

# Ratification of *ICRMW* toward the *ILO* Conventions amid COVID-19 in Thailand

Siwarut Laikram<sup>1</sup>, Shubham Pathak<sup>2\*</sup>

<sup>1</sup> School of Laws, Walailak University, Thai Buri, Tha Sala and 80160, Thailand.

<sup>2</sup> College of Graduate Studies (CGS), Walailak University, Thai Buri, Tha Sala and 80160, Thailand.

## Abstract

Globalization has opened the avenues for the world to come together and attain sustainable growth. Migrant workers are a lifeline for several countries' labour forces and productivity. However, in Thailand, the rights of these migrants are restricted due to the non-ratification of the International Convention on the Protection of the Rights of Migrant Workers and Family Members (ICRMW). This research explores and analyzes various factors essentially responsible for the ratification of ICRMW in Thailand. The methodology adopted is the mixed method. The collected data were analyzed based on a socio-legal approach, with qualitative and quantitative tools and techniques combined: the strength, weakness, opportunity, and threats (SWOT) technique was integrated into the analytic hierarchy process (AHP) (SWOT-AHP). The findings suggest that Thailand has not yet ratified the ICRMW conventions, including ILO C-87 and ILO C-98, thus depriving migrant workers of protection. They are not protected by national law and are not entitled to equal protection as nationals: for instance, foreign workers are forbidden from migrating to the established labour unions and enjoying medical benefits and salaries. All these must be consistent with the conventions, particularly the Labor Protection Act, B.E. 2541 (1998) and the Labor Relations Act B.E. 2518 (1998). The novelty of this research is the analysis of the domestic and international laws in the Thai context, which depicts the need for ratification of ICRMW to protect migrant workers and their families. The findings can pave the way for similar future research in other ASEAN member countries.

## Keywords:

Migrants Workers;  
Human Right;  
International Labour Organization;  
Legal Instruments;  
COVID-19.

## Article History:

<b>Received:</b>	12	April	2022
<b>Revised:</b>	23	June	2022
<b>Accepted:</b>	09	July	2022
<b>Published:</b>	17	July	2022

## 1- Introduction

International labour migrants have existed for decades due to the shortage of labour used to produce goods and services. Globalization has made this problem more challenging and complex than ever, as it leads migrant workers to seek jobs abroad, where they can have a higher quality of life. Understanding the repercussions of globalization has been an important aspect of any developing economy [1, 2]. Several workers and their families have adopted their skills, culture, traditions, families, and history in the hope of a better life. The rights of these migrant workers and their families ensure enhanced productivity [3, 4]. Previous literature sheds light on the various aspects of globalization and migrant workers to enhance their financial, social, economic, and legal security [5, 6]. This phenomenon has occurred in all regions of Thailand due to the Association of Southeast Asian Nations (ASEAN) integration. The restrictions on immigration laws aggravate conditions, thus further affecting labour demand and supply [7]. Migrant workers are an integral part of Thailand's working ecosystem, influencing employment conditions and the domestic economy. Therefore, they should have the same protection against employment and working conditions under Thai law as Thai people.

\* **CONTACT:** shubhampathak@gmail.com

**DOI:** <http://dx.doi.org/10.28991/esj-2022-SPER-014>

© 2022 by the authors. Licensee ESJ, Italy. This is an open access article under the terms and conditions of the Creative Commons Attribution (CC-BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Currently, there is still inequality between national and migrant workers regarding income and the right to form a labour union. Thailand has been constantly questioned by the United Nations about its human and labour rights violations [8]. This country has issued a report to clarify the neglect of these labour rights violations because Thailand not only does not comply with human rights laws but also lacks accession to the ICRMW and Conventions No. 87 and No. 98 of the International Labor Organization (ILO). However, previous studies do not pinpoint the combined effects of international conventions and the domestic laws and amended acts of migrant workers amid the COVID-19 pandemic in Thailand [9-11]. Moreover, Thailand is accused of being an exporting and importing country and a passage for human trafficking, which is exploitation and a serious crime against migrant workers. Thailand has been ranked low by the United States and the European Union for its efforts to combat human trafficking, providing an opportunity for independent research on the repercussions of the absence of equal and adequate rights for migrant workers and their families.

Thailand is a member of the ASEAN Economic Community (AEC). This membership caused many workers and their families to migrate and work in Thailand [12]. It was found that migrant workers should comply with the sustainable development goals (SDGs) frameworks and the objectives set by the UN and ILO [13]. One of the most significant conventions is the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICMW). This convention is related to protecting fundamental migrant rights, the same as citizens of the host state, such as establishing housing and the right to work, medical care, and education [14]. Obviously, northern and western Thailand still have many legal and illegal working migrants who have migrated to escape poverty and the civil war [15]. Therefore, whether adhering to human rights principles or not, the Thai legal system must comply with the fundamental rights of migrant workers and their families, who rightfully deserve equal rights.

Regarding international law, a state has sovereignty over its territory with or without the permission of migrants to enter its territory. However, in case of the state allows migrants to enter its territory [16], the state shall also protect those migrants since they are human beings with universal human rights, expressly of rights and dignity [17]. Therefore, migrants with or without permission, shall be protected equally and legally due to their human rights and citizenship. Most migrant are unskilled workers who work throughout the Kingdom of Thailand. There were 2,350,677 migrant workers in December 2021, reported the Office of Foreign Workers, the Administration Department of Employment, and the Ministry of Labor [7]. Currently, there are three types of jobs employed by migrants: unskilled jobs, dangerous jobs, and difficult jobs [8]. As a result, migrant workers are seen as inexpensive laborers, causing the violation and abandonment of the rights of the employee, namely, sufficient minimum wages, reduced overtime pay, occupational health and safety, leave rights, medical treatment rights, and the right to compensation for termination of employment [18].

The impact of Thailand's disregard toward the principle of international labor freedom and labor union establishment is due to the fact that Thai legal framework does not allow migrant workers to have the right to bargain. Thailand has been pressured by several international labor organizations and major trading partners. In 2016, the Universal Periodic Review (UPR) proposed that Thailand should safeguard the rights of migrant workers regardless of racial and linguistic differences since it provides the legal provision of all migrant workers' rights, encompassing one of the most comprehensive human rights principles in the UN. The UPR aftermath persuaded Thailand to ratify the International Convention on the Protection of the Rights of Migrant Workers and their Family (ICRMW). This convention also enacted an additional provision of rights for legal migrant workers: the right to form a labor union.

International migration has become one of the hallmarks of a globalized world. Migrant workers are the main components of development that create economic opportunities and generate trading challenges in governance and social solidarity. Two hundred million people are living outside of their home country or country of their citizenship. This number is equivalent to the fifth most populous country in the world if those people are gathered in the territory of a state. Migrants likewise impact almost all countries worldwide, whether the country of origin, transit, or destination. Many countries have faced these three categories of migrants.

Respecting the rights of migrants of the states, the ICRMW is the broadest guideline framework in international law for the protection of the rights of migrant workers and their family members [19]. This convention has several purposes:

- It aims to establish minimum standards for safeguarding the civil and political rights, economy, society, and culture of all migrant workers and their family members [20]. It also encourages states to amend their laws to be more consistent with the principles of human rights international standards in this Convention, as clearly stated in Article 79 that the states have the right to decide who will be allowed to enter the country and for how long they will be allowed to stay.
- It treats migrant workers as more than labor or economic commodities with no human rights [21].
- It reflects the critical role of migrant workers play in the global economy, including recognizing the economic and social benefits of the host country. In addition, the development of the host country depends on the assurance of legal status and protection of human rights. Consequently, this Convention sets standard rules that make these rights practical and enforceable under national law [22].

- Nonetheless, some migrants face exploitation and discrimination and suffer many cases of abuse abroad. For example, migrants face more problems with the recognition and protection of their rights than citizens of the host country. The Convention provides legal measures for protection against the infringements of rights facing migrant workers and their family members and ensures the appropriate safeguarding of principles.
- This Convention is a comprehensive international instrument on migrant workers. It sets out comprehensive international standards as follows: (a) welfare benefits and the rights of migrant workers and all their family members, and (b) the obligations and responsibilities of the state parties is extended towards the country of origin as well.

All states benefit from the international migration of migrant workers in bilateral and multilateral instruments, essentially due to the tools that enable state parties to formulate specific measures for bilateral and multilateral migration. As a result, transit countries and the countries that are the source of employment would get the economic incentive and social development. However, these legal instruments are only valuable if they do not conflict with the approved global standards or raise standards to address the protection of migrant workers and their family members

- It emphasizes the rights of all migrant workers, whether legal or illegal, which must be recognized by the enforcement of the law for all migrant workers regardless of their legal status. However, at the same time, it aims to encourage migrant workers to have legal licenses because all workers and employers are encouraged to respect and abide by the host state's laws and regulations.
- The convention's philosophy is based on the principle of non-discrimination. All migrant workers and their family members shall have the same legal status and basic human rights as the citizens of that host country. Particularly, migrant workers and their family members with valid licenses should be treated equally as host citizens. In addition, the growing newborn population must be protected due to domestic laws.
- It defines the international definition of the migrant worker and gives an inclusive definition of all migrants, males and females, who will work, are working, or have worked for a paid job in a country other than their home country. The convention also establishes a definition of the foreign worker types that apply to all regions in the world [23].
- It prevents and eliminates the exploitation of migrant workers and their family members throughout the migration process. It casts a particular focus on the legal recruitment of workers. In addition, it promotes banning human trafficking involving migrant workers and eliminating the incentives to employ illegal and unlicensed foreign workers.
- Finally, it establishes a committee called the Committee for the Protection of the Rights of Migrant Workers and Their Families, which is obliged to review the measures of its own countries, whereby state parties are required to report on the legal measures enforced by member states parties.

