing but at least there was no debt from it:

I probably made the right decision. A group of workers who decided to sue the company found that they had to go back and forth between Bangkok and their homes to fight their case for two years, and the case ended with reconciliation. The workers received only 20,000 baht compensation along with the return of their land titles.

Ironically, the amount was not much different from what Chutima Chaihong was paid, and her case closed much quicker – leaving a negative message for workers who in the future might want to consider seeking justice through the courts.

V. Berry picking in 2010 and the Lomsjö Bär case

Despite the 2009 labour dispute case between workers and their recruitment agency due to the abysmal earnings among berry pickers, Sutassanee Suebwongpaet, Director General of the Department of Employment, was still optimistic about the berry picking opportunity for Thai workers in Sweden in 2010. As cited in Muennoo (2010), she trusted that in 2010 the blueberries would be abundant. In addition, the problems of the previous years had been addressed by the relevant parties and thus workers should not have any more trouble.

Under her guidance, the Department of Employment approved permission for approximately 4,800 workers to pick berries in Sweden and Finland. If each worker earned 100,000 baht in the berry picking season as many had in the past, their combined earnings would thus have been around 480 million baht.

5.1 Changes in regulation to protect workers

Indeed, there had been some improvements. To address the issues that workers had encountered in 2009, the Swedish authorities introduced more stringent regulations for the 2010 season, especially regarding the payment of minimum wage and certain living conditions, regardless of whether or not Swedish companies had signed collective agreements with the Swedish berry picking trade union. On paper, these adjustments looked like considerable guarantees of fair working conditions: to obtain a work permit, the salary must be no less than 13,000 kronor (1,400 euros) per month, and the employment conditions must be equal to those of the Swedish Collective Labour Agreement (or what is normal in the profession or trade):

- If employed by a company with operations in Sweden, the Collective Labour Agreement is the Swedish Municipal Workers' Union agreement with

the Federation of Swedish Forest and Agricultural Employers. The agreed minimum wage under this agreement was 16,372 kronor (1,700 euros) per month for the period 1 June 2009–31 May 2010.

- If employed on an hourly basis, the agreement also contains information about the minimum hourly wage. If employed by a foreign company with no operations in Sweden, such as a temporary staffing agency, the temporary staffing agreement is valid. Under that agreement, the minimum wage was 17,730 kronor per month (1,900 euros).

These regulations apply regardless of whether or not the foreign temporary staffing agency has signed a collective agreement.

In terms of the work environment and hours of work, the Swedish Work Environment Authority was explicit: Workers are entitled to 11 consecutive hours free from work in a 24-hour period as daily rest. The ordinary working hours must not exceed 40 hours a week. If it becomes necessary, working hours may be 40 hours a week on average during a four-week period. Typically, the working day should be eight hours, although under certain circumstances, a maximum of 48 hours over a four-week period or 50 hours during one calendar month may be worked. The overtime may not exceed 200 hours during one calendar year.

The regulation of working hours was not very popular among the pickers, however; they wanted to work as much as possible to benefit from the piece-rate system, and they had nothing to do during their leisure time anyway. There was pressure on the Work Environment Authority to reconsider the regulations on hours.

The Work Environment Authority has the primary regulatory authority in the monitoring of the terms and conditions of migrant berry pickers (and all

other employees in Sweden). In 2010, it issued a notice of new rules affecting berry pickers in Sweden.

Despite this formidable array of regulations, it seems they were insufficient to contain the re-appearance of abuses common in previous years.

In 2010, an estimated 4,000 Asian workers in total arrived in Sweden, less than the usual number and later than usual. Prior to the 2010 season, berry picking was equated with other seasonal jobs, which meant that pickers had to be guaranteed a contract with a specified salary and working conditions in order for a work permit to be granted. In spite of the new worker-protection measures and the previous complaints, the summer of 2010 produced a scandal that reached international proportions and cast the Swedish authorities in a less-than-flattering light. What made 2010 not just a run-of-the-mill story of labour abuse of vulnerable migrants was that this time the berry-picking workers, faced with a poor harvest and the near certainty of even greater impoverishment as a result of debts owed to agents and moneylenders, decided to take matters into their own hands.

