

Thailand
A Joint Submission on Migrant Workers and Their Families in Thailand
for the 12th Session of the Universal Periodic Review, October 2011

I. INTRODUCTION

1. This report has been prepared from a consultation held on 1-2 February, 2011 in Bangkok, Thailand with the following organizations: Raks Thai Foundation; MAP Foundation; Foundation for AIDS Rights; Human Rights and Development Foundation; Friends of Women Foundation; Pattanarak Foundation, AIDSNet Foundation; and the Labour Rights Protection Network. These organizations are key members of the Action Network for Migrants (ANM), Migrant Working Group and PHAMIT Program. Raks Thai Foundation is the primary author.

2. This report draws attention to the systemic problems that undermine or threaten migrant workers' rights and well being in Thailand. Main problems are that migration policies are short term, conflicting, and lack enforcement mechanisms. These policies have a primary objective of acting as a deterrent to migration rather than supporting rights of migrant workers. A weak administrative and human rights monitoring system enable exploitation, trafficking, violence and discriminatory practices by officials, employers and other private individuals against migrants.

3. It is estimated that migrant labor constitutes approximately 5% of Thailand's workforce. Migrant workers, mainly from the neighboring countries of Lao PDR, Cambodia and Myanmar (Burma), work in low-skilled jobs in agriculture, fisheries, construction, manufacturing and services such as domestic work. Less than half the migrants in Thailand are registered, with the 1 million or more migrants who are undocumented considered as "illegal aliens."

II. BACKGROUND AND FRAMEWORK

4. Section 5 of the current Constitution of the Kingdom of Thailand B.E. 2550 (2007) explicitly states that, "The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution." Section 30 states that "All persons are equal before the law and shall enjoy equal protection under the law."

5. The Ministry of Labour has affirmed that all laborers are entitled to equal protection under the National labor laws including the Labour Relations Act of 1975 (LRA) and the Labour Protection Act of 1998 (LPA). By 2003, Thailand had signed bi-lateral MOUs with the countries of Cambodia, Lao PDR and Myanmar on the "Cooperation in the Employment of Workers" as a plan to regularize cross-border migrant workers in Thailand. Terms of the MOU reaffirm that the rights of migrant workers who have entered the country under the MOU are to be protected equally to Thai nationals. There are also measures to control undocumented migration.¹ Thailand has also issued the Child Protection Act of 2003 and the Anti-Trafficking in Persons Act in 2008.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Cooperation with human rights mechanisms

6. Thailand is party to 7 core international human rights instruments, namely: (i) the International Covenant on Civil and Political Rights (ICCPR); (ii) the International Covenant on Economic, Social and Cultural Rights (ICESCR); (iii) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; (iv) the Convention on the Rights of the Child (CRC) and its two Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution,

and Child Pornography; (v) the Convention on the Elimination of All Forms of Racial Discrimination (CERD); (vi) the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); (vii) the Convention on the Rights of the Persons with Disabilities (CPRD).

7. Thailand has *not* ratified: the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICRMW); the ILO Conventions 87, 98 and 111; is not a party to the Convention on Refugees; and has made reservations on CEDAW - Article 16 and Article 29 (par. 1).

8. There has been recent communication between the UN Special Rapporteur on the Human Rights of Migrants (in addition to other UN Special Rapporteurs) and the Royal Thai Government on a number of issues related to migrant registration policies and work accident compensation rights, deportation of Lao Hmong; and the welfare of Rohingya in detention.²

Equality and non-discrimination

Migrant Policies and Documentation

9. Many of the problems that migrants face in Thailand arise from policies that govern registration of migrant workers. (Annex 1) Statistics from 2010 showed that 932,255 migrant workers registered with a work permit, and this number dropped to 706,445 in 2011.³ (Annex 2) However, over a million migrants and hundreds of thousands of migrant children remain undocumented.⁴ Undocumented migrants from other countries including Bangladesh, China, Nepal and Vietnam are not recognized and have no channel to become regularized. There is no feasible naturalization process available for migrants to obtain Thai citizenship.

10. The Nationality Verification (NV) process and the MOU labor import system intended to regularize migrant workers are unregulated, complicated, take time and are expensive for migrants.⁵ For migrants from Myanmar, conditions associated with processing these documents require the use of middle men, raising the price considerably and increasing vulnerability to fraud.⁶ (Annex 2)

11. The value of being registered with a work permit is undermined by the fact that a migrant's registration status is linked to the employer.⁷ Another problem is that most employers pay documented migrants' registration fees in advance, creating a form of debt-bondage that makes employers feel justified in withholding work permits and other ID.

12. The Thai government considers those migrants who are not registered in the current system or who fall out of the system as "illegal," and can therefore be subject to arrest, detention and deportation.⁸ Migrants' status as either being illegal or tenuously documented not only increases vulnerability to extortion and rights abuses by police and employers; it prevents free mobility to access services for fear of arrest or harassment by police.

13. There are reports that migrants afraid of entering the NV system are resorting to registration with a 10-year identity card under the Ministry of Interior which is intended for stateless persons to be reclassified as Thai nationals. This is an ambiguous policy that is highly susceptible to corruption by local officials.

14. There have been cases of specific ethnic minorities being repatriated as "illegal economic migrants" which could be considered as refoulement. In December 2009, a group of 4,000 ethnic

Hmong from Lao P.D.R., of which 158 people had been officially recognized as refugees by the UNHCR, were forcibly repatriated as illegal economic migrants.⁹ Rohingya boat people have been denied recognition as refugees and the Thai military has reportedly pushed boatloads of men back to sea without engines, proper water, food or shelter.¹⁰ In January 2009, one group of 78 males, of which 12 were under age 18, were incarcerated as illegal migrants and languished in jail where two (one age 15 the other age 19) died of poor health.¹¹

Right to work and to just and favourable conditions of work

15. Documented migrants' are not allowed to freely change employer.¹² If the employer allows the change, migrants with annual registration must file with the Department of Employment Services and find a new employer within seven days, while those under the MOU are given only three days. If a migrant does not register the change of employer or does so without the employer's permission, they forfeit their registration status and become "illegal."