The world is currently focused on the sustainable development goals (SDGs) set by the United Nations. These goals drive the economy and society to an international level, paving the way for sustainable development to eliminate all forms of poverty [24]. Poverty is a major problem in developing countries. It is the starting point for many great challenges, such as child labor, human trafficking, and crime [25]. In addition, promoting the rights of migrant workers and their families is one of the main goals of sustainable development as the problem of migrant workers persists. Furthermore, to protect the rights of migrant workers and their families, some countries face difficulty relying on migrants as their primary migrant workers for certain types of work that nationals do not prefer. Some believe that migrant workers can benefit a developing country by attracting more efficient foreign workers. Migrant workers can also establish a mechanism to import technology and transfer expertise in various fields to boost the economy and increase minimum income [26].

## 2- Literature Review

This research adopted a socio-legal methodology to understand the legal and social measures of migrants who lack legal status and are unprotected by law. The methodology used is an interdisciplinary approach to social studies for analyzing the laws of fundamental human rights and the broadly affected human social relationship [27]. There is a maxim saying, "*Wherever there is society, there is law*" (*Ubi Societas, Ibi Ius*), which refers to the relationship between law and society since law arises from society and for society [28]. However, no society could exist without the need for laws. As Aristotle said, humans shall have life rules because humans are social animals. Humans have to live with one and react with other human beings. This research produces a creative blend and a more in-depth insight into the subject matter by analyzing the origins and feasibility of societal laws whenever the law affects human society—for example, providing reflective criticism and interpreting the legal provisions. Therefore, the qualitative analysis of data is not a theoretical tool, it resides within the theoretical hypothesis of how to understand the social world [29].

The Romans founded a society ruled by law and made by humans. There was one Christian Roman emperor, Justinian, who introduced the written legal system and influenced the legal system that impacted society [30]. This research combines theoretical and empirical analyses with perspectives and approaches from the humanities and social sciences. In addition, research areas are clearly defined to understand the aims and concepts of practice and legal institutions that are influenced by cultural, economic, historical, political, and social contexts. Socio-legal methodology and laws are mostly empirical and rely more on social theory than on doctrine, which are tools for social regulation originating from society. The law forces people in society, for the sake of society, to deal with problems related to implementation or revising the existing laws. Therefore, the socio-legal method would be highly consistent with enacting a new law for better sociology [31].

For legal development due to socio-legal principles, implementing this method indicated that the new law could play a role as a catalyst to accelerate the process of social change into a better society [32]—the enactment of internal laws based on human rights and human needs for creating a dynamic society. In addition, legal research could help develop and implement the mix-methods multidisciplinary approach since the legal issue is related to several factors, namely, social, political, economic, and psychological issues in terms of the size of the migrant worker community involved [33].

The accession and ratification into the international conventions relating to the protection of migrants shall comply with international human rights law principles, such as the ICRMW Convention and Conventions No. 87 and No. 98 of the ILO. These would reduce the protection of the migrants' work, both legal and illegal. Thailand would have advantages in terms of the economy, investment, trade, and international political society. Furthermore, the internal legislation would enhance benefit as a legal tool for ensuring social and economic equality for nationals and foreigners. Social factors and the laws shall influence the legal implementation and enforcement that would balance the advantages effectively (Table 1).

Thailand joined the ASEAN Economic Community, known as AEC. Thailand's economic and social conditions provide opportunities for free trade, which allows many migrants from neighboring countries to work in Thailand. This study found that employers hired many workers from neighboring countries, mostly unskilled laborers. Particularly, there are migrant child laborers who lift or carry building materials in the construction industry.

The objectives of this research are as follows:

- To study the ICRMW Convention and the right of migrant workers and family members toward the International Labor Standards Covenant Convention, 1948 (ILO C-87); and the Collective Bargaining Convention, 1949 ILO C-98) of the International Labor Organization (ILO).
- To compare the legal rights and measures regarding the protection of human rights of migrant workers and their family members who come to work in Thailand under the ICRMW, ILO C-87, ILO C-98.
- To analyze the benefits of national and international legal instruments and the relevant legal mechanisms that could protect migrant workers and family members in Thailand using a socio-legal method, as well as SWOT and AHP methodologies.

**Table 1. Conventions Related to Foreign Workers in Thailand**

No.	The Core International Human Rights Instruments and their monitoring bodies related to Thailand	Summary	Date of accession	Date of Ratification
1.	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families-ICRMW) 1990	Providing the duties of persons to enhance and protect human rights. Also regulating equal civil, political, economic, social and cultural rights.	Non Accession	Non Ratification
2.	The ILO Migration for Freedom of Association and Protection of the Right to Organise Convention, 1948 (C-87)	The right to regulate for workers and employers to establish and join organizations. In addition, supporting various administrative authority without nationality discrimination between men and women in politics, life, law.	Non Accession	Non Ratification
3.	The ILO Migrant for Right to Organise and Collective Bargaining Convention, 1949 (C-98)	The fundamental equality right of workers under the adequate protection against discrimination. Furthermore providing an enhance the right to collective bargaining in respect of their workplace and access easily to bargain and negotiation etc.	Non Accession	Non Ratification

Source: Adapted from United nation Human Right Office of the High Commissioner [34-36].

The ICRMW enumerates the rights outlined in the International Bill of Rights (Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, 1966 [35]. To alter the society and improve the equality of migrant workers in Thailand, the relevant sectors of both public and private organizations shall give an internal legislative act that complies with the rule of law. ICRMW is a cosmopolitan diplomatic handle ensuring prestige and equality in an epoch of hybrid globalization.

It is expressly linked to the situation of migrant workers and their family members in Thailand, whereas other instruments do the same for other groups (e.g., women, children, people with disabilities, indigenous peoples). The ILO Convention on freedom of association and collective bargaining (C-87 and C-98) sets out specific standards for the employment and occupation of foreign workers (International Labor Organization, 2022). All aspects for migration policy formulation of states. Ensuring freedom of association (C-87) and collective bargaining (C-98) could work a long way in promoting migrants' labor market efficiency and better economic performance. The migrants and their families should be explicitly protected regarding the economic and social developments for disallowing servitude and all forms of forced migrant labor.

The fundamental significance of the ICRMW and the ILO lies in that they establish a comprehensive standardized framework for formulating national and international migration policies based on the rule of law. ICRMW describes practices that adhere to human rights, also known as right-based approaches. However, the requirements are more in-depth than human rights treaties, framing variables for determining national policies and regulatory regulations. Also outlined in the agenda for dialogue and cooperation between the states on the issues most relevant to this issue is the exchange of information and cooperation in the suppression of illegal migration, smuggling of foreign workers, human trafficking, and providing advice to migrants before travel [37].

The ICRMW expands the legal framework for migration, treatment of migrants, and the prevention of exploitation and illegal migration, covering all stages in the migration process of migrant workers and their family members, including preparation, recruitment, departure, transit, residing in the state of employment, and the return to society in the home country.

In addition, ICRMW has revised the definition of migrant workers to reflect the current situation and the different categories of migrant workers classified by "remunerative activities" Thus, it also covers informal and formal migrants. The standards outlined in the Convention generally cover the rights of male and female migrant workers, while the risks and vulnerabilities of woman workers' rights are not discussed. Therefore, laws must be enacted under the Convention to ensure rights are exercised. It is clearly stated in the Convention that female workers and their family members must have the same full protection as male workers.

The Convention presents the fundamental human rights defined in the Universal Declaration of Human Rights and major international human rights treaties. In other words, these rights apply to all migrant workers and their family members regardless of race or legal status. It also clarifies the rights that shall be specific to legal migrant workers and their family members in the social and civic sector by certifying that migrant workers are human beings with roles and responsibilities outside the labor and economic context. At the same time, Article 79 of the ICRMW applies explicit language to protect state privileges in deciding who can enter, still residing and/or work within the territory [34].

In terms of inter-state cooperation, the three conventions set out guidelines for international cooperation to promote legal, equitable, and humane migration conditions. These conventions emphasize that the protection of migrants' rights is a shared responsibility contained in part IV of the ICRMW on consultation and cooperation between states. For example, providing information to migrants, labor recruitment cooperation, the repatriation of foreign workers and their family members, and preventing and eliminating illegal migration and employment of foreign workers [34].

The ILO Migration for Freedom of Association and Protection of the Right to Organize Convention, 1948 (C-87) is a basic requirement outline about the right of workers and employers to establish and join any labor organization of their choosing without political influences. All migrant worker and employer organizations shall assemble freely and not be liable to be suspended by any administrative authority. Both sides shall have the right to establish and join any type of labor association, namely, federations and confederations, under Articles 2 and 5. These organizations might implicate international organizations of workers and employers truly. For example, the right to freely organize the appropriate measures under Article 11. These legal provision rules would bring the equal treatment of nationals and migrant workers in terms of recruiting workers, living conditions, working conditions, accessing the justice system, paying taxes, and social security [23].

This convention stipulates the principle outlined in Article 19 of the Constitution of the International Labor Organisation (ILO). Any state's ratification of this convention by any member shall not seem to influence any existing law, order, custom, or other agreement in virtue. This C-87 convention stipulates details where the subject matter of this convention is within the self-governing authorities of any colony or dependency territory. Remarkably, each member liable for that territory's international relationships probably transmits roubles to the Director-General of the ILO Office and other measures to control migration throughout the process under Article 13 of C-87 [36].