One of the most important cases concerns the Lomsjö Bär AB company in southern Lapland.

5.2 The Lomsjö Bär AB case

The Lomsjö Bär AB, a “food and beverage” joint-stock company, 80 per cent of which is owned by a Finnish national named Ari Hallikainen, advertised for “foreign professionals” on the SwedishJob.com website:

Lomsjö Bär AB is a Swedish company that deals with berrys,[sic] such as lingonberry, blueberry and cloudberry. Lomsjö Bär AB is in need of berry pickers during Aug–Sept. As a berry picker, you will be situated in the forest surrounding Åsele, Sweden.

The advertisement dates from 2008 and offers remuneration at a “fixed price”, “depending on the amount of berries collected. One day salary is about 800 SK (85 EUR)”. In Thai currency, the prospect was equivalent to more than 3,500 baht per day – a powerful incentive.

Unlike most other companies in the business, Lomsjö Bär AB claimed that it did not use any employment agencies or other “go-between” firms but addressed potential employees directly in their home countries.

In the spring of 2010, a recruiting agent in Thailand advertised over local radio in the province

of Chaiyapum for pickers for Lomsjö Bär AB. Those who wanted to sign a work contract were told that the recruitment fee was 75,000 baht, of which a first payment of 25,000 baht would be considered the deposit. The remaining sum of 50,000 baht would be advanced to them by the company and deducted from their earnings in Sweden.

Some 280 persons applied, with the agent reportedly collecting about 7 million baht. Visas were obtained, and in early July, the agent informed the recruits that the second payment of between 2,300 baht and 3,000 baht was due. A total of 162 Thai pickers were employed during the summer and autumn of 2010.

In mid-July, the recruits were informed that Lomsjö Bär AB would not be able to advance the remaining part of the recruiting fee of 50,000 baht. Only 156 recruits were able to find the additional money, mainly by borrowing from relatives or moneylenders at interest rates of between 3 and 7 per cent per month. One picker reportedly paid 20 per cent per month and the remaining 124 recruits had to forgo the work opportunity.

The agent refused to return the deposit to those who could not pay the balance, claiming to have spent more than half the money on visa arrangements; the workers filed a complaint with the local labour office. The agent then proposed returning about one third of the payments, some 10,340 baht of the up to 28,000 baht that he had received from each recruit. Some 20 individuals accepted this offer, while another 104 refused. The complaint against the agent is ongoing in Thailand, but he has disappeared.

5.3 The work contract

The individual work contracts, as cited by Woolfson et al. (2010), were weak from a Swedish perspective. A picker was guaranteed a minimum wage of 16,372 kronor per month for a 40-hour working week; but to achieve more than the minimum wage, workers would need to pick more than 10 kg of wild berries every day of their working week, something that under the circumstances was practically impossible. An average picker managed to pick around 3 kg per day. In other words, the Lomsjö Bär AB contract had no value and worse, according to the terms of the contract, there was no guarantee that a berry picker could earn enough money to not go home in debt.

The Migrant Workers Union Thailand argued that the dishonest methods employed to recruit the Thai

berry pickers amounted to trafficking under Thai law because the agencies and individual agents promised remuneration higher than possible in reality. They had advertised only the gross salary and said nothing of the deductions for food, lodging, travel within Sweden, etc.

5.4 Upon arrival in Sweden

The company's introductory video the workers had been shown in Thailand had downplayed the hardships. Certainly that 2010 would be a rather bad year for harvesting berries was not foreseeable when the video was produced, but as some pickers explained, they had the impression that access to the fruits would be much easier than it turned out to be; they would have to climb hills – not mountains – in the search for berries. Nothing had warned them of the mountain bears that they indeed encountered.

By the end of August, the Lomsjö Bär AB pickers had been paid 6,000 kronor, after which they received nothing. When on their 25 September payday the pickers did not receive any wages, either their outstanding wages from August or their wages for the whole of September, they decided to march through the streets of Åsele. Their protest was widely publicized in the Swedish media.