Labour Rights Protection / Violations, Proper Remuneration and Working Hours

16. Labor protection for migrant workers is inadequate generally, and is especially lax in Special Economic Zones. There are insufficient labor protection personnel, many of who are prejudiced or corrupt, to inspect remote and isolated workplaces where migrants work, and there is limited provision of translation at centers that receive labor complaints. When translation is provided, there are concerns it is often biased in favor of employers.

17. While the Thai Labour Protection Act (Article 4) asserts that all laborers are protected equally under the law, there are regular reports of migrants receiving considerably less than minimum wage and no overtime payment. This is especially prominent among domestic workers, agriculture, in the fishing industry and garment factories along the Myanmar border.¹³

18. Migrant workers are often compelled to work excessive hours, up to or over 10 hours a day, and are commonly only given one or two days off a month, if they are given any.¹⁴

19. Many employers do not pay wages on a timely basis, make excessive deductions for registration fees, or simply withhold payment. For migrants who live in factory compounds or work on long-distance fishing boats, employers commonly make deductions for food, water, electricity, shelter, and safety equipment at excessive rates.

20. The health exam migrants take annually includes a test for pregnancy. Although not a condition for deportation, the results are not confidential and employers are known to use other excuses to fire pregnant women. This and periodic announcements that pregnant migrant women will be deported spurs migrant women to induce unsafe abortions in order to retain their jobs.¹⁵

Freedom to Organize

21. By law¹⁶ migrant workers are not allowed to be committee members of workers' unions or to form their own unions, limiting their ability to engage in collective bargaining.¹⁷

22. Migrant workers regularly suffer from unfair dismissal, including employers that close their business abruptly and do not pay final wages or return documents.¹⁸

Young Workers, Domestic Workers and Dangerous Work Conditions

23. Some young migrant women who work as domestic workers suffer conditions that could be considered as forced labor. They cannot leave the workplace; personal documents are

withheld; no days off are provided and they work excessive hours without break; they are reliant upon the employer to provide shelter and food –which may both be substandard; and they are commonly paid below minimum wage, if they receive any payment at all. Domestic work is not recognized as formal work and therefore lacks protection mechanisms, increasing these young women and girls' vulnerability to trafficking, sexual abuse, rape and other forms of violence.¹⁹

24. Thailand prohibits children below the age of 15 from any type of labor and allows only certain types of jobs for ages 15-18 years. There is poor monitoring, allowing both employers and employees to lie about the age of migrants working in hazardous occupations, such as agriculture. There are girls below the age of 15 being employed as domestic workers,²⁰ and noticeable numbers of under-age children working on fishing boats and in seafood processing.²¹

Right to social security and to an adequate standard of living

Limitations on Social Security Benefits

25. Migrants registered with a passport and work permit are covered under the Social Security scheme as formal workers. Migrant workers will not be able to receive many of the benefits they pay for, including pension (as they are officially limited to four years in the country), unemployment and maternity leave.²² There is a monthly payment to the fund of 5% of wages from the employee and a matching 5% by the employer. Without proper monitoring, there is concern that employers are deducting the full 10% from migrants' wages.

26. Work accident compensation systems provided under the Social Security Office's Workmen's Compensation Fund do not comply with Thailand's obligations as a signatory to ILO Convention 19 Equality of Treatment (Accident Compensation). Undocumented migrants and those not covered under Social Security do not receive proper compensation for work related injury or death.²³

Health

Underlying Determinants of Health

27. Migrants who work in factories are often restricted to living and working on the premises of the factory compound. Employers also arrange housing for construction crews and agricultural workers. These quarters are often crowded, unsanitary, poorly ventilated and dangerous.²⁴ The ratio of toilets to employees is woefully inadequate, (four functioning toilets to support hundreds of workers), and the cleanliness of the water provided for washing is sub-standard.²⁵

28. In factories where workers are not allowed to leave the compound, the employer provides poor quality food and drinking water which migrants are charged for at exorbitant prices; and there have been numerous cases of fishermen on deep sea boats suffering severe malnutrition.

29. Communities where migrants live are commonly ignored by municipal services resulting in piles of garbage, open sewers and the absence of health services, all of which increase the risk of disease. Ignored by the local administration organizations which are responsible for housing, living conditions of migrants are commonly substandard, overcrowded and dilapidated.

Health Insurance, Access to Health Services and Related Policies

30. Migrants' access to public health services in Thailand is dependent on their registration and health insurance status placing them under either: the Social Security scheme, or the National Health Security scheme. Both sets of health insurance coverage have gaps in coverage

for migrant workers such as no reproductive health and family planning services in migrants' languages, lack of provision of antiretroviral drugs that treat HIV and AIDS, and no coverage for work related accidents or health conditions. (Annex 3)

31. Over a million undocumented migrant workers, as well as all dependents and children, are ineligible for purchasing health insurance, and therefore must pay for all health services out of pocket. There is an Emergency Welfare Fund that hospitals can use when a migrant is unable to pay that also pays for poor Thais. In some areas where hospitals have shouldered a large debt for services to undocumented migrants there have been reports of denial of medical services or insufficient treatment because of a migrant's undocumented status and inability to pay.

32. There is no policy or mechanisms to support migrant workers and their dependents to access health information and services in their language. The hospitals or health centers that have "Migrant Health Assistants," who provide translation services for migrants, are mostly supported by NGOs. An obstacle is that government policy does not allow hospitals (or other government offices) to hire migrants in this capacity because it is considered as skilled labor.

Administration of Justice and the Rule of Law

33. Many practicalities render the judicial system either inaccessible or ineffective for migrants: no support is provided to migrants in accessing or navigating the legal process; the quality of translators provided is not guaranteed; and cases (labor, civil) may take a couple of years. Migrants who file suits have difficulty maintaining their legal status and right to work, which can deter migrants from pursuing their case. Some migrants may be deported before the case has been completed, rendering them unable to collect final payment from lawyers.