The Right to Organise and Collective Bargaining Convention (C-98) contains specific guidelines for the legal treatment of freedom of unionization. The convention provides legal provisions for the collective bargaining principles that pertain to the core values. This convention ensures nationality and migrant workers' protection from differentiation for their undertaking in labor union activities. Each member party shall commit to constructing the existing legal and bargaining regulatory framework on the national and international levels. In addition, Article 1 and Article 2 of C-98 protect safeguarding non-discrimination among nations. Furthermore, the C-98 formulates the collective bargaining principles between migrant workers and employers to rule employment unions [38].

Interestingly, the committee of experts (Committee on Freedom of Association) is liable for reviewing the members' party reports that every member shall be presented every three years. These committees encourage the monitoring of employment and examine complaints opposed to state parties that lead forward by worker and employer organizations, irrespective of state parties, according to Article 14. However, the right to organize and collective bargaining convention is part of the 15 core conventions covered under the Generalized System of Preferences (GSP) regulation, such as zero or low duties on imports originating goods, enabling developing countries [36].

Both national and international workers should be legally protected by national and international law. Any actions against the free establishment of anti-union and human rights discrimination in respect of employment shall be prohibited, namely, providing the chance of joining a labor union or trade union membership under Article 1. The state members should provide the appropriate measures to national conditions where migrant workers could reach the minimum standard benefits. In addition, encouraging and promoting the full development and usage of equipment for voluntary between employers and employers' organs in terms of the collective agreements under Article 4 of C-98. [36].

**Table 2. List of the current participants that open for signature by all States in accordance with its Article 87-1**

No.	Members	Ratification, Accession	Effectiveness
1	Albania		5 June 2007
2	Algeria		21 April 2005
3	Argentina	10-August 2004	23 February 07
4	Armenia	26-September 2013	
5	Azerbaijan		11 Jan 1999
6	Bangladesh	7 October 1998	
7	Belize		14 Nov 2001
8	Benin	15 September 2005	6 Jul 2018
9	Bolivia (Plurinational State of)		16 Oct 2000
10	Bosnia and Herzegovina		13 Dec 1996
11	Burkina Faso	16 November 2001	26-Nov-03
12	Cabo Verde		16 Sep 1997
13	Cambodia	27 September 2004	
14	Cameroon	15 December 2009	
15	Chad	26 September 2012	
16	Chile	24 September 1993	21-Mar-05
17	Colombia		24 May 1995
18	Comoros	22 September 2000	
19	Congo	29 September 2008	31-Mar-17
20	Ecuador		5 February 2002
21	Egypt		19 February 1993
22	El Salvador	13 September 2002	14-Mar-03
23	Fiji		19 Aug 2019
24	Gabon	15 December 2004	
25	Gambia	20 September 2017	28-Sep-18
26	Ghana	7 September 2000	7 Sep 2000
27	Guatemala	7 September 2000	14-Mar-03
28	Guinea		7 Sep 2000
29	Guinea-Bissau	12 September 2000	22-Oct-18
30	Guyana	15 September 2005	7 Jul 2010
31	Haiti	5 December 2013	
32	Honduras		9 Aug 2005
33	Indonesia	22 September 2004	31-May-12
34	Jamaica	25 September 2008	25-Sep-08
35	Kyrgyzstan		29 Sep 2003
36	Lesotho	24 September 2004	16-Sep-05
37	Liberia	22 September 2004	
38	Libya		18 Jun 2004



39	Madagascar	24 September 2014	13-May-15
40	Mali		5 Jun 2003
41	Mauritania		22 Jan 2007
42	Mexico	22 May 1991	8 Mar 1999
43	Montenegro 2	23 October 2006	
44	Morocco	15 August 1991	21 June 1993
45	Mozambique	15 Mar 2012	19 August 2013
46	Nicaragua		26 Oct 2005
47	Niger		18 March 2009
48	Nigeria		27 July 2009
49	Palau	20 September 2011	
50	Paraguay	13 September 2000	23 September 2008
51	Peru	22 September 2004	14 September 2005
52	Philippines	15 November 1993	5 Jul 1995
53	Rwanda		15 December 2008
54	Sao Tome and Principe	6 September 2000	10-January 2017
55	Senegal		9 June 1999
56	Serbia	11 November 2004	
57	Seychelles		15 December 1994
58	Sierra Leone	15 September 2000	
59	Sri Lanka		11 Mar 1996
60	St. Vincent and the Grenadines		29 October 2010
61	Syrian Arab Republic		2 Jun 2005
62	Tajikistan	7 September 2000	8 Jan 2002
63	Timor-Leste		30 Jan 2004
64	Togo	15 November 2001	16 December 2020
65	Turkey	13 January 1999	27 September 2004
66	Uganda		14 November 1995
67	Uruguay		15 February 2001
68	Venezuela (Bolivarian Republic of)	4 October 2011	25 October 2016

Source: Adapted from United Nation Human Right Office of the High Commissioner [8].

### 3- Research Methodology

This research has adopted a qualitative and quantitative (mixed) research methodology (Table 3). The research was conducted from 2021 to 2022. For a qualitative methodology, a legal conceptual framework based on legal documentaries in descriptive namely, the provision of ICRMW, the ILO Conventions No. 87 and No. 98 ILO, the Labor Relations Act BE.2518 (1998), the Labor Protection Act, BE.2541 (1998) for legislation to protect the rights of migrant workers and establishment of labor unions. Furthermore, analyzing legal document data from both Thai and English that came from books, articles, journals, information on the Internet, research reports, case study thesis, publication documents of government and private agencies, key informant interviews about the ICRMW, ILO Conventions No. 87 and No. 98 ratification.

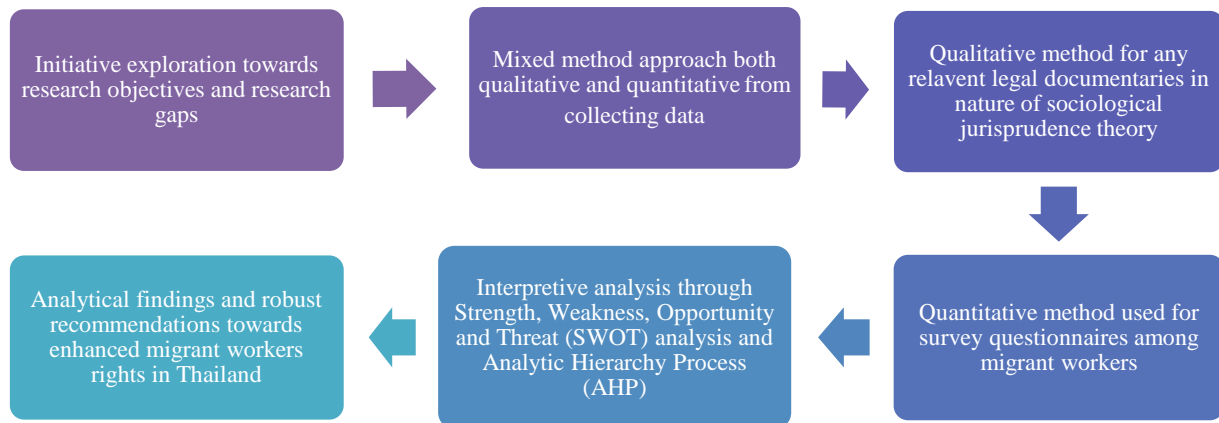
Nathan Roscoe Pound (1870–1964) was one of the fathers of sociological jurisprudence theory and a professor of law at Harvard University in the United States [38]. Pound highlighted that the law must be stable, but it must not remain at a standstill. He disagreed with the idea that natural laws are unchanging and inflexible [39]. Pound introduced a sociological jurisprudence theory and developed an economic theory that emphasized relationships both the development of law and vice versa. His concept of sociological jurisprudence started in the late 19<sup>th</sup>-20<sup>th</sup> century due to the industrial revolution originating from the European industrial revolution about the laborer. During that period, the society and economy caused social and labor problems, especially the exploitation of the capitalists of the labor class, wage oppression, and non-negotiation [40]. As a consequence, the concept of social jurisprudence theory was reformed by Pound and based on the function of the law in society rather than the subject matter. His well-known theory conceptualizes law as social engineering focused on enacting legislation to address social legislation. Pound believed that law legislation would protect the people's interests for society in society to solve social problems.

Furthermore, it was a tool for balancing benefits equally in society. For example, when people have developed from agriculture into a capitalist society, there would have several conflicts which may be the problem of inequality. These conflicts occur between poverty and the rich or ideas that drive reforms for injustice in different societies [41].

**Table 3. Research methodological approach towards this research**

Research Study Questions	Method(s)	Sources	Sample Respondents
Should Thailand ratify ICRMW also specialized enact Conventions No. 87 and No. 98 of the ILO?	Qualitative-SWOT	<b>Primary Sources:</b> The provision of ICRMW; the ILO Conventions No. 87 and No. 98 of ILO; the Labor Relations Act BE.2518 (1998); the Labor Protection Act BE.2541 (1998); cases/judicial opinions conference proceedings; memos, personal narratives, diaries, interviews and so on.	Migrant workers Law in Bangkok, Metropolitan Area Thailand.
			Business administrative management and Law lecturers of public & private universities in Bangkok, Metropolitan Area Thailand.
Is Thailand has enough legal instruments efficiently that could protect the victim? Is it enough?		<b>Secondary Sources:</b> Articles; books; book-chapters in the edited volume; histories; biographies, literary criticism and interpretation, reviews of law so on.	Officials from Thai Ministries, ILO, OHCHR, NGOs and other stakeholders.
The obligations to combat enforced disappearance under the national law of the land.	Quantitative - AHP Analytical Hierarchy Process	<b>Primary sources:</b> National statutes, i.e., Constitution, Penal Code/leading cases/judicial opinions and so on.	Migrant workers Law in Bangkok, Metropolitan Area Thailand.
		<b>Secondary Sources:</b> Analysis or interpretation of data; Articles/ books/book-chapters in the edited volume/blogs and so on.	Law lecturers of public & private universities in Bangkok, Metropolitan Area Thailand.