As it turned out, Ari Hallikainen, the primary owner of Lomsjö Bär AB, had withdrawn all his funds from the company's account, a sum reportedly in the area of 4 million kronor (about 400,000 euros) and went into hiding, leaving 162 Thai berry pickers unpaid for most of their work that season.

5.5 Fighting for justice in Sweden

Woolfson et al. (2010) noted that in this case, the involvement of the Swedish trade union Kommunal made the greatest difference.

But to represent the Thai berry pickers, Kommunal had to find at least one or two among them who were willing to be members of the union; if so, it would then be possible – indirectly – to represent all 162 pickers. The problem was that the Thai workers had neither the money nor the willingness to spend money to become union members. Fortunately, there was a clause in Kommunal's statutes that allowed workers younger than 26 years to three months' free membership without any fee. Thus Kommunal registered three persons as members and the union was able to represent them in a Swedish court.

The legal process was delayed, however. During the proceedings, Kommunal had a cooperative

relationship with the local municipality of Åsele. It also received help from the Thai Embassy. Five Embassy representatives flew from Stockholm to ensure that the workers' rights were protected and arranged for their airfare and transportation back to Thailand.

At that point (early October), 117 people took the opportunity to return to Thailand, although empty-handed. Among them were the two newly recruited Kommunal members. The union thus had to retain the power of attorney for them from Thailand, which they eventually achieved, but only after a time-consuming search for the two workers.

Kommunal then had the right to represent the three Thai berry pickers and accordingly had the legal right to take action against Lomsjö Bär AB. But to meet all the Thai workers' claims for compensation, Kommunal had to proceed to a second step, which was to file a bankruptcy petition against Lomsjö Bär AB. If the company went into liquidation, all workers who had claims would automatically be covered by the so-called governmental salary guarantee: the Swedish State would compensate them for their loss of earnings. Thus in December 2010, the reorganization administrator found that most of the workers had the right to reimbursement, though only for their basic salary and not for overtime. Kommunal made clear that it would have difficulty in taking the case further, and the workers accepted the offer.

Although Lomsjö Bär AB has disappeared from the scene, berry pickers from Thailand are expected in the following year. A Finnish entrepreneur bought an old residential school building in Åsele with room for 280 pickers. This time, the entrepreneur knows that everything he does will be thoroughly scrutinized by municipality officials, Kommunal and the media.

This, however, is no guarantee for decent standards; the whole industry exists in a grey zone not very open to scrutiny.

5.6 The new regulatory regime

Prior to the berry picking season of 2011, the Swedish Migration Board (Migrationsverket) established more rigorous work permit requirements to ensure the basic salary of the foreign berry pickers and that the workers receive sufficient information about the job and Swedish regulations.

The main intention was to ensure that berry pickers would be offered a wage and other conditions of

employment on par with Swedish collective agreements. The Migration Board established clear requirements to be fulfilled before issuing work permits:

- Berry pickers must have a valid passport and be able to support themselves from this work.
- The employer must advertise the position in Sweden and the European Union for at least ten days (new recruitment).
- The employer must offer conditions of employment on a par with Swedish collective agreements or whatever is customary within the occupation or industry.
- The work must be on such a scale that a worker can earn at least 13,000 kronor (approximately 1,400 euros) per month.
- The employer must prove that each berry picker received sufficient information about the type of work to be done, civil rights and traffic safety regulations.
- The employer must also prove that the salary stated in the offer of employment will be covered, even if the harvest is poor and if workers cannot pick a minimum amount.
- An employer who hired berry pickers in the previous year must prove that they were paid their wages by producing wage slips.

Regulatory interventions of this nature may be regarded as both welcome and somewhat overdue in view of the successive difficulties surrounding the employment conditions and remuneration of these workers. Whether they are sufficient in scope, can be effectively enforced and address the underlying problems remains to be seen.

In sum, the Swedish case study of 2010 shows that:

- The Swedish model of industrial relations has certain perhaps surprising weaknesses, especially when it comes to protecting the rights of a transnational migrant workforce in the face of attempts to exploit them in a condition of essentially forced labour.
- The regulatory and judicial authorities seem to have been slow to react to what was an ongoing problem, involving both deception in recruitment and the defrauding of workers' wages by illegal deductions (two key criteria in international labour standards).
- Redress was uneven, although within limits, and the trade unions offered legal and material support.

