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SENDING COUNTRIES: SOUTHEAST ASIA

Kingdom of Thailand



A. COUNTRY CONTEXT

Thailand is located on the South-East Asian peninsula between the Andaman Sea and the Gulf of Thailand, and shares its borders with Myanmar, the Lao People’s Democratic Republic (PDR), Cambodia and Malaysia. The population is 64 million, 94 per cent of whom are Thai-speaking Buddhists. Various other ethnic groups, including the Hmong, Mein, and Karen, live in the northern highland region and speak distinct languages. Approximately 5 percent of the population is comprised of Muslims speaking a dialect of Malay known as Pattani, after one of the three southern borders near the Malaysian border where they mainly live. Since January 2004, armed conflict between the Thai Government and Malay separatist groups has claimed the lives of almost 5,000 people in the southern provinces.¹

Thailand is an upper middle-income country² with medium human development.³ Gross national income was placed at 4,420 US dollars per capita in 2011.⁴ The country’s solid economic growth over the past decade is due to its “well developed infrastructure, free-enterprise economy, generally pro-investment policies, and strong export industries,” according to a report by the US Central Intelligence Agency. Exports of machinery, electrical components, agricultural products and jewellery are main drivers of the economy and account for more than half of gross domestic product.⁵

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- 1 Human Rights Watch, “Thailand: Southern Insurgents Bomb Nightspots”, New York, 2011.
Available from: www.hrw.org/news/2011/09/20/thailand-southern-insurgents-bomb-nightspots
 - 2 Available from: <http://data.worldbank.org/country/thailand>
 - 3 Available from: <http://hdrstats.undp.org/en/countries/profiles/THA.html>
 - 4 Available from: <http://data.worldbank.org/country/thailand>
 - 5 US Central Intelligence Agency, *The World Factbook 2011 – Thailand*, (2011).
Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>

Human Development Index (2011)	Medium human development ⁶
Stock of immigrants (2010)	1 157 300 ⁷
Annual growth rate of immigrants	1.6% (1960-2005)
Immigrants' share of population (2010)	1.7 % ⁸
Proportion of female immigrants (2010)	48.4 % ⁹

Thailand is a hub for outgoing, incoming and transiting migrant workers. It is also a major source, destination and transit country for trafficking of men, women and children. In this paper, the discussions centre on Thailand as a receiving country for migrant labour. However, it also discusses the role of the Government in safeguarding the rights of Thai workers who leave the country.

The majority of low-skilled, low-wage migrant workers in Thailand originate from Myanmar, the Lao PDR and Cambodia, and are mainly employed in sectors related to fishing and seafood processing, construction, agriculture, textiles and garment making, and household help.¹⁰ The Government has indicated that illegal immigration is one of its biggest challenges, estimating that in Thailand there are more than one million illegal migrants from Myanmar, over 110,000 from the Lao PDR and over 120,000 from Cambodia.¹¹

In order to better regulate the flow of migrant labour into the country, the Government enacted a registration process requiring workers from Myanmar, the Lao PDR and Cambodia to have their nationality verified by their country of origin before being issued a work permit. Those who register may work and live temporarily in Thailand for two years and access social security and healthcare benefits.¹² However, according to International Organization for Migration, the national verification system "has been beset by operational problems, and by the end of February 2011, only 550,000 migrant workers had completed the nationality verification process."¹³ Despite the risks, many migrant workers still prefer to use informal processes for securing work, as they find the formal registration process complicated and time consuming, and many cannot afford the 3,800-baht (115-dollar) registration.¹⁴

6 UNDP, *International Human Development Indicators – Thailand* (webpage, n.d.). Available from: <http://hdrstats.undp.org/en/countries/profiles/THA.html>

7 World Bank, *Factsheet - Thailand* (webpage, n.d.). Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Thailand.pdf>

8 Ibid.

9 Ibid.

10 International Organization for Migration, *Thailand Migration Report 2011*, (Bangkok, 2011), p. 12. Available from: www.un.or.th/documents/TMR-2011.pdf

11 Dr Chanvit Tharathep, Senior advisor to the Ministry of Public Health, *Migrants Health in Thailand*, (n.p., n.d.). Available from: www.gfmd.org/documents/switzerland/moldova/gfmd_swiss11_moldova_presentation_s3-03b-Thailand-Tharathep.pdf

12 US State Department, *Human Rights Report 2011 – Thailand* (2011), p. 54. Available from: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

13 International Organization for Migration, *Thailand Migration Report 2011*, p. xii.

14 Committee For Asian Women (CAW), *Thailand: the Tribulation of Migrant Workers*, (Bangkok, 13 December 2011). Available from: www.cawinfo.org/wordpress/?page_id=16#intro

The Government has attempted to improve this situation and facilitate legal status for migrants by: establishing one-stop service centres in Bangkok and 16 provinces; operating a migrant worker hotline; distributing pamphlets on migrants' rights, and providing information through a website in Thai and other languages.¹⁵ The Government also held new rounds of registration in 2011 and 2012 to give irregular migrant workers renewed opportunities to regularize their status.¹⁶

B. KEY GENDER AND HUMAN RIGHTS ISSUES

Thailand has ratified or acceded to eight of the nine core international human rights treaties. It has yet to accede to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). Thailand acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985 and its Optional Protocol in 2000. In 2006, the CEDAW Committee urged Thailand to withdraw its reservation to article 16 of the CEDAW, as it was contrary to the object and purpose of the Convention. In response, on 18 July 2012, the Government withdrew the reservation.