The following flow (Figure 1) chart provides the detailed adopted methodology for this research. The following flow chart provides for the detailed adopted methodology towards this research.



**Figure 1. Flow chart of research methodology**

Interestingly, the social engineering theory was represented by Pound. The theory balances benefits through legal mechanisms. It aims to create a new social structure that would be an effective legal mechanism to meet the needs of the people as much as possible. It aims to ensure minimum loss and maximum benefit to society. Pound defines benefit as a matter of demand that human desire truly achieves. It was the obligation and duty that the law would rule for these things to make such interests appear real and without conflict. He has categorized benefit interests into three categories, similar to Rudolf von Jhering [42], as follows:

- Individual interests are demands for the individual's life that are relevant to freedom: establishing the labor unions of migrant workers, operating industries, and making contracts.
- Public interests refer to the demands made by individuals arising from political life. The state is the juristic person who has the responsibilities and obligations to protect not the citizen but also protecting the benefits of migrant workers and their families equally as Thai people in the workplace.
- Social interests refer to the demands in terms of social life expectancy. Economic progress, freedom of trade, establishing of industrialization, supporting the living standards of foreign workers, promotion of social welfare in case of migrant workers' sickness, disability, and education of migrant families in Thailand.

Therefore, this research applies and discusses a sociological jurisprudence regarding the right of migrant workers under ICRMW, Conventions No. 87 and No. 98 of the ILO, given that Pound's idea has become the most powerful legal



mechanism for sociological jurisprudence theory. Pound provided a new legal process in high education. He stepped up from the stone to the pinnacle of legal philosophy. He expanded the role of jurists to touch on the real world instead of abstract debates in legal philosophy that consisting of individual interests, public interests, and social interests would enhance the protection of migrant workers since the law is a powerful weapon for advancing society [43]. As a result, the process of legal legislation would be a beneficial approach for Thailand regarding ratifying the ICRMW toward Conventions No. 87 and No. 98 of the ILO instruments, namely, the results of establishing labor unions under the ICRMW comparative legislature, labor law, and labor relations law.

"The life of the law is in its enforcement," Pound said. The law revision and enactment should be treated equally for both Thais and migrants. In this regard, law enforcement would be a legal tool for solving social problems and building a new labor society. A legal reformation reduces the economic gap between the employer and the migrant workers to serve the capitalist economy. In other words, it is a way to solve the problem of mutual benefit between society and the private business sectors.

The data were collected from Bangkok metropolitan areas using questionnaires. The sample size was 234. The participants were selected by random sampling from the IOM Thailand database. Thirty participants were then selected for the key informant interviews from various sectors. The data collected were analyzed through descriptive SWOT and AHP. The SWOT-AHP conceptual framework was analyzed through descriptive and Strengths Weaknesses Opportunities and Threats (SWOT) and AHP analysis. Framework (Figure 2) gives an in-depth insight into the data and relies on expert opinions to identify the strength, weaknesses, opportunities, and threats of the ratification of ICRMW in Thailand. It is a valuable tool for providing a holistic analysis of the migrant scenario in Thailand. The overall implementation of the amended legal framework ensures the human rights of the migrant workers, social regulation, and sustainable development of the Thai people.

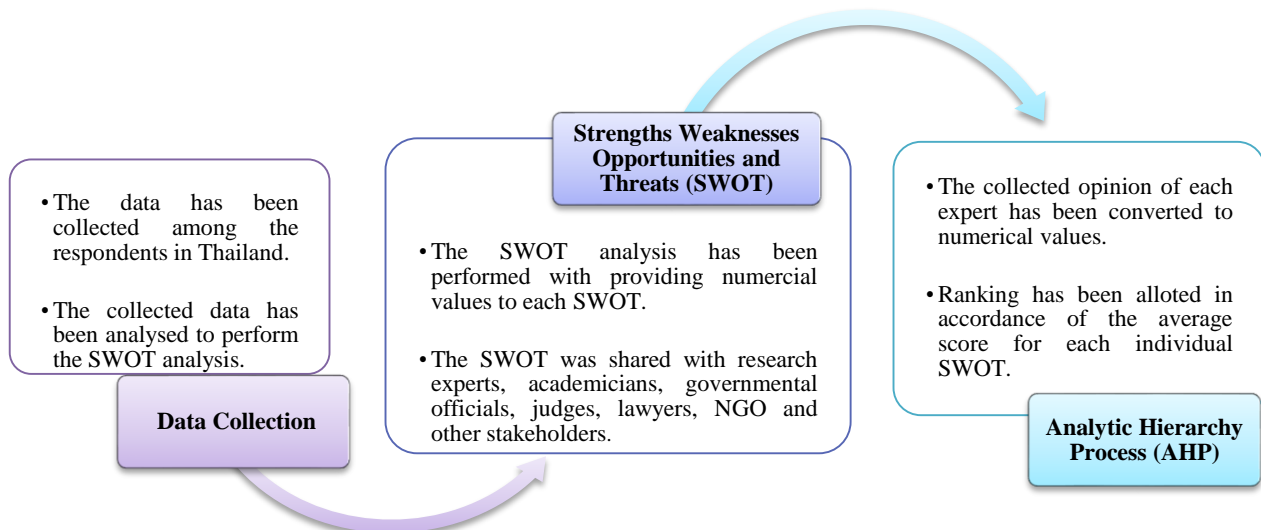


Figure 2. Conceptual framework of the research

#### 4- Results and Discussions

- **Question 1:** Should Thailand ratify ICRMW, particularly enact Conventions No. 87 and No. 98 of the ILO?
- **Question 2:** Does Thailand have sufficient legal instruments to protect migrant workers and family members?

Table 4. Comparative analysis of international conventions and domestic labor law in Thailand (A Comparative legal measure table between the Labor Relations Act BE.2518 (1998) that is inconsistent with Conventions No. 87 and No. 98 of the ILO legal instruments).

Legal Measures	Principles of Conventions 87 and 98	Labor Relations Law inconsistent with Conventions 87 and 98.
1. A person who has the right to form a labour union and can be a member of the labour union committee.	Convention No. 87 on the Principles of Free and Non-Discrimination Organization	<p>Must be 20 years of age or mature and Thai nationality according to Section 88 of Labour Relations Act, B.E. 2518 (1975).</p> <p>An employee means a person who agrees to work for an employer in order to receive wages excluded both self-employed and homeworkers that couldn't establish a labour union according to Section 4 of Labour Relations Act, B.E. 2518 (1975).</p> <p>Private employees and state enterprises couldn't unite to form labour unions because the laws are separated from each other according to Section 4 and 95 of the Labour Relations Act, B.E. 2518 (1975).</p> <p>There is an exception prohibiting civil servants, and employees of government agencies can form a labour union according to Section 4 of the Labour Relations Act, B.E. 2518 (1975).</p>

2. Criteria for establishment of labour unions and operations	Convention No. 87 on Officials to Refrain from Interference or hinder the administration carrying out activities of workers' organizations.	At least 10 employees are required to establish a labour union along with the draft regulations of the labour union, including the members of the union, when elected by the members, must be submitted for registration with the government officials according to Section 89 of Labour Relations Act, B.E. 2518 (1975).  A state enterprise labour union must have at least 25% of all employees to form a union according to Section 42 of the State Enterprise Labour Relations Act, B.E. 2543 (2000).  Government officials have the power to enter the office of the union to inspect the affairs of the union and to order any union director or employee to submit or present documents if problems arise
3. The right to form a labour union	The Convention No. 87 on Workers' Organizations have the right to freely form and join labour federations and labour confederations.	Private labour unions and state enterprise labour unions cannot form a labour union and the Employees' Organization Council.  The law requires only the state enterprise labour federation can become a member of the Employee Organization Council.
4. Number of unions in the same entrepreneur establishment	Convention No. 87 on the Right to Free Assembly of Workers.	The law stipulates that each state enterprise may have only one labour union and that an employee may be a member of only one state enterprise labour union.
5. Prohibition of employees from joining labour unions	Convention No. 87 on the Principles of the Free Sample of Workers without Restriction of Rights.	An employee who has the commanding authority may not be a member of a labour union that other employees have established or are a member. Other employees may not be members of the labour union that the employee who is the supervisor has established or is a member.  State enterprise management and employees who perform work of an occasional nature, seasonal nature. And according to the project, there is no right to become a member of the labor union.
6. Choosing a Union Counsellor	Convention 87 on the right to administer trade unions without interference from government officials.	Required to select consultants for negotiating trade unions only registered with the Department of Labor Protection and Welfare.
7. Criteria on the right to strike	Convention No. 87 on Government Officials to refrain from Interference or obstructs the conduct of trade union activities that shall inconsistent with Convention No. 98 on Bargaining Intervention by Government Agencies.	Private unions can strike and hold a general meeting with at least half of the members voting for a strike.  The Minister has the power, in his discretion, to order the cessation of the strike or to determine the activities prohibiting the use of the right to strike even in activities that are not considered essential services. (Non-essential service).  All types of state enterprise businesses are prohibited to strike, even if they are not public service businesses.
8. Protection of trade union organizers and collective bargaining	Convention No. 98: Worker's Organization Not Enough Protection or was not intervened by the employer.	The law clearly does not protect operators forming unions.  The law does not prohibit the closure of jobs only for workers who are union members or have a list of claims submitted to the employer and the employer is not prohibited from accepting people to work on behalf of the employee who has exercised the right to strike.  The difference between the protection of "employee directors" and "union directors" is punishment or dismissal of an employee director must be authorized by the labour court while the employer has absolute power to terminate or punish the union director.