VI. Lessons learned

The labour exploitation of Thai workers in Sweden in 2009 and 2010 is only one situation of countless similar abuse. Around 80 per cent of the 6,000 Thais who went to Sweden in 2009 failed to cover their costs. Why? According to the Sweden Forest Berries Association, there were fewer berries than in 2008 and, according to the Minister of Labour, too many Thais went to pick berries. However, as cited by Asian Research Center for Migration (2010) and the Network Against Trafficking and Exploitation of Migrant Workers (2010), migrants working in Sweden (or elsewhere) are likely to encounter difficulties due to:

- the contract presented as the “actual” version states a lower wage than promised at the time of recruitment or the type of work differs and the living conditions are less than decent;
- lack of knowledge pertaining to the laws of the country, dissatisfaction with the working conditions, inability to perform in the job at the expected standard, language/communication barriers, an inability to adapt to the local climate and excessive alcohol consumption;
- Thai recruiting agencies overcharge potential berry pickers for the recruitment fee;
- local brokers charging their own fees (3,000–30,000 baht) on top of the fees of the actual recruiting agency;
- some bank officers in charge of making loans “charge” 2,000 baht per person to facilitate the loan approval per worker who borrows to cover the recruitment fee and other expenses;
- Swedish agencies making arrangements for labour camps (where workers live) charge heavily for food and the lodging.

The case study represents a typical situation in which hopeful jobseekers are lured by the promise of highly paid work abroad. It also reflects insights on the ways in which mistreatment so easily occurs:

- **Registered agencies can be exploitive.** According to an analysis of statistics over a five-year period (ARCM, 2010), unlicensed recruiters were responsible for a majority of the violations of the recruitment law. The Sweden case study, however, illustrates how legally licensed recruitment companies can easily exploit workers as well.
- **Awareness-raising campaigns may well be ineffective.** ARCM (2010) notes in its latest research that public service announcements and warnings are not reaching the targeted audience as well as they should. Even if they are, the message conveyed may not be sufficient. For example, the Department of Employment recommends that jobseekers should:
 - only apply for work at licensed employment agencies and job placement services, not with unverifiable “head hunters”;
 - check with the DOE to confirm that a particular agency really has jobs available;
 - never pay a job placement fee in cash; pay only into the registered business (bank) account of the employment agency or licensed independent agent.

These suggestions, however, seem to be ineffective to prevent jobseekers from being exploited, as Ounjai Thiwong, a worker who endured hardship and disappointment in Poland in 2009–10, explained:

I always did background checks on any company by calling the Department of Labour to find out if the company had a license. I also contacted the Department of Consular Affairs [in the

Ministry of Foreign Affairs] to check if the job abroad that was advertised really existed. I thought I had done a thorough job checking the information to ensure there was nothing fraudulent. But I still blundered. This turned out to be an expensive lesson. I have now learned that even a recruitment agency that is legally registered can still deceive and take advantage of jobseekers.

In addition, pre-departure orientation seminars are lacking sufficient detail to properly prepare Thai workers before they depart for overseas jobs. Considering their length of only two to eight hours, it is not surprising. This amount of time is insufficient to give outgoing workers an in-depth understanding of the work or cultural conditions in their destinations, how to prepare themselves and how to conduct themselves while abroad.

- **Recruitment companies have become highly competitive and resort to devious practices.** Recruitment companies – licensed or unlicensed – usually hire local recruiters to help look for clients. These small-scale brokers include community residents as well as recruiters who are traveling representatives of the foreign employment loan services and language schools illegally engaged in recruiting. The number of recruiters has increased further with the prevalence of persons representing domestic and foreign employment agencies. They all are intent on the same goal: to build credibility within rural communities so that people believe that they are capable of placing workers in attractive foreign jobs.
- **False claims are commonplace.** The primary aim of labour recruiting agencies is, according to the Network Against Trafficking and Exploitation of Migrant Workers (2010), “to create the impression that there is, whether true or not, a vast overseas demand for migrant workers”. The labour-recruiting business is not based on how much a migrant worker can earn and is not tied to whether or not a worker can or cannot complete their contract. The objective is simply to recruit as many people as possible by developing the means to trick as many people as possible into signing up to an overseas work package.