In its 2006 Concluding Observations the CEDAW Committee expressed appreciation for Thailand's commitment to gender equality. It noted in particular (1) the assignment of a high-ranking official as Chief Gender Equality Officer and the appointment of a Gender Focal Point to promote gender equality in every ministry and department, and (2) temporary special measures taken to achieve gender balance in the National Human Rights Commission and the Village and Urban Fund Committee. Greater respect for the protection and promotion of women's human rights in Thailand can also be seen in recent legal frameworks for gender equality. For example: the 2007 Constitution of Thailand guarantees equal rights and protection between women and men; the Name Act was amended to allow women the right to choose a family name; the Penal Code has been amended to criminalize marital rape; the Civil Code now provides women and men equal grounds for divorce; the 2007 Protection of Victims of Domestic Violence Act provides for protection and rehabilitation of victims; the Prevention and Suppression of Human trafficking Act was passed in 2008; and drafts of the Promotion of Opportunity and Equality Act are being reviewed and pending submission for review by the Parliament. Despite this progress, gender inequalities remain, particularly among certain groups of women including Muslim women in the deep South, the hill tribe women in the North, HIV positive women, women with disabilities and migrant women workers.¹⁷

Human Rights Watch has documented the abuses suffered by migrants, including migrant women, in the workplace. According to its 2010 report *From the Crocodile to the Tiger: Abuse of Migrant Workers in Thailand*, "workers who sought to organize and collectively assert their rights were subject to intimidation and threats by their employers, and retaliation if they filed grievances with Thai authorities. Both registered and unregistered migrant workers complained

15 US State Department, *Human Rights Report 2011*, p. 54.

16 International Organization for Migration, *Thailand Migration Report 2011*, p. xii.

17 Available from: www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf

of physical and verbal abuse, forced overtime and lack of holiday time off, poor wages and dangerous working conditions, and unexplained and illegal deductions from their salary. When migrant workers miss a day or more of work, they often forfeit whatever outstanding wages are owed them. And migrant workers who might complain of mistreatment must always be on guard against employers who would take advantage of their lack of citizenship by calling immigration officials, police, and even well connected thugs who act with impunity.”¹⁸

C. KEY STAKEHOLDERS

The Ministry of Labour (MoL) is responsible for the oversight of labour administration and protection, skill development, and the promotion of employment. Under the MoL is the Department of Employment whose Office of Foreign Workers Administration oversees and monitors foreign workers in Thailand.¹⁹ The Overseas Employment Administration Office is part of the Department of Employment and is responsible for providing overseas employment opportunities for Thai workers free of charge and assists overseas employers with hiring workers from Thailand.

The National Human Rights Commission (NHRC) of Thailand is mandated with: examining allegations of human rights violations and proposing remedial measures; submitting annual reports on the human rights situation to the government; proposing revisions of laws, rules or regulations to promote and protect human rights; disseminating information and promoting education and research in human rights; cooperating and coordinating with government agencies, non-governmental organizations (NGOs) and other human rights organizations; and submitting cases to court regarding human rights violations.²⁰

Migrant Assistance programme (MAP) works to empower migrant communities from Myanmar living and working in Thailand. MAP’s programmes include initiatives focused on community health and empowerment and labour rights. MAP also provides information to migrant parents on how to register the birth of their children and assists in contacting relevant authorities and providing translation and facilitation for the parents.²¹

December 18 is a Thai-based NGO that functions as an international resource centre on the human rights of migrant workers. In 2006, it launched Radio 1812, a global radio marathon that takes place in the context of International Migrants Day and brings the stories and experiences from migrants to radio audiences across the world. In 2008, 175 radio stations from 48 countries in all world regions took part in the event.²²

18 Human Rights Watch, *From the Crocodile to the Tiger: Abuse of Migrant Workers in Thailand*, (n.p, February 2010), p. 3. Available from: www.hrw.org/reports/2010/02/23/tiger-crocodile

19 Thailand, Ministry of Labour, Department of Employment, Office of Foreign Workers Administration, *Working of Alien Act*, (BE 2551/2008). Available from: <http://wp.doe.go.th/sites/eng/index.html>

20 Available from