The ICRMW began in 1972 to reflect the views and concerns of global migrant workers regarding the rights of migrant workers. Particularly, the occurrences that the Economic and Social Council has warned about the situation of violation of the rights of migrant workers in European countries. Most of them are foreign migrants from Africa who came to their destination illegally. The UN General Assembly has denounced discrimination against migrant workers and called on the country's state to stop the mistreatment. In addition, the UN General Assembly has called for improvements in managing migrant workers entering the country under the human rights principle.

In 1976, the Anti-Discrimination and Protection of Minorities Subcommittee (Sub-Commission on Prevention of Discrimination and Protection of Minorities) brought the claim from the General Assembly to compile a report on labor exploitation. This idea was made through human trafficking by Halima Embarek Warzazi. She was a diplomat and human rights activist who inspired migrant worker operation law. There were problems arising from two major causes. One of the reasons is illegal migrant worker operations. The second cause is discrimination against migrant workers in the destination country. This report became a concept for drafting the United Nations Convention on the Rights of Migrant Workers in 1957 and 1978 by the resolution of the United Nations General Assembly 33/163 on measures to improve the situation for ensuring human rights and dignity of all migrant workers. This concept focuses on combating racism and discrimination based on the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) [44].

The ICRMW has only been successfully implemented in developed nations, including the United Kingdom [45], [46], Australia [47], and Italy [48]. Additionally, international success stories [49] and ASEAN stories from Indonesia and Malaysia [50- 52], Philippine [53] non-implementation of ICRMW success stories from East Asian countries [54] are among some of the first experiences of implementing ICRMW in the ASEAN region. However, Thailand, one of the ASEAN region's leaders, must ratify the ICRMW to protect all the international migrants pooling into the Thai economy.

The rights of migrant workers to labor unions under the ICRMW are based on Article 8 of the ICESCR. There are also two unique characteristics: The first states that under Article 26 of the ICRMW, all migrant workers have the right to unite under a trade union. In other words, the right to be a trade union member is guaranteed; any country that employs everyone regardless of the legal status of migrant workers. Secondly, under Article 40, the ICRMW, migrant workers with legal status are given additional rights to form their labor unions. In this way, there is no discrimination between migrants and national workers. It also makes the content of the ICRMW inclusion right different from the convention on ILO C-87, which does not determine the legal status of migrant workers.

The internal law of Thailand concerning the right to establish labor union is adopted in the Constitution B.E. 2560 (2017), part 3, Section 42 and the Labor Relations Act, B.E.2518 (1975). However, for migrant workers, although the constitution does not specifically specify such as Part 3, which is the Thai people category, it does not prescribe any specific prohibitions. Therefore, the inclusion of migrant workers as a human right is enshrined in the first paragraph of Article 4 of the Constitution, which guarantees all human rights and dignity. In addition, migrant workers must also consider their legal status under the Immigration Act BE. 2522 (1979) [8].

To be followed with the principles of human rights and United Nations Sustainable Development Goal 16 on protecting freedoms. Human rights are fundamental rights composed of natural rights and rights recognized by the law, which form the basis of society for all humankind to live together equally and fairly. An increase in the efficiency of political mechanisms would bring human values and dignity [55]. The enactment of the effective national law by the state is crucial to protect human beings because everyone has a right to life. If freedom is lost or one is exposed to bodily harm, injury, or death, the offender will be punished according to the law.

In addition, it is also recognized that the absence of specific laws in Thailand would open up legal loopholes for the Thai government to enforce disappearances with a high probability of enforced disappearances. Interestingly, Thailand would not be blamed for failing to protect the missing person under the Thai criminal procedure law due to the need to prove to the judges that the missing person was beaten, shot, killed, or wounded. For instance, the family did not know the victim's fate, thus not filing the case in the Thai court [56]. Therefore, to make Thailand safe from enforced disappearances, the internal law on the Protection of all Persons from Enforced Disappearance should be enacted as an effective mechanism to guarantee the Thai people's rights and freedoms and reflect the positive image of Thailand.

ICRMW is one of the nine United Nations Covenants and core conventions on human rights. This convention specifically protects the rights of migrant workers and became effective in 2003. It defines and describes the rights of migrant workers as well as legal guidelines that cover migrants from different states. In this regard, there are two relevant ILO conventions. Firstly, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Secondly, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). These two conventions will help Thailand keep up with the capitalist world's current labor movements and serve as a standard for all labor rights groups.

Under Article 26 of the ICRMW Protection Framework for Migrant Workers' Rights, all migrant workers have the right to join a trade union in the country of employment regardless of the legality of their presence in a host country. Furthermore, Article 40 states that if migrant workers are legal, they have the right to form a union in the country. In addition, self-employment shall be allowed as long as it does not violate the law on public order and good morals of the host country.

The consolidation is a right through which migrant workers could act under the principles of freedom of association and collective bargaining guaranteed by the International Covenant on Economic Rights, society, and culture. Particularly, the Universal Declaration on Fundamental Principles and Rights at Work leads to the protection of other rights [44], such as the requirements for working conditions, compensation, social security, sanitation, and access to legal procedures. The ICRW does not elaborate on the characteristics of trade unions as outlined in the two ILO conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Therefore, the main characteristics of labor unions. In general, several criteria should be set: being a legal entity recognized by law, having an objective to protect benefits related to employment conditions, and having a management structure. Lastly, the union will be the negotiating agent between employers and employees or proceed with other rights, such as appointing an arbitrator.

However, although labor unions arise from freedom of assembly and collective bargaining, ensuring access to the right to form a trade union under ICRW is unique. This is because ICRMW will use the legal status of migrant workers as a basis for accessing the right to form a trade union. However, if any migrant workers have an abnormal status, such

as illegal migration, no permission to work, no nationality, or no labor contract, they still have the right to join a labor union. Migrant workers with normal status have the same rights as national workers, including the right to form a trade union because ICRMW would use its legal status to consider, but ILO Conventions 87 and 98 do not take into account the legal status of migrant workers. In summary, the characteristics of ICRMW favor the adoption of internal law if Thailand has ratified it as a party to the two conventions.

Thailand has more than three million migrant workers, 90% of whom are unskilled workers from neighboring countries, such as Burma, Laos, Cambodia, and Vietnam. These data were from the Labor Market Information Administration Division Department of Employment. The Ministry of Labor stated that in the year B.E. 2562 (2019), most of these workers were legal migrants through nationality verification and importation under the Memorandum of Understanding on Cooperation in Thailand. The employment MOU was distributed throughout the country, particularly in construction, agriculture, and livestock. Operators often abused these workers without claim because most of the establishments employed almost all migrant workers. As a result, it was impossible to form a labor union to negotiate with employers. In addition, migrant workers did not dare to demand anything, fearing they might get fired because those migrant workers could not be a member of a union committee under the Labor Relations Act B.E. 2518, which would be protected by law [57].

Migrant workers are more likely to choose to suffer oppression from their employers than to be fired and deported to their country of origin due to economic problems and wage rates. Despite efforts to unite migrant workers and migrant workers for Thailand to ratify the following convention consecutively; International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICRMW); the Freedom of Association and Protection of the Right to Organize Convention, 1948 (ILO C-87); Right to Organize and Collective Bargaining Convention, 1949 (ILO C-98) [36].

Importantly, Thailand has security concerns due to many illegal migrant workers. In addition to working in Thailand, may also use Thailand as a base for early international political movements and the security of Thailand. If the conventions above are ratified, unions of foreign migrant workers will be recognized and affected by internal laws, such as the Labor Protection Act, B.E. 2541 (1998), and the Labor Relations Act B.E. 2518 (1998).

Consideration of the ratification of the ICRMW; ILO C-87; ILO C-98, there is a possibility that various problems can be solved. These are relating to unions of migrant workers to a certain extent, both short-term and long-term. For example, the short-term solution is to change the status of countries with violations of migrant workers' rights which has a hyperlinked effect on political and economic dimensions. In the past, it was found that developed countries often use these issues as a tool to pressure Thailand about the Generalized System of Preference (GSP), which is a system of preferential tariffs of developed countries. In this regard, the United States terminated Thailand's preferential tariffs, thus causing Thailand shall pay import duties to the United States on certain imported products [58].

If Thailand ratifies three legal instruments, namely, ICRMW; the Freedom of Association and Protection of the Right to Organize Convention, 1948 (ILO C-87); Right to Organize and Collective Bargaining Convention, 1949 (ILO C-98), the developed countries cannot justify its lack of freedom for foreign workers. Hence, in the future, these three legal instruments will represent a tool for the Thai government against illegal migrant workers' rights.

In the long-term, Thailand could improve its legal development in terms of human rights rules and the legal mechanisms that deal with the preparation for ratification and revision of the Labor Organization. In addition, good relations are established, and conflicts are reduced between employers and migrant workers because each party has a collective bargaining body that ensures the law reduces discrimination between migrants and national workers. Furthermore, it encourages more illegal migrant workers to become legal workers because they are offered additional rights that differ according to their legal status, which affects the welfare equivalent to that of national workers.

Although Article 40 of ICRMW states that foreign workers have the right to establish a labor union, internal laws, like the Labor Relations Act B.E. 2518, stipulate the right to establish a labor union, and committee members must be Thai nationals only [38]. With the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C-87), Right to Organise and Collective Bargaining Convention, 1949 (C-98), and various other international covenants, it seems that regardless of being migrant workers or foreigners, they should have the freedom to form labor associations and cooperatives, or unions.