False claims made by them include “good work”, “high pay” and “quick hiring and travel”, but this all comes at a price, wherein the client has to pay the commission quickly. After they are paid, they

may connect a prospective client with a job that is not as good as was promised or they may not find any work for them at all.

- **There is a lack of mechanisms to follow up on and assist workers once they are abroad.** The recruitment company in Sweden demonstrated a complete disregard for looking after the workers once they had arrived in the country. This reduced the workers to fending for themselves. Being paid less than contracted is a common occurrence among migrants working abroad, and yet the Government has neglected to establish a channel of oversight and protection for workers who are abused, find themselves in unsafe or unfair work conditions or with unfair contracts. Reporting to the Thai Embassy is difficult for most workers.

Embassy personnel do not have specific skills on labour protection, human trafficking and related laws. They are not aware of government guidelines and procedures when providing assistance to cases in need. (For example, there are steps that Thai officials can take when receiving complaints from workers, especially on labour trafficking cases, which have special procedures identified according to laws and MOUs. But officials typically do not know all the laws and regulations that can be used when dealing with migrant workers.) As well, workers who have gone abroad for work do not notify their presence in the country to the Thai Embassy, making it difficult to monitor their situation (Rachawong, 2011).

- **The loopholes in the labour protection law almost enable the exploitation.** Although the Recruitment and Job-Seeker Protection Act covers recruitment procedures for both local and overseas employment, it offers limited protect to jobseekers after they migrate. The law cannot protect Thais who act on their own cognizance or are recruited by other means, such as by an unlicensed recruiting agency (the Act allows private agencies to operate recruitment services). Penalties meted out for offences of illegal recruitment are not severe enough (ARCM, 2010).
- **Law enforcement and penalties imposed on recruitment companies appear ineffective.** According to the ARCM (2010):

The extent of this problem is reflected in the statistics on complaints and requests for assistance by workers abroad between the

years 2004 and 2008. The ratio of complaints registered to the number of cases provided assistance are negligibly different. Of 15,964 complaints, 14,329 received assistance. But on claims totalling 1.07 billion baht in monetary settlements, funds actually recovered were less than half the sum demanded. The most common high-value complaint was one in which the recruiter had charged a large sum of money as a commission but had failed to arrange work abroad for the client.

In addition, the numbers of offenders who have been punishment is relatively small compared with the overall damage done by them. There have been cases of recruiting agencies that had their license suspended because of their infringement of the labour law. However, those companies found ways to re-open and to continue recruiting workers for jobs abroad.

The ARCM (2010) found two primary limitations within the Government's ability to enforce the labour law: an inadequate number of personnel for preventing deception or fraud against jobseekers in provincial areas and a deficiency of assistance provided by government officials in destination countries, along with the unclear delegation of agency roles.

- **Graft and corruption in job recruitment are characterized as widespread.** Some government authorities have intentionally prevented severe penalizing or stricter control of recruitment agencies. There is concern that these recruiting agencies had a "good relationship" with the Ministry of Labour. According to ARCM (2010), corruption practices in the worker recruitment business include those committed by:
 - high-level public officials who receive or collect money from recruitment agencies directly or become a consultant for recruitment agencies after retirement and use their connections within the government to influence state officials to overlook misconduct by the agencies;
 - politicians who run their own recruitment agencies through a proxy owner for a recruitment agency in which they possess a controlling interest, collect money from recruitment agencies directly or who improperly use their position as members of

the Labour Committee in the parliament;