34. Labor negotiations that occur out of court, in the Labour Protection Office or in court, commonly result with workers receiving less than the minimum wage because the starting figure for negotiations is minimum wage, resulting in the employer paying less than the legal wages even after going to court.²⁶

Right to life, liberty and security of the person

Excessive Use of Force

35. Police regularly set up anti- smuggling of persons checkpoints to inspect vehicles. When vehicles carrying smuggled migrants have tried to evade these checks there have been incidents of excessive force being used, including the firing of live rounds that have resulted in the direct and indirect death of smuggled migrants (death by gunshot or by the ensuing car accident). There has been no inquiry into this conduct despite petitions to the NHRC and no consequences to the officers involved.²⁷

36. There are reports of raids to arrest undocumented migrant workers at work sites and residences where unnecessary force has been used²⁸ and where migrants have fled into unsafe conditions that have resulted in death, such as jumping into bodies of water and drowning.²⁹ Raids are encouraged by a policy that pays rewards to informants who report the use of undocumented migrant workers.³⁰

Limitation of Personal Liberty, Mobility and Association

37. Employers and agents are known to withhold migrant workers' documents, such as ID cards or passports and work permits, yet are rarely ever charged or prosecuted. The withholding

of documents gives the employer control over migrants' mobility. Migrants are usually only given a photocopy, leaving them vulnerable to harassment and extortion by police.

38. In 2006, five provinces introduced "Provincial Decrees" that restrict migrants' personal liberties by restricting or denying permission to: own or use mobile phones, drive or own motorcycles, gather publicly in groups of more than five people, go out after hours of an imposed curfew. Although it has been indicated that these decrees have since been lifted, there has been no formal announcement.³¹ There is also a case of a local level decree in Phang Nga Province that requires migrants to prominently wear colored vests to indicate their migrant status, and restricts them from riding bicycles.³²

Extortion, Invasion of Privacy, and Deprivation of Personal Property

39. Knowing that migrants' status is tenuous, police officers and other citizens regularly extort money and take valuables from migrants. While in transit locally, police may negotiate with migrants for bribes to avoid being arrested, or will detain them and demand payment from employers to release their employees.³³ Police and those claiming to be police regularly raid migrants' private residence without producing valid documents, and once inside take money, valuables and documents. There have been incidents of police in Chiang Mai Province confiscating motorcycles owned by migrant workers under false pretenses.³⁴

40. Employers often avoid paying migrants their rightful wages by calling police and reporting their own undocumented migrant workers. Migrants who are arrested, detained and deported for being undocumented commonly have no recourse to recover personal valuables. They commonly forfeit their last wages or are unable to recover personal belongings at their residence. Police are also known to confiscate personal possessions of value from migrants, such as gold or money right off their persons. The process of deportation is quick and informal and does not provide migrants channels for recourse.³⁵

Sexual Harassment and Rape of Migrant Women

41. Police and other officials are known to sexually molest or violate migrant women by conducting excessive body searches that include groping, demands to disrobe and even unnecessary and invasive cavity checks. While in detention, migrant women have suffered rape and harassment by officials.³⁶

42. Police and immigration officials are reported to cut women's hair as a way of marking migrant women who have been deported, which for women from Myanmar is a denigration of their culture and is personally humiliating.³⁷

43. Violence against migrant women is under-reported. As migrants' status is reliant on their employer, migrant women fear retribution from their employers, especially for migrant domestic workers who work and live in the private domain of the employer's home. One-stop crises centers (OSCC) in hospitals, which act as a link to police in reporting rape cases, do not have translators, lack gender matching of reporting officers, and are difficult to access for migrants.

Detention and Deportation

44. Migrants may be charged as illegal alien workers or simply deported. Those who are charged and are unable to pay the fine end up in detention. With increased crackdowns there has

also been an increase in the number of migrants being detained. These conditions are unsanitary and overcrowded, and migrants may be kept in detention for unspecified periods.³⁸

45. When undocumented migrants are deported there is a lack of proper screening. It is unclear how rigorous the process is, but it is certain to fail a number of potential refugees. Since Thailand has not ratified the Convention on Refugees, there are ethnic groups that should be granted asylum status but who are not recognized, including the Rohingya and Shan.

46. Vehicles used to deport migrants at the border areas are infamous for being unsafe and a number of traffic accidents have occurred with migrants being seriously injured or killed. There is no accountability or compensation provided to those injured or their families.

Children

47. Migrant children born in Thailand are not considered Thai citizens and policies contribute to a growing number of stateless children mostly from Myanmar. (It is believed that each year at least 6,000 migrant children are born in hospitals and many more outside.) Under the Civil Registration Act of (Volume 2) B.E. 2551 (2008), all children born in Thailand are entitled to birth registration, but this does not equate to citizenship and is problematic in practice.³⁹ Prior to this Act only children of documented migrants were entitled to birth registration, but the new Act is not retroactive.

48. In 2005, the Thai government's Ministry of Education issued a Regulation that allows schools to register students not of Thai nationality and without formal documents with a 13 digit ID card that is valid for ten years, however, in part due to inadequate support or promotion by the government, there are low rates of migrant children in school receiving this card.⁴⁰

49. A Cabinet Resolution on 5 July, 2005 established that compulsory education is to be provided to all children residing in the country - even if they do not have proper documentation supporting their legal status.⁴¹ Unfortunately, good intentions are not supported by necessary resources. Schools only implement this policy in areas where NGOs are active (and engage parents, and promote education for the girl child). At least 60,000 migrant children were registered in primary school (grades K-9), which is considerably less than half the total number of migrant children estimated in the country.⁴²

50. Educational services provided by migrant communities and NGOs are not recognized. In some areas, such as Mae Sot, migrant communities have been running their own schools for the last fifteen years but the teachers qualifications are not recognized by formal educational establishments, and education certificates are not recognized from other countries.⁴³

51. Migrant children are being inadvertently separated from their parents when either they or their parents are arrested and deported. A lack of proper screening mechanisms by police or immigration and a lack of social services for these cases results in these children being inappropriately left at borders unattended, or abandoned at their residence in Thailand.