Therefore, Thailand should encourage cooperation between industry councils, the Thai Chamber of Commerce, the employer association, the employee association, and a network of NGOs related to human rights or migrant workers. For example, encouraging working standards of foreign workers legally by requiring employers to strictly comply with the law to protect workers' rights, whether getting advantage of the labor establishment for an effective negotiation or not. The important problem is to stop the migrant discrimination due to a bias concerning race, religion, and having different cultural traditions. Thus, hatred and prejudice arise even though today's world has developed into a globalized era. Therefore, the principles of human rights should be instilled in youth from a young age.

Strengths Weaknesses Opportunities and Threats (SWOT) analysis- SWOT analysis has been utilized primarily as the qualitative tool to ascertain and determine the significance of the internal and external factors affecting decision-making capacities. To enhance and support the qualitative findings, AHP has been incorporated to provide a wholesome and cumbersome analysis of the collected data [59-63]. The quantitative approach has been adopted to provide the matrix and weights assigned to each SWOT (Table 5). The assignment of the numerical values strengthens the understanding and significance of each individual SWOT [64-66]. The combination of the SWOT-AHP analysis provides for an adequate policy and decision-making process [67].

**Table 5. SWOT-AHP weightage and ranking**

Strength	Criterion				Average weight	Average percentage	Rank
S1	0.256	0.136	0.096	0.148	0.636	63.6	1
S2	0.013	0.058	0.048	0.038	0.157	15.7	3
S3	0.036	0.054	0.047	0.057	0.194	19.4	2
S4	0.002	0.018	0.015	0.024	0.059	5.9	4
Weakness							
W1	0.065	0.043	0.071	0.096	0.275	27.5	1
W2	0.058	0.068	0.024	0.051	0.201	20.1	3
W3	0.023	0.068	0.047	0.039	0.177	17.7	4
W4	0.081	0.063	0.054	0.013	0.211	21.1	2
Opportunities							
O1	0.026	0.034	0.041	0.025	0.126	12.6	4
O2	0.047	0.056	0.068	0.034	0.205	20.5	3
O3	0.022	0.039	0.098	0.042	0.201	20.1	2
O4	0.048	0.056	0.074	0.038	0.216	21.6	1
Threat							
T1	0.035	0.024	0.065	0.025	0.149	14.9	2
T2	0.014	0.038	0.042	0.023	0.117	11.7	3
T3	0.024	0.016	0.029	0.031	0.1	10	4
T4	0.065	0.074	0.084	0.093	0.316	31.6	1

Source: Authors. Adopted from [68].

Strengths: Thailand has been accessing and ratifying several international conventions and promoting human rights to all its population. There are several strengths, including the robust legal framework and policy-making conceptualization at the national level. The strength of the Thai governance system is the ability to provide for the following strengths:

- *S1* Medical and vocational leaves, as well as maternity, paternity, and sick leaves to be provided in spite of the demographic characteristics of the migrant workers.
- *S2* Social security and welfare schemes to be extended towards migrant workers and their family members while employed and after retirement.
- *S3* Legality of the employment status of the migrant workers according to the internal law/Act/policies. Minimum wage to the migrant workers despite their nationality and legal status.
- *S4* Warrant the minimum education for the children of migrant workers.

The results from the AHP found that *S1*, *S3*, *S2*, and *S4* are significant, respectively. This allows for understanding the optimum utilization of the resources along with the legal framework in Thailand. The experts depicted the strengths to be available and could be included in the future amendments and the decision-making process in Thai governance of migrant workers.

Weaknesses: The major weakness in Thailand is its unsure political stability, which directly impacts the inadequate legal implementation of human rights. The military coup and influence of the monarchs limit the democratic government's influence upon the governance system and adoption of the international conventions. The following are weaknesses found in the Thai governance and legal systems:

- *W1* Corruption at the governance level, including national and local levels.
- *W2* High competition among migrant workers.

- W3 Inaccessibility towards medical and social security schemes. Low quality of social security welfare for migrant workers.
- W4 Transparency of the government system in Thailand.

The results found that W1, W4, W3, and W2 are significant, respectively. The higher corruption and inequalities were the most significant weaknesses in the Thai migrant system.

Opportunities: Thailand has several opportunities to provide enhanced human rights for migrant workers. These opportunities enhance the workers' resilience, promote their human rights, and ensure the overall development of the Thai economy.

- O1 Thailand will be equipped with a highly-skilled migrant labor force.
- O2 Better future generation of educated and skilled migrant workers' generations.
- O3 Developing innovative technology and research for sustainable development.
- O4 Enhance the financial status of the Thai economy and banking sector.

The results found that O4, O3, O2, and O1 are significant, respectively. Financial growth is of utmost significance as it provides for sustainable development.

Threats: Inadequate political framework and reduced intentions to provide for migrant workers at the level of governance results in non-accession and non-ratification of the international conventions. The following are the threats to the Thai migrant system and policy implications, especially at the local levels:

- T1 Non-accountability towards lower wages paid in comparison to Thai citizens.
- T2 Inadequate political and legal system for inaccurate policy decision making and inadequate policy implications at the ground level in Thailand. Military coup and suspension of the democratic human rights of the migrant workers in Thailand.
- T3 Reduced legal rights of migrant workers and inability to apply for residency or citizenship.
- T4 Insecurities towards the internal Thai labor force due to higher migrant population and skilled labor force.

The results found that T4, T1, T2, and T3 are significant, respectively. These threats enhance the migrant workers and their family members' vulnerabilities. Reduced financial and social security rights diminish their chance to grow and succeed.

While turning crisis into opportunity, the labor migration and the role of international organizations have been implicated in labor migration cases amid the COVID-19 pandemic because both benefits and disadvantages affect humanity and Thailand in many dimensions. Despite the benefits, migrant workers are still trying to find higher-paying jobs and send money home even amid the coronavirus pandemic. This action has given migrant workers and their families a better quality of life, despite the difficulties in preventing the spread of the virus under the health authorities in Thailand. Interestingly, migrant workers and their families choose to risk their lives to work in Thailand amid the Covid-19 situation in exchange for more security. In terms of human rights, it is found that the country of origin receives many benefits, such as gaining income into the country and helping to alleviate poverty in the country, lower unemployment rate, and the transfer of skills and technologies that migrant workers learn from developed countries.

Besides, migrant workers were found to be more vulnerable to the spread of COVID-19. Migrant workers could affect the originating country by reducing the number of workers. In particular, most of them are young workers, such as losing tax revenues and the gross domestic product (GDP) they should generate. Migrant workers with special skills or abilities often have high bargaining power with employers. As a result, they would get fair wages. Furthermore, having greater protection of their rights under the Thai labor law acts compared with unskilled migrant workers. Consequently, unskilled migrant workers could gain fair compensation and did not receive the same protection as skilled labor.

Migrant workers are not protected with rights and benefits equivalent to citizens of the host country as many factors are involved, such as education level, ethnicity, gender, and working conditions, that also jeopardize the safety of their physical, mental, emotional, and social health. Therefore, it is essential to comply with all the international law, conventions, standards and regulation. In addition, whenever Thailand allows migrant workers to work shall consider both advantages and disadvantages of immigration before employing migrant workers. Thailand benefits economically from migrant workers. Thus, a joint investment agreement should be made at the level of international organizations. In addition, providing capital and resources to create an effective management system can stop illegal travelers and prevent human trafficking in Thailand. Consequently, these legislative measures would result in greater cost savings than subsequent remediation.



The migrant labor force is mistreated and has limited human rights regarding the working conditions in heavy industrial production units. Similarly, absence of binding regulations limits access to article 79 of the ICRMW conventions which results in lack of safeguard the rights of migrant workers and their families.. The Thai internal law requires protecting women, men, and third-gender migrant workers. This protects the legal and illegal migrant workers as well as the overall society. However, illegal migrant workers enter Thailand through naturally enabled geographical boundaries without restrictions. In conclusion, migrant workers should be protected regarding their gender and legal status.

Thailand should consider the ratification of the ICRMW despite the Covid-19 pandemic to enhance the legal right of migration that can impact social solidarity. The ICRW accession and ratification will improve the image of Thailand and gain international recognition even if the legislative parliament must approve the ratification of this Convention in Thailand, and it shall be under Article 178 of the Thai Constitution. Thailand may consider the invitations of the specialized experts from international organizations, namely, the ILO, IOM, OHCHR, and UNESCO. This result would provide immigrant technical advice and immigrant policy practice.

Particularly, continue to study the possibility of adjusting the standard internal laws to be consistent with international standards. In other words, Thailand must have an internal legal mechanism based on the rule of law. In addition, the legal norms will provide the basis for formulating labour migration policies, policy implementation, and supervision. After Thailand's accession and ratification, migrant workers will be strengthened by being able to manage and set up migrant workers' organizations to negotiate their powers with employers effectively. In addition, several various measures that would occur by the obligation after Thailand is ratified;

- Firstly, the ICRW ensures freedom for all migrant workers based on human rights;
- Secondly, an accession to union rights among migrant workers, between legal and illegal;
- Thirdly, it must clearly state what types of migrant workers have the right to form a labour union. For example, it must be a worker who has an employment contract. It is labour of a specific nationality, a provision that applies to specific types of labor;
- Fourthly, in the case of establishing a union of foreign workers, Thailand should ratify to become a party under the ICRW to ensure the human rights of migrant workers. The ICRMW also affects the adjustment of internal rules and mechanisms for obligations ILO C-87 and ILO C-98 because they do not define the characteristics of labour unions. In addition, the result of the ICRMW ratification could be a counter to non-tariff barriers;
- Fifthly, establishing trade unions under ICRMW, although based on human rights, is undeniably a security risk as it allows migrant workers to form a legally recognized organization. Some groups of migrant workers may be used as a means of exploitation that affects national security, whether concerning international relations, terrorism, mafia, or criminal organizations. Therefore, it is necessary to have other mechanisms or legal measures to monitor, namely, migration measures for issuing work permits, measures to inspect employment agencies, and tax audit measures;
- Sixthly, the number of states that have ratified it is small, especially in industrialized countries, compared to other international conventions. Therefore, most of the States' Parties are the countries of origin of the migrant workers. Therefore, employing countries that are mainly industrialized cannot be forced to comply with the rules under the ICRW because those destination states are not party to the ICRW;
- Seventhly, the distribution of rights between legal and illegal workers in ICRMW is also a subject of debate as to whether it is inherently incompatible with human rights.