- Politicians and high-ranking public officials who inappropriately intervene in the actions of state practitioners to oversee and discipline the operation of recruitment agencies.
- **Government agencies are limited in the protection they can provide.** There are limits to the Ministry of Labour's mission and responsibility that inhibits their ability to assist workers. The Department of Labour Protection and Welfare, for example, does not have a mandate to cover Thai workers working abroad. The TOEA does not cover workers once they are already outside Thai territory but only controls the channel in which they are exported.
- **The agency deposit is too low to properly compensate workers.** The recruiting agencies are required to deposit only 5 million baht with the TOEA. The experience of the cheated migrant workers in Sweden illustrates that the total amount claimed by workers exceeds 5 million baht, thus making a strong case that the deposit should be larger.
- **Limitation of workers in the court procedure can pre-empt justice.** Workers do not have a thorough understanding of the law nor the resources to endure a long, drawn-out battle, which companies are too happy to provoke in order to wear down the fight in exploited workers. Sometimes they are discouraged by the slow and complicated process of testimony as well as the strong personality of judges. They need constant support from organizations.

VII. Recommendations

As a follow-up with the case study of exploitation among Thai migrant workers in Sweden, a migration expert, academic, lawyer, government official and two returning workers in Thailand consulted for this case study have suggested various ways to better manage the migration process, leading to the following recommendations:

Stronger public awareness and information dissemination on job recruitment fraud

- Strengthen the dissemination of news and information via such channels as “labour volunteers”, seminars and door-to-door campaigns and seek cooperation from news publishers and broadcast media (including community radio stations) to reach jobseekers with warning information.
- Improve the quality of the disseminated information on foreign employment for the general public and include specific details about the process of finding jobs, legal channels for working abroad and an overview of relevant Thai laws that let prospective workers know what their rights are and how agencies are required to operate.
- Improve pre-employment training provided to prospective workers to ensure that they are more aware of the pitfalls of illegitimate recruiters and so that they make better-informed decisions to migrate abroad for work. For example, the different types of employment contracts should be explained and the names of licensed recruitment agencies should be provided. The workers should also

be provided with information on how to confirm the credibility of claims by recruiters (such as the name of a prospective employer and job positions available) as well as laws of the country of destination.

- Publicize a list of recruitment agencies found guilty of violating the labour laws and make it available to prospective workers. There are cases of these recruitment agencies still operating; for example, Kitti Brothers was reportedly working in Lampang Province even though it was sued by returning workers and ordered to pay compensation.

Management and control of recruitment agencies and recruitment process

- Improve the quality of licensed job placement services so that they perform in the international job market more competitively. Some recruitment agency staff suggest improving the rules and regulations so that agencies can access jobseekers directly with accurate information on jobs, thus reducing the need for local brokers (and thus reduce the recruitment fee).
- Blacklist recruitment agencies that violate the labour law and fair employment practice. Although they can open another company under a different name, at least there is a record of companies that have been sued by workers that prospective workers should have access to easily.
- Promote and acknowledge recruitment agencies with outstanding performance.
- Investigate the widespread evidence of corruption and pay-offs between the recruiting

agencies and government agencies or officials.

- Promote and encourage jobseekers to access employment through the government-to-government recruitment channel.

Protection of workers going abroad

- Extend the pre-departure orientation seminar conducted for Thai workers before they depart for overseas jobs to several days to give outgoing workers an in-depth understanding of what they can expect, how to better prepare and their responsibilities while abroad. Language training should be offered. Workers must be made aware of the pitfalls and traps to better guard against exploitation by service providers in host countries.
- Harness the experiences and advice of Thai workers who have worked abroad and arrange forums in which they can meet with prospective migrants and talk about their work conditions, the difficulties encountered and how to negotiate for more fair compensation.
- Require all outbound workers join the Foreign Workers' Welfare Fund before leaving Thailand.

Effective law enforcement

- Increase the number of personnel within the Thai Labour Ministry offices abroad, especially legal experts, and establish labour offices in countries where the number of Thai workers has grown significantly.
- Enforce the labour laws swiftly and thoroughly. Prohibit bail on the more serious crimes due to the likelihood that suspects will flee to escape the punishment, given their international connections. Offenders should be placed on the Department of Special Investigation blacklist to prevent their further involvement in the recruiting business.
- Increase the severity of punishments for labour code violations.
- Establish a fund to aid migrant workers caught in lengthy court procedures in which they are seeking compensation due to labour law

violations in order for them to pay off their debt burden they acquired to pay for the recruitment fee and other expenses to migrate abroad; such assistance would enable them to continue with the court process.