52. Although the Ministry of Health has a directive to provide immunizations to all children in the country, as a result of a lack of data and the inability to reach migrant populations, tens of thousands of migrant children are not properly immunized.

Trafficking and Child Labor

53. Thailand is a destination, source and transit country for trafficking of humans. Victims of trafficking in Thailand come from Myanmar, Cambodia, Lao P.D.R. and China. Men are trafficked into sweatshops and onto long-haul fishing boats.⁴⁴ (Annex 4) Women are trafficked into domestic work, sex work and sweat shops. Migrant child labor in the shrimp processing industry is common.⁴⁵ Women and children are also forced to act as beggars.⁴⁶ Although in June 2008, Thailand enacted the Anti-Trafficking in Persons Act, B.E. 2551, the country was recently placed on the “Tier 2 - Watch List” by the US Government for lack of progress in combating trafficking.

54. A main weakness observed by NGOs is that enforcement officials are unwilling to report trafficking cases including cases of child labor for fear that it will reflect poorly. Police also lack understanding of the laws on anti-trafficking. Concern over the repercussions that exposing trafficking in Thailand’s fishing and seafood industry would have on export markets to Europe and the US may also hamper reporting or public prosecution of cases.

55. Under the Anti-trafficking law 2008 Article 56 (#3) it is illegal for reporters to publicly name the workplace of people who have been trafficked, however this still occurs frequently.⁴⁷

RECOMMENDATIONS

The Civil Society Organizations that contributed to this paper recommend to the Royal Thai Government the following:

International Commitments

56. Ratify the following: i) the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICRMW); ii) ILO Conventions 87 and 98; iii) iv) The Convention on Refugees; v) the ILO Convention on Domestic Work with full recommendations.

National Legislation and Migration Policies

57. Reform laws to allow migrants and other stateless groups to become naturalized citizens, and automatically grant Thai nationality to stateless children.

58. Consult migrant workers and civil society representatives in the drafting and development of migrant policy.

59. Develop a long-range migrant policy that allows all migrant workers and their family members in Thailand to register. In the meantime, ensure that access to the Nationality Verification scheme is monitored, transparent and equitable to all migrants, and ensure that those who do not wish to enter this scheme have another option to remaining in the country legally.

60. Review and amend laws and policies to separate migrants’ registration status from their employer, and allow migrants to change employers freely.

61. Ensure that employers are aware of and compelled to pay migrants at least minimum wage as stipulated for each province, legal rates of overtime pay, and abide by all labor standards.

62. Include all occupations under the full protection of labor laws and benefits, and recognize domestic work and sex work as legitimate occupations by placing them under the protection of labor laws.
63. Implement systematic monitoring of specific industries that are known to use migrant labor (agriculture, domestic work, fishing, seafood processing, and various types of manufacturing especially garment factories) to reduce all forms of exploitation including trafficking. Increase vigilance to arrest and prosecute employers or brokers who violate immigration laws, labor laws or trafficking laws.
64. Amend migrants' benefits or payments under Social Security to fit their situation more appropriately supported by proper contributions made by employers and the government.
65. Develop a system that allows all migrant workers and dependents, regardless of documentation status, to purchase health insurance at reasonable rates, and that ensures access to necessary life saving medicines such antiretroviral treatment for people living with HIV and vaccinations, and guarantees treatment for all accidents by public hospitals.
66. Provide all migrant workers with workman's compensation regardless of their documentation status and uphold obligations under ILO Convention 19 by revoking circular RS0711/W751.
67. Reform the Labour Relations Act, B.E. 2518 (1975) to permit migrants to serve as trade union executive committee members and organize their own trade unions to adhere to ILO Conventions 87 and 98.
68. Ensure that local governments do not impose decrees or regulations that supersede national laws or override guaranteed and enshrined basic rights of migrants including the right to associate; and provide assurance that governors' "Provincial Decrees" have been lifted.

Rights Protection Measures and Mechanisms

69. Increase the number of personnel acting as labor inspectors by including migrant workers and training them to promote labor protection and the well being of all migrant workers, with a focus on occupations that are most vulnerable to exploitative conditions.
70. Put mechanisms in place that will increase access to labor protection and legal services, such as developing channels for reporting labor complaints in migrants' languages and working in partnership with civil society and Lawyers Associations.
71. Issue directives to all employers of migrants to ban the practice of confiscation of migrants' personal documents, and enforce relevant laws protecting the right to possess personal documents.
72. Promote awareness campaigns against child labor in both the general community and among migrants, supported by greater enforcement of relevant laws.
73. Increase access to essential services that protect women's rights, such as proper gender oriented OSCC and reproductive health information and services in migrants' languages.

74. Adopt humane principles and practices in any repatriation of non-Thai populations, including proper screening and protection for those at risk of persecution or who may be victims of trafficking.
75. Assure accessible, expeditious, transparent and inexpensive judicial process for all cases; and improve conditions to uphold the rights and maintain the safety and dignity of victims for victims while cases are being adjudicated.
76. Set up stronger mechanisms to detect and punish law enforcement officers who commit corruption, including extorting money from migrants, smuggling or trafficking.
77. Ensure that there are proper investigations into the use of excessive force in anti-smuggling measures or raids on undocumented migrants.
78. Develop clear and appropriate guidelines to assist migrant children who have suffered rights violations or who have been separated from their parents to access justice or social support services, and to cease unethical deportation practices of migrant children.
79. Clarify and promote with a budget, policies on entering migrant children into Thai schools with registration, and ensure that migrant children receive proper learning certificates; and recognize and support non-profit learning and education centers for migrant children by allowing education certificate to be transferable to the Thai education system.
80. Allow registration of Migrant Health Workers as a formal occupation for migrant workers, and implement a policy that all hospitals and health centers in areas with significant numbers of migrants have Migrant Health Workers.
81. Review the performance of the National Human Rights Commission and set up mechanisms to actively track human rights violations of migrant workers and their dependents by engaging migrant and Thai worker/associations and civil society groups.