## 5- Conclusion and Recommendation

Currently, Thailand lacks legal rights and the protection of migrants and their families, mostly impacting the Thai economy, making it necessary for Thailand to access and ratify the ICRMW, ILO C-87, and ILO C-98 to provide legal protection of the rights and obligations of migrant workers and their families. With legal protection under national law, these workers and their families shall be entitled to equal protection as nationals, thus allowing them to establish labor unions, and receive medical benefits, paid leave, and equal salary. For this reason, the laws must lay the economic and social foundation and policy framework to deal with the challenges related to migrants' rights. Furthermore, the Thai government must set short-term and long-term plans for the current situation, especially during the Covid-19 economic crisis, because migrant workers could form a major national threat. The protection of the rights of migrant workers and their families should be strictly adhered to following ratified conventions, in particular, the United Nations Human Rights Convention and other relevant agreements. In addition, international agreements are a significant success, especially bilateral and multilateral agreements with countries from which migrant workers originate, countries that deal with cross-border trafficking in persons and enforce children and women to work in danger, health, and systematic

repatriation. Moreover, long-term implementation policies are due to the restrictive section of the constitution (Section 178) and adverse political motivation towards the faster and adequate implementation of legal instruments in Thailand.

Future attempts can further explore how these effective legal dynamics for migrants can be especially focused on specific occupations in ASEAN. This affects the rights of migrants, migrant unions, migrant associations, governments, political parties, trade unions, international labour organizations, and non-governmental organizations (NGOs). In addition, future research can bring the advanced technology for collecting migrant workers' information that the expert migrants during Covid-19 to focus on children and women workers' rights.

## **6- Declarations**

### **6-1-Author Contributions**

S.P. and S.L. contributed to the design and implementation of the research, to the analysis of the results and to the writing of the manuscript. All authors have read and agreed to the published version of the manuscript.

### **6-2-Data Availability Statement**

Data sharing is not applicable to this article.

### **6-3-Funding**

The authors received no financial support for the research, authorship, and/or publication of this article.

### **6-4-Acknowledgements**

The authors would like to thank the School of Laws, and College of Graduate Studies (CGS) at Walailak University for supporting the research. This research was financially supported by the new strategic research project (P2P), fiscal year 2022, Walailak University, Thailand.

### **6-5-Institutional Review Board Statement**

Not Applicable.

### **6-6-Informed Consent Statement**

Not Applicable.

### **6-7-Conflicts of Interest**

The authors declare that there is no conflict of interests regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancies have been completely observed by the authors.

## **7- References**

- [1] Castles, S. (2016). Understanding Global Migration: A Social Transformation Perspective. An Anthology of Migration and Social Transformation. IMISCOE Research Series. Springer, Cham, Switzerland. doi:10.1007/978-3-319-23666-7\_2.
- [2] Hollifield, J. & Foley, N. (2022). Understanding Global Migration. Stanford University Press, United States. doi:10.1515/9781503629585.
- [3] Parreñas, R. (2022). Children of Global Migration: Transnational Families and Gendered Woes. Stanford University Press, Redwood City, United States. doi:10.1515/9781503624627.
- [4] Castles, S. (2002). Migration and Community Formation under Conditions of Globalization. *International Migration Review*, 36(4), 1143–1168. doi:10.1111/j.1747-7379.2002.tb00121.x.
- [5] Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., & Taylor, J. E. (1993). Theories of international migration: a review and appraisal. *Population & Development Review*, 19(3), 431–466. doi:10.2307/2938462.
- [6] Suhardiman, D., Rigg, J., Bandur, M., Marschke, M., Miller, M. A., Pheuangsavanh, N., Sayatham, M., & Taylor, D. (2021). On the Coattails of globalization: migration, migrants and COVID-19 in Asia. *Journal of Ethnic and Migration Studies*, 47(1), 88–109. doi:10.1080/1369183X.2020.1844561.
- [7] Department of Employment of Thailand. (2021). Statistics on the number of foreign workers in December. Foreign Workers Administration Office, Bangkok, Thailand.
- [8] Office of the Council of State. (2022). Law library of Office of the Council of State. Available online: <http://web.krisdika.go.th/data/law/law2/%A149/%A149-20-2551-a0001.pdf> (accessed on February 2022). (In Thai).

- [9] Sigler, T., Mahmuda, S., Kimpton, A., Loginova, J., Wohland, P., Charles-Edwards, E., & Corcoran, J. (2021). The socio-spatial determinants of COVID-19 diffusion: the impact of globalisation, settlement characteristics and population. *Globalization and Health*, 17(1), 1–14,. doi:10.1186/s12992-021-00707-2.
- [10] Huguet, J. W., & Punpuing, S. (2005). *International migration in Thailand: International Organization for Migration. Regional Office Bangkok, Thailand.*
- [11] Chalamwong, Y., & Prugsamat, R. Labor migration in Thailand: Recent trends and implications for development. *TDRI Quarterly Review*, 3–9.
- [12] Chemsripong, S. (2016). Skilled Labor Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labor Market. *Journal Of Economics And Political Economy*, 3(4), 767–781. doi:10.1453/jepe.v3i4.1012.
- [13] Frey, D. F., & MacNaughton, G. (2016). A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda. *SAGE Open*, 6(2), 1–13,. doi:10.1177/2158244016649580.
- [14] Pécoud, A. (2017). The Politics of the UN Convention on Migrant Workers' Rights. *Groningen Journal of International Law*, 5(1), 57–72. doi:10.21827/59db6983b848b.
- [15] Wang, C. S. (2021). Border-crossing and the narrative of the minor: Midi z's the road to mandalay. *Asian Cinema*, 32(1), 19–35. doi:10.1386/ac\_00031\_1.
- [16] Saisoonthorn, J. (2021). *International Law II. Winyuchon, Bangkok, Thailand.*
- [17] Miller, D. (2016). Is there a Human Right to immigrate?. *Migration in political theory: The ethics of movement and membership*, 11–31, Oxford University Press, Oxford, United Kingdom. doi: 10.1093/acprof:oso/9780199676606.003.0002.
- [18] Da Lomba, S. (2011). Irregular migrants and the human right to health care: a case-study of health-care provision for irregular migrants in France and the UK. *International Journal of Law in Context*, 7(3), 357–374. doi:10.1017/s1744552311000188.
- [19] Mcinerney-Lankford, S. (2009). Human rights and development: A comment on challenges and opportunities from a legal perspective. *Journal of Human Rights Practice*, 1(1), 51–82. doi:10.1093/jhuman/hun005.
- [20] Lyon, B. (2017). *The ICRMW and the US: substantive overlap, political gap. Shining new light on the un migrant workers convention, Pretoria University Law Press, Pretoria, South Africa.*
- [21] Cholewinski, R., De Guchteneire, P., Guchteneire, P. F., & Pecoud, A. (2009). *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights. Cambridge University Press, Cambridge, United Kingdom.* doi:10.1017/CBO9780511811272.
- [22] Theddy, Sirait, N. N., Agusmidah, & Rosmalinda. (2021). Legal Protection of International Labor Organization (ILO) and Indonesia Towards Indonesia Illegal Migrant Workers. *Proceedings of the Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021)*. doi:10.2991/assehr.k.220204.026.
- [23] International Labour Organization (2022). *Migration for Employment Convention (Revised), 1949 (No. 97)*. Available online: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312242](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312242) (accessed on March 2022).
- [24] International Labour Organization. (2022). *Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all*. Available online: [https://www.ilo.org/global/topics/dw4sd/theme-by-sdg-targets/WCMS\\_556964/lang-en/index.htm](https://www.ilo.org/global/topics/dw4sd/theme-by-sdg-targets/WCMS_556964/lang-en/index.htm) (accessed on February 2022).
- [25] Mahdavi, P. (2013). Gender, labour and the law: The nexus of domestic work, human trafficking and the informal economy in the United Arab Emirates. *Global Networks*, 13(4), 425–440. doi:10.1111/glob.12010.
- [26] Oliinyk, O., Bilan, Y., Mishchuk, H., Akimov, O., & Vasa, L. (2021). The impact of migration of highly skilled workers on the country's competitiveness and economic growth. *Montenegrin Journal of Economics*, 17(3), 7–19. doi:10.14254/1800-5845/2021.17-3.1.
- [27] Hendry, J., Creutzfeldt, N., & Boulanger, C. (2020). Socio-Legal Studies in Germany and the UK: Theory and Methods. *German Law Journal*, 21(7), 1309–1317. doi:10.1017/glj.2020.83.
- [28] Albano, T., & Volpicelli, S. (2016). Disregarding Aristotle's Motto "UBI Societas IBI IUS": The Biased Genesis of Human Trafficking Protocol and the Consequences on its Enforcement. *Gênero & Direito*, 5(2), 174–202. doi:10.18351/2179-7137/ged.v5n2p174-202.
- [29] Bryman, A. (2016). *Social research methods. Oxford University Press, Oxford, United Kingdom.*
- [30] Samuel, G. (2021). *Methods of legal history and comparative law. Comparative Methods in Law, Humanities and Social Sciences*, 11–44, Edward Elgar Publishing, Massachusetts, United States. doi:10.4337/9781802201468.00007.
- [31] Feenan, D. (2013). Exploring the 'Socio' of Socio-Legal Studies. In: Feenan, D. (eds) *Exploring the 'Socio' of Socio-Legal Studies. Palgrave Macmillan Socio-Legal Studies. Palgrave, London, United Kingdom.* doi:10.1007/978-1-137-31463-5\_1.