- Provide legal experts who can advise returning migrant victims of labour law violations on how to seek fair compensation, especially considering the limits to pursuing compensation through a case in court.

Coordination and cooperation of service providers

- Establish a formal liaison between the Department of Employment, the Skills Development Promotion Division and the Department of Consular Affairs, with clear delineation of responsibility towards overseas migrant workers.
- Establish a channel for exchanging information between government agencies relating to labour exploitation and human trafficking.
- Establish a labour protection centre to liaise with relevant ministries and coordinate case conferences in which various parties work together to find the most effective solutions for workers.

Income generation alternatives for returnees

- Promote income-generating alternatives to working abroad, primarily within the agriculture sector, because more than 50 per cent of the migrant workers own farm land. This includes developing efficient natural resource management for water supply and policies regarding guaranteed crop prices.

Self-empowerment

- Support migrant workers, returnees and jobseekers to organize themselves in the form of a union or association, where appropriate. They should be linked to existing trade unions in the country for networking and learning purposes. Provide financial support to enable them to get started, recruit members and exercise their collective bargaining right.

In addition, Woolfson et al. (2010) also provided recommendations for cooperation at international level and specifically for Sweden as a destination country, as follows:

- **The training of law enforcement officers has to be sensitive to forced labour as a transnational process rather than an easily identifiable “steady state”.** Police officers also need to be made aware of the legal powers that are at their disposal to prosecute those who perpetrate what is a serious crime and is designated as such in Swedish law and that there are investigative tools available, such as those used to investigate organized crime.
- **The relevant enforcement and social services agencies at the local and national levels within Sweden should adopt a concerted inter-departmental coordinated approach to preventing the exploitation of migrant workers for forced labour,** by a close and detailed monitoring of their wages and working conditions. In May 2011, a group of authorities concerned with the berry pickers agreed to strengthen their common efforts to prevent labour abuses. It now seeks to strengthen its efforts and take more active responsibility regarding informing the berry pickers of their employment and working conditions according to the existing laws and collective agreements. The authority is also committed to visiting the berry pickers and inspecting their health and safety situation in the field. However, their monitoring function is limited to occupational safety and health and working time issues. In turn, therefore a significant strengthening of the surveillance remit and investigative resources available to the authority may be required, or perhaps the creation of a new specialist labour inspection body along with enhanced competencies, powers of investigation and referral to the labour courts and/or the criminal justice system where appropriate.
- **National governments involved must cooperate to ensure that the recruitment process of workers in countries of origin does not reproduce the structures of indebtedness vulnerability that have previously occurred.** This requires controlling the activities of unscrupulous recruiting agents and preventing the issuing of irregular or misleading employment contracts in the countries of origin and/or destination.
- **Both employers and trade unions in countries of origin and destination must find ways in which this transnational labour market can be brought within norms of decent work and corporate social responsibility.** With regard to employers, this entails not merely ensuring the fair labour practices of recruitment agencies and immediate employers but the responsibility of end-of-chain food producers and the cosmetics industry in guaranteeing exploitation-free products to the consumer. For employees, at a minimum the industries involved should ensure the creation of opportunities for the exercise of rights to labour organisation and collective representation for migrant workers. In Sweden, there is also the possibility of trade unions defending such workers' conditions. Kommunal is monitoring the permit permission-granting of labour contracts in cooperation with the Migration Board. It is a designated co-actor in the permit-issuing procedures, with the opportunity to comment on the terms of employment offered and whether the agreement is above or below collective standards for wages and conditions.⁶³
- **Sweden has an opportunity to demonstrate best practice by raising the question of global governance of migrant workers' rights internationally.** This implies that those migrant workers who have been victimized as a result of their involuntary involvement in forced labour must be given the financial means to extricate themselves from the liabilities incurred and the opportunity to re-establish their livelihoods on the basis of sustainable economic development in their countries of origin.

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