-End-

ENDNOTES AND REFERENCES

- ¹ Article XX of the MOU on the “Cooperation in the Employment of Workers” states that countries will “take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, trafficking of illegal workers and illegal employment of workers.”
- ² Available in full at http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.30.Add.1_EFS.pdf
- ³ <http://monnews.org/?p=2259>
- ⁴ In 2004, there were 93,082 migrants below the age of fifteen registered with a general ID (Tor Ror 38/1); the number of migrant children from Burma under the age of 12 years old exceeded 63,000; around 10,000 migrants over the age of 60 also registered. It is estimated that there may be up to 700,000 migrant children in Thailand.
- ⁵ <http://www.mekongmigration.org/?p=557>
- ⁶ http://www.irrawaddy.org/article.php?art_id=18125
- ⁷ A migrant worker with annual registration or under the NV is given seven days to find a new employer before the work permit is considered null and void, and those who enter under the MOU are given three days .
- ⁸ There are numerous rights violations and abuses that arise from arrest, detention and deportation which have been detailed in research by the Mekong Migration Network’s report MMN (2008). Migration in the Greater Mekong Subregion: Resource Book - In-depth Study: Arrest Detention and Deportation. Kowloon, Hong Kong, Mekong Migration Network and Asian Migrant Centre. http://www.mekongmigration.org/publications/Resource_Book_ADD_p.127-153.pdf
- ⁹ <http://news.bbc.co.uk/2/hi/8433299.stm>
- ¹⁰ <http://english.aljazeera.net/news/asia-pacific/2009/02/2009234449163111.html>
- ¹¹ In 2008 alone there were reports that 600 Rohingya had been set out to sea. There are still reports of these incidents occurring. <http://www.irinnews.org/Report.aspx?ReportId=82635> ; <http://paidoo.net/article/191031.html>
- ¹² Permission is automatic only under extreme conditions such as the closing of the business, the death of the employer, or rights-abuses by the employer.
- ¹³ MAP Foundation, (2010), Migrant Movements, Wanida Press http://www.mapfoundationcm.org/pdf/eng/MigrantMovements_1996-2010.pdf
- ¹⁴ Human Rights Watch, “From the Tiger to the Crocodile – Abuse of Migrant Workers in Thailand,” Feb. 2010, NY, NY USA.
- ¹⁵ <http://www.burmanet.org/news/2007/11/26/irrawaddy-pregnant-migrant-workers-fear-repatriation-from-thailand-shah-paung/>
<http://www.bangkokpost.com/news/local/209447/migrants-pay-thais-to-adopt-their-children>
- ¹⁶ As promulgated in the Labour Relations Act, B.E. 2518 (1975).
- ¹⁷ http://www.ghre.org/en/index.php?option=com_content&view=article&id=249:95-documented-migrant-workers-arrested-in-phuket&catid=1:latest-news&Itemid=70
- ¹⁸ http://www.irrawaddy.org/article.php?art_id=15471
- ¹⁹ <http://www.mekongmigration.org/?p=485> ; <http://www.mekongmigration.org/?cat=5> ; also see - Boontinand V.(2010). Domestic Workers in Thailand: their situation, challenges and the way forward. ILO Subregional Office for East Asia (p.18-20)
- ²⁰ <http://www.mekongmigration.org/?p=36>
- ²¹ SolidarityCenter (2008). The True Cost of Shrimp. Washington DC, Solidarity Center: AFL-CIO.; Pearson, E. (2006). Underpaid, Overworked and Overlooked: The realities of young migrant workers in Thailand (Volume 1). The Mekong Challenge. Bangkok, International Labour Organization: Mekong Sub-regional Project to Combat Trafficking in Children and Women
- ²² <http://www.bangkokpost.com/news/local/213115/social-security-failing-migrants>
- ²³ <http://ilo8798.blogspot.com/> ; <http://www.mekongmigration.org/?p=262>
- ²⁴ <http://www.mekongmigration.org/?p=778> ; <http://www.phuketgazette.net/archives/articles/2010/article9297.html>
- ²⁵ p.37-38. MAP Foundation, (2010), Migrant Movements. http://www.mapfoundationcm.org/pdf/eng/MigrantMovements_1996-2010.pdf
- ²⁶ <http://www.dvb.no/english/news.php?id=3027>
- ²⁷ <http://www.hrw.org/node/88950> ; <http://www.phnompenhpost.com/index.php/2010062340028/National-news/thais-clarify-order-to-deport.html>
- ²⁸ <http://www.shanland.org/humanrights/2009/hundreds-of-migrant-workers-in-chiangmai-arrested-in-raid>
- ²⁹ <http://www.mizzima.com/news/regional/3697-activists-urge-investigation-into-deaths-of-migrants.html>
- ³⁰ <http://www.hrw.org/en/node/88580/section/5>
- ³¹ In 2006, “Provincial Decrees” were declared in the Provinces of Phuket, Surat Thani, Ranong, Rayong and Phang-Nga. As an aftermath to this there were reports that police and public citizens took advantage of the decrees and extorted private possessions from migrant workers. <http://www.ghre.org/en/news/79--the-restricted-law-on-migrant-workers-from-phang-nga-province-and-their-lives/>
<http://www.mekongmigration.org/PDF%20for%20Advocacy/Specific%20Cases%20agains%20Migrants%20Resulting%20from%20the%20New%20Decree%20in%20Phang%20Nga%20Province.pdf>
- ³² In Nam Yom Fishing Village, Kuraburi District, Phang Nga Province there have been reports of this. <http://www.ghre.org/en/news/452-burmese-workers-suffer-violation-of-rights-as-thai-police-force-them-to-wear-branded-waistcoats-before-being-allowed-to-travel/>

<http://www.ghre.org/en/news/431-order-issued-that-migrant-workers-are-prohibited-from-riding-bicycles/>

³³ (p.134) http://www.mekongmigration.org/publications/Resource_Book_ADD_p.127-153.pdf ;

<http://www.bangkokpost.com/news/investigation/35965/the-plight-of-migrant-workers> ; http://www.irrawaddy.org/article.php?art_id=17719 ;