- [32] Ovchinnikov, A., Mamychev, A., & Mamycheva, D. (2015). Sociocultural bases of state - Legal development coding. *Mediterranean Journal of Social Sciences*, 6(3S4), 67–74. doi:10.5901/mjss.2015.v6n3s4p67.
- [33] Hillyard, P. Law's Empire: Socio-legal Empirical Research in the Twenty-first Century. *Journal of Law and Society*, 34(2), 266–279, doi: 10.1111/j.1467-6478.2007.00391.x.
- [34] United Nations Human Rights, Offices of the High Commissioner. (2022). International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available online: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx> (accessed on April 2022).
- [35] United Nations Human Rights (2022). Office of the High Commissioner for Human Rights (OHCHR), Geneva, Switzerland. Available: [https://www.ohchr.org/en/ohchr\\_homepage](https://www.ohchr.org/en/ohchr_homepage) (accessed on April 2022).
- [36] International Labour Organization. (2022). List of instruments by subject and status. Available online: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::> (accessed on March 2022).
- [37] Khokhar, T. (2021). Ending Gender-Based Violence and Harassment in the World of Work: The Critical Importance of Implementing ILO Convention 190. International Center for Research on Women ICRW, Washington, DC, United States. Available online: <https://www.icrw.org/publications/ending-gender-based-violence-and-harassment-in-the-world-of-work-the-critical-importance-of-implementing-ilo-convention-190/> (accessed on February 2022).
- [38] Nalbandian, E. G. (2011). Sociological jurisprudence: Roscoe Pound's discussion on legal interests and jural postulates. *Mizan Law Review*, 5(1), 141-149.
- [39] Pound, R. (1912). The Scope and Purpose of Sociological Jurisprudence. III. Sociological Jurisprudence. *Harvard Law Review*, 25(6), 489. doi:10.2307/1324775.
- [40] Stone, J. (1965). Roscoe Pound and Sociological Jurisprudence. *Harvard Law Review*, 78(8), 1578. doi:10.2307/1338955.
- [41] Lyman, S. M. (2002). Toward A Renewed Sociological Jurisprudence: From Roscoe Pound to Herbert Blumer and Beyond. *Symbolic Interaction*, 25(2), 149–174. doi:10.1525/si.2002.25.2.149.
- [42] Seagle, W. (1945). Rudolf von Jhering: Or Law as a Means to an End. *The University of Chicago Law Review*, 13(1), 71–89. doi:10.2307/1597562.
- [43] Tamanaha, B. Z. (2020). Sociological Jurisprudence Past and Present. *Law and Social Inquiry*, 45(2), 493–520. doi:10.1017/lsi.2019.26.
- [44] Saul, B., Kinley, D., & Mowbray, J. (2014). The international covenant on economic, social and cultural rights: commentary, cases, and materials. Oxford University Press, Oxford, United Kingdom.
- [45] Ryan, B. (2009). Policy on the ICRMW in the United Kingdom. *Migration and Human Rights: The United Nations Convention on Migrant Workers Rights*, 278–294. Cambridge University Press, Cambridge, United Kingdom. doi:10.1017/CBO9780511811272.011.
- [46] Money, J., Lockhart, S., & Western, S. (2016). Why migrant rights are different than human rights. *Handbook on Migration and Social Policy*, 399–418, Edward Elgar Publishing, Massachusetts, United States. doi:10.4337/9781783476299.00034.
- [47] Boucher, A. K., & Carney AO, T. (2014). Social security for migrant workers and their families in Australia. *Social security and migrant workers: selected studies of cross-border social security mechanisms*, 187-214, Sydney Law School Research paper no. 13/67, Sydney, Australia.
- [48] Touzenis, K. (2009). Migration and human rights in Italy: Prospects for the ICRMW. In R. Cholewinski, P. De Guchteneire, & A. Pecoud (Eds.), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights*, 343-359. Cambridge University Press, Cambridge, United Kingdom. doi:10.1017/CBO9780511811272.014.
- [49] Gest, J., Armstrong, C., Carolan, E., Fox, E., Holzer, V., McLellan, T., Mogan, A. C., & Talib, M. (2013). Tracking the process of international norm emergence: A comparative analysis of six agendas and emerging migrants' rights. *Global Governance*, 19(2), 153–185. doi:10.1163/19426720-01902002.
- [50] Sharom, A., Purnama, H. R., Mullen, M. Asuncion, M. & hayes, M. (2014). An Introduction to Human Rights in Southeast Asia (1<sup>st</sup> Ed.). *Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia*, Thailand. Available online: <http://shapesea.com/wp-content/uploads/2015/11/HR-Textbook-Ed-1-Complete-low-rez.pdf> (accessed on February 2022).
- [51] Association of Southeast Asian Nations (ASEAN). (2017). ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers. Available online: <https://asean.org/book/asean-guidelines-on-effective-return-and-reintegration-of-migrant-workers/> (accessed on May 2022).
- [52] Mikac, R., Cesarec, I., & Harahap, A. M. (2022). Migration Issues in the Age of the COVID-19 Pandemic: A Comparison Between the European Union and Association of Southeast Asian Nations. *Proceedings of the Universitas Lampung International Conference on Social Sciences (ULICoSS 2021)*. doi:10.2991/assehr.k.220102.028.

- [53] Rother, S. (2022). The 'gold standard' for labour export? The role of civil society in shaping multi-level Philippine migration policies. *Third World Quarterly*, 1–20,. doi:10.1080/01436597.2021.2015314.
- [54] An, B. Y., & Tang, S. Y. (2020). Lessons From COVID-19 Responses in East Asia: Institutional Infrastructure and Enduring Policy Instruments. *American Review of Public Administration*, 50(6–7), 790–800. doi:10.1177/0275074020943707.
- [55] Landau, L. B. (2006). Protection and dignity in Johannesburg: Shortcomings of South Africa's urban refugee policy. *Journal of Refugee Studies*, 19(3), 308–327. doi:10.1093/jrs/fel012.
- [56] Laikram, S., & Pathak, S. (2022). Essentialities of ratifying CED in Thailand: Human Rights amid Covid-19 Pandemic. *Emerging Science Journal*, 6, 57–70. doi:10.28991/esj-2022-SPER-05.
- [57] Office of the Council of State. (2022). Labour Relations Act B.E. 2518 (1975). Available online: [http://web.krisdika.go.th/data/document/ext809/809950\\_0001.pdf](http://web.krisdika.go.th/data/document/ext809/809950_0001.pdf) (accessed on May 2022).
- [58] Sallstrom, L. R. (1994). US withdrawal of Thailand's GSP benefits: real or imagined. *TDRI Quarterly Review*, 9(3), 15-22.
- [59] Görener, A., Toker, K., & Uluçay, K. (2012). Application of Combined SWOT and AHP: A Case Study for a Manufacturing Firm. *Procedia - Social and Behavioral Sciences*, 58, 1525–1534. doi:10.1016/j.sbspro.2012.09.1139.
- [60] Oreski, D. (2012). Strategy development by using SWOT-AHP. *Tem Journal*, 1(4), 283-291.
- [61] Kurttila, M., Pesonen, M., Kangas, J., & Kajanus, M. (2000). Utilizing the analytic hierarchy process (AHP) in SWOT analysis - A hybrid method and its application to a forest-certification case. *Forest Policy and Economics*, 1(1), 41–52. doi:10.1016/s1389-9341(99)00004-0.
- [62] Lee, Y., Kim, Y. J., & Lee, M. C. (2021). Improving public acceptance of H2 stations: SWOT-AHP analysis of South Korea. *International Journal of Hydrogen Energy*, 46(34), 17597–17607. doi:10.1016/j.ijhydene.2021.02.182.
- [63] Kaymaz, Ç. K., Birinci, S., & Kızılkın, Y. (2022). Sustainable development goals assessment of Erzurum province with SWOT-AHP analysis. *Environment, Development and Sustainability*, 24(3), 2986–3012. doi:10.1007/s10668-021-01584-w.
- [64] Phadermrod, B., Crowder, R. M., & Wills, G. B. (2019). Importance-Performance Analysis based SWOT analysis. *International Journal of Information Management*, 44, 194–203. doi:10.1016/j.ijinfomgt.2016.03.009.
- [65] Saaty, T. L. (2011). *Group Decision Making: How to Obtain Representative Group Judgments from Individual Judgments. Technologies for Supporting Reasoning Communities and Collaborative Decision Making: Cooperative Approaches*, 114-134. IGI Global, Pennsylvania, United States. doi:10.4018/978-1-60960-091-4.ch007.
- [66] Eslamipoor, R., & Sepehriar, A. (2014). Firm relocation as a potential solution for environment improvement using a SWOT-AHP hybrid method. *Process Safety and Environmental Protection*, 92(3), 269–276. doi:10.1016/j.psep.2013.02.003.
- [67] Gottfried, O., De Clercq, D., Blair, E., Weng, X., & Wang, C. (2018). SWOT-AHP-TOWS analysis of private investment behavior in the Chinese biogas sector. *Journal of Cleaner Production*, 184, 632–647. doi:10.1016/j.jclepro.2018.02.173.
- [68] Saaty, T. L. (1990). How to make a decision: The analytic hierarchy process. *European Journal of Operational Research*, 48(1), 9–26. doi:10.1016/0377-2217(90)90057-I.