<http://www.mysin Chew.com/node/44563>

³⁴ <http://www.mekongmigration.org/?p=41>

³⁵ (p.145-146) http://www.mekongmigration.org/publications/Resource_Book_ADD_p.127-153.pdf

³⁶ <http://www.mekongmigration.org/?p=842> ; http://www.mekongmigration.org/?page_id=126

³⁷ (P. 136) http://www.mekongmigration.org/publications/Resource_Book_ADD_p.127-153.pdf

³⁸ <http://www.phnompenhpost.com/index.php/2010062139985/National-news/thailand-detains-migrants.html>

³⁹ If a child is not born at the hospital, which is common among undocumented migrant women, the mother is able to request a delivery certificate from the village headman, however, there are few migrants aware of this policy and undocumented migrants are afraid of being arrested while traveling to process the document. <http://www.bangkokpost.com/news/local/209447/migrants-pay-thais-to-adopt-their-children>; <http://www.mekongmigration.org/?p=478> ; <http://www.voanews.com/english/news/asia/Children-of-Migrants-in-Thailand-Get-Caught-Without-a-Country---112870424.html>

⁴⁰ The policy is known as “The Evidence in Receiving Students who Study at Formal Education Institutions” whereby schools can register students not of Thai nationality and without formal documents (primarily migrant and stateless children) with the department of Provincial Administration under the Ministry of Interior which then issues the child a 13 digit ID card that is valid for ten years.

⁴¹ <http://www.mekongmigration.org/?p=478>

⁴² http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=72:right-to-education-for-migrants-refugees-and-asylum-seekers-&catid=35:un-resolution&Itemid=73

⁴³ <http://www.irinnews.org/Report.aspx?ReportID=84844>

⁴⁴ <http://www.monnews-imna.com/newsupdate.php?ID=1353>; <http://www.phnompenhpost.com/index.php/2010071540491/National-news/tracing-a-trafficking-journey.html>

⁴⁵ SolidarityCenter (2008). The True Cost of Shrimp. Washington DC, Solidarity Center: AFL-CIO.;

Pearson, E. (2006). Underpaid, Overworked and Overlooked: The realities of young migrant workers in Thailand (Volume 1). *The Mekong Challenge*. Bangkok, International Labour Organization: Mekong Sub-regional Project to Combat Trafficking in Children and Women ;

<http://www.theaustralian.com.au/news/executive-lifestyle/human-bycatch/story-e6frg8jo-1225940157820>

; http://www.ghre.org/en/index.php?option=com_content&view=article&id=293:fish-box-factory-raided-by-immigration&catid=1:latest-news&Itemid=70 ; <http://www.mizzima.com/news/regional/3080-thai-officials-rescue-burmese-workers-.html>

⁴⁶ <http://khmernz.blogspot.com/2010/02/street-sweeps-shine-light-on-thailands.html>

⁴⁷ <http://www.mekongmigration.org/?p=820>

ANNEX 1

Since 2001, there has been an annual, national registration process for migrant workers from the three countries (Lao PDR, Cambodia and Myanmar) who have already entered the country illegally and work in specific occupations. Migrants are only allowed to be hired in low or unskilled manual work such as agriculture, animal husbandry, construction, fisheries and seafood processing, certain types of factories, domestic work, basic service and general laborers.

Currently, migrants in Thailand fall under four categories of legal status: (1) migrant workers who enter the country through legal channels with a passport and visa, (2) migrant workers who entered Thailand illegally and subsequently registered with a work permit and entered the Nationality Verification (NV) process, (3) migrant workers who entered the country illegally and registered under the annual work permit registration but have not entered the NV process, and (4) migrant workers and their dependents who entered the country illegally, have not registered or who have fallen out of the system and whose status is therefore considered as an “illegal alien.” Most children of migrant workers and other dependents are undocumented, although there have been a couple of registrations that have included migrant children.

The following explains migrants under group 3.

In the first “open” registration, in 2004 all migrants including dependents were allowed to register with a general ID with 1.28 million migrants registering. Those registering with a work permit reached 849,522. In following years, only those registered with a work permit were allowed to re-register, meaning new arrivals were not allowed to register. There were a couple of supplementary “open” registrations in years where numbers registering were too low.

Registration entails having to pay 3,800 Baht in registration fees up front (1,900 Bt for a full year work permit, 600 Bt for health exam, and 1,300 Bt for health insurance), which the employer would commonly front and then deduct from migrant workers’ wages. A migrant’s work permit registration status is linked to the employer, and this arrangement with the employer paying up front has encouraged behaviors such as employers withholding migrants’ work permits and ID for fear that “their investment will run away.”

Registration periods are usually only for one-month windows, and they are announced with little forewarning or promotion, usually one month in advance. Numbers of migrant workers registered with work permits under this system have fluctuated from 500,000 to over 1 million. By the end of 2009, there were 1.3 million registered under this system with a work permit (Ministry of Labor, Dec 2009), which had been announced as an open registration and the last annual registration, allowing migrant workers and their family members to register with the general ID. Registration was also required to enter the Nationality Verification system, which had a deadline of February 2010. Due to administrative problems with the government of Myanmar, the process has slow and another annual registration has been announced in early 2011.

ANNEX 2

The following explains migrants under group 1 and 2 from the above list.

In 2003, Thailand signed bi-lateral MOUs with the countries of Cambodia, Lao PDR and Myanmar on the “Cooperation in the Employment of Workers” as a plan to regularize cross-border migrant workers in Thailand. This system is intended to have migrants cross the border with a passport (that is only good for Thailand) and work permit and enter directly to the work site as antidote to illegal/ informal migration. (These documents are only valid for a two-year period that can be renewed for another two years. The migrant then must return to the home country and is not allowed to re-enter the country for three years for employment purposes.)

The system has been in place and functioning since 2006, but the slow processing time, high cost and restrictive regulations that govern conditions of employment (including lack of choice in placement), have resulted in low numbers utilizing this system. Only 78,686 migrants have entered the country legally through this channel since it first started to the present.

Seemingly oblivious to the problems plaguing the system, the Cabinet Resolution of 26 May 2009 declared that all migrant workers must come under the MOU system by becoming registered with a passport and work permit by February 28, 2010 (which was later extended to the end of 2012 due to complications explained below). To allow the many migrants already in the country to receive temporary passports and work permits the government established the Nationality Verification system policy.

Only migrants who already have a work permit under the annual registration mentioned in Annex 1 are allowed to submit for the Nationality Verification process. Once a migrant passes the NV process they are then eligible for a passport (that is only good for Thailand) and a work permit. The governments of Lao P.D.R and Cambodia have sent teams to Thailand’s interior to facilitate this activity. And while there have been concerns that the process is flawed and would result in corruption including large numbers of migrants being rejected, this has not materialized to any significant degree. However, only 45,417 out of the 56,479 Cambodians eligible for the NV process have completed it; while only 34,999 of the 62,792 Lao workers eligible have completed it.

The NV process for migrants from Myanmar has raised serious concerns. The Myanmar Government has recently established a similar system to verify the nationality of migrants from Burma who are already in Thailand. However, the government is unwilling to enter the country. So, they have set up stations at three border points (Kawthoung, Myawaddy, and Tachilek) which migrants must travel to, accompanied by their employer (according to policy). This has become a serious consideration as the related expense of traveling back and forth to the border in order to process the forms is prohibitive as this sort of travel will result in loss of work days, and since employers are unlikely to accompany the migrants, agents have cropped up to provide transportation services and assistance in processing the applications. As these agencies were unregulated and believed to be associated with police and military, prices are highly inflated at

rates of up to 7,000 Baht per person depending on the location. This, in addition to the cost of processing all documents, which is approximately 4,500 Baht (which includes the price for the visa, which was reduced from 2,000 Baht to 500 Baht even those who paid the original price did not receive any refund), making the total expense for migrants from Myanmar to process their NV over 10,000 Baht per person (or around US\$330). The lack of regulation has also resulted in cases of fraud where migrants paid considerable amounts of money and either received fake documents or nothing. (<http://www.bangkokpost.com/print/25873/>)

It is believed that the NV process will not result in significant numbers of migrants from Myanmar registering primarily because of their fear that if they identify themselves to the military government there will be repercussions on their families back home. Informal discussion groups by the Human Rights and Development Foundation showed that migrants from Myanmar, especially from ethnic groups, have great reluctance to enter this system out of concerns over the repercussions to their families back in their home country who may be taxed unnecessarily as a result. Out of the 812,984 migrants from Myanmar who are eligible to enter the NV process, only 308,090 have successfully done so. (December 2010, Ministry of Labor)

There is concern that the government of Myanmar may not use clear standards or transparent processes in the Nationality Verification process of determining who is recognized as a citizen, as few migrants if any have original documents to prove their nationality. This raises a major point of concern in Thailand that there is no policy on what will happen to those migrants who are not recognized as citizens of their country. The insinuation is that those people will be considered stateless, or will remain in the country as illegal migrants. This is especially an issue of concern for certain individuals who may be fleeing political retribution or are members of persecuted ethnic minority groups from Myanmar, including the Shan, Mon, Karen and Rohingya, who have no formal refugee status.

Related Links and video

<http://www.abc.net.au/pm/content/2010/s2961489.htm> (ABC DKBA Mae Sot)

<http://www.youtube.com/watch?v=XZGgNNOV4Sc> (Aljazeera Ranong Trafficking)

<http://english.aljazeera.net/video/asia-pacific/2010/11/20101111425202302.html>

(Aljazeera Ranong Trafficking)

<http://www.youtube.com/watch?v=Ak48JQ5vOPI> (ABC DKBA Mae Sot)

<http://english.aljazeera.net/video/asia-pacific/2010/07/201071723514942402.html> (Aljazeera DKBA Mae Sot)

<http://www.youtube.com/watch?v=bswV3k25FSM> (NV Aljazeera)

ANNEX 3

Health rights are elaborated in the Thai Constitution of 2007, Article 51, which states that “A person shall enjoy an equal right to receive public health services which are appropriate and up to the quality, and the indigent shall have the right to receive free medical treatment from public health centers of the state.” Migrants’ right to health services are articulated more explicitly in the “Certificate of Patients’ Rights” established by the Medical Practitioners Organization of Thailand in 1998. Article 2 states that, “Medical patients have the right to receive medical treatment by a health practitioner without discrimination on the basis of their ethnicity, nationality, religion, society, status, sex, age or medical condition.” Policies and practicalities limit migrants’ access to proper health services.

Documented migrant workers’ access to public health services in Thailand is partially reliant on their registration and health insurance status. Those now coming through the MOU or under the Nationality Verification are covered by the Social Security scheme. However, in a government policy announcement on 8 October 2010, certain occupations in the informal sector that are primarily filled by migrant workers have been explicitly exempted from coverage under the Social Security scheme including: domestic work, fisheries, agriculture, animal husbandry, and sex work.

Migrant workers registered under the annual registration are covered under the National Health Security scheme. This is managed by the local hospitals, the provincial public health office and the Office of the Permanent Secretary of Health and the budget comes from fees migrants pay directly during registration each year.

Health Budgeting for Migrants

Under the National Health Security scheme for the annual registration for a work permit, migrants pay **1,900 Baht** in fees. The fees are broken down as follows:

- **600 Baht** for the health examination
- **1,300 Baht** for health insurance

For every **1,300 Baht** paid by a migrant for health insurance:

- **914 Baht** goes to the designated health facility where the migrant is registered for treatment services:
 - **499 Baht** = outpatient services
 - **415 Baht** = inpatient services
- **206 Baht** goes for prevention and health promotion to the Provincial Health Office and Dept of Medicine.
- **120 Baht** is paid for related administrative fees to the Provincial Health Office and Dept of Medicine; and **10 Baht** goes to the Bureau of Health Service System Development (central government)

Both sets of health insurance coverage for migrant workers have gaps in coverage and limitations. For example, although the National Health Security scheme mentioned above, which migrants directly contribute to, allocates a budget for preventative health there has been little

done for migrants. There is also a national budget for preventative health, but it is not allowed to be used for non-Thais. The budget is earmarked on a per capita basis counting only Thais, and does not count migrants. There are concerns that a shift to the Social Security scheme will obviate preventative health for migrants completely because there is no budget allotted for preventative health. Limited initiatives on preventative health for migrants have meant that there is little being done to promote reproductive health and family planning services for migrants. As a result, unplanned pregnancy is common among migrant women, especially from Myanmar, as is unsafe abortion. Immunization programs only reach a limited number of migrant children, leaving these children susceptible to a variety of diseases, including polio.

Another glaring gap in health insurance coverage for migrants is the lack of provision of antiretroviral drugs (ARV) that treat HIV and AIDS. Even though Thailand produces its own generic first-line ARV, migrants are not provided access to these drugs. Through a grant from the Global Fund to Fight AIDS, Malaria and TB, almost 2,000 migrants are being provided ARV procured from outside of the country. However, this project has a quota that has already been filled, and migrants who currently need ARV are left on a waiting list. There are also concerns over sustainability of relying on outside sources for ARV into the future.

Practical obstacles include the policy that requires migrants to go to a designated health provider in order to utilize their insurance. When employers withhold documents this becomes difficult as they may face police harassment. Hospitals are usually in central location, requiring migrants to take time off from work and pay for transportation. As a result, many migrants may go to a private clinic that is more expensive but convenient, or self-treat at the pharmacy or with traditional remedies.

Once at the hospital migrants find it difficult to communicate as few speak Thai and are unfamiliar with medical terms or biology. Most hospitals and health centers do not have translation services for migrants seeking health information or treatment. While there are a few hospitals that have recruited migrant volunteers to use as translators or peer educators, this is only a few locations and is supported by NGO initiatives and funding. Part of the problem is that there is a government policy that prohibits hospitals (or other government offices) to hire migrants in work that is considered as skilled labor.

Only migrants registered with a work permit receive health insurance. That means over a million undocumented migrant workers and all non-working migrants (dependents including children) are ineligible for purchasing health insurance and must pay for all health services out of pocket. There is an Emergency Welfare Fund that hospitals can use that also pays for poor Thais. Some areas where hospitals have shouldered a large debt for services to undocumented migrants, there have been reports of denial of medical services or insufficient treatment because of migrants' undocumented status and their inability to pay.

ANNEX 4

Trafficking of Fishermen in Thailand

*This is an excerpt taken from the Draft Report: **Trafficking of Fishermen in Thailand**
August 26, 2010, by Philip Robertson on behalf of International Organization for Migration*

Thai fishing vessels ply the territorial waters of dozens of nations, especially Burma (Myanmar), Cambodia, India, Indonesia, Malaysia, and Vietnam, and go as far as Somalia and other parts of the coast of East Africa. Yet for an increasingly sophisticated industry, Thailand's recruitment for fishery workers remains largely based on informal recruitment processes which often lead to abuses and fostering trafficking. Many fishermen are sold to owners of a fishing boat at a certain price per head. The trafficked fishermen must thereafter work to pay off this fee before he will be paid any wages. Depending on the level of the fee the trafficked fisherman could be working from one month to as long as six to eight months before earning any wages that they can keep. In some cases, depending on the predilection of the boat captain and/or owner, trafficked fisherman are kept working on boats for years without pay.

The working conditions on the fishing boats are extremely arduous. Fishermen are expected to work 18 to 20 hours of back-breaking work per day, seven days a week. Sleep and eating is possible only when the nets are down and recently caught fish have been sorted. Fishermen live in terribly cramped quarters, face shortages of fresh water, and must work even when fatigued or ill, thereby often risking injury. Fishermen not performing to the expectations of the boat captain may face severe beatings or other forms of physical maltreatment, denial of medical care and in worst cases, maiming or killing.

Only a small percentage of foreign workers on fishing boats have proper documentation and work permits. On land, there is widespread use of informal "identification cards" which offer some protection from arrest by local police but have no legal basis in either Thai immigration or labour legislation. At sea, on boats leaving Thai waters, the boat captains often hold fraudulent Thai Seafarer (Fisherman) books issued with the photo (but not the real name or bio-data) of the fisherman, and usually do not release these to fisherman while they are in foreign ports, thereby further diminishing any legal protection afforded by this document.

While anti-trafficking legislation has been improved and MSDHS facilities established in Thailand to provide support to male victims of trafficking including fishermen, the current framework requires men who have been trafficked to stay in shelters and does not allow them to work. This acts as a disincentive for male victims of trafficking to be willing to be identified as such. Since victims are not allowed to work to earn money, the system does not respond directly to male victims' needs and results in many male trafficking victims fleeing shelters, which poses an obstacle in promoting collaboration with law enforcement authorities to reduce trafficking.

A common practice reported by Thai, Cambodia and Myanmar fishermen is to hold trafficked fishermen on boats indefinitely, transferring the trafficked crew members between fishing boats (usually ones from the same fleet, same owner). When one boat must return to shore, the trafficked men are forced to get on another boat that is staying at sea and continuing to work.

On May 4, 2010, the Thai Cabinet granted permission for migrant workers who become trafficking victims to be allowed temporary stay and right to work while they are receiving assistance to overcome their deal, and to assist with efforts to prosecute traffickers who victimized them. While the specific regulations for trafficking victims to be allowed to work still must be worked out between the MOL, MSHDS, and Ministry of Interior, this is an important step forward. Writing of the regulations should be done in a participatory manner, with the government shelter directors and representatives of NGOs working with trafficking victims given the opportunity to participate.

This sets up the possibility that fisherman who are rescued from trafficking may be given the opportunity to work while they are staying at the MSDHS shelters. Previously up to this point, fishermen left shelters after they had recovered their health, and returned to the illicit migrant labour market. By so doing, they gave up their legal right to remain in Thailand and undermine efforts to prosecute traffickers in a court of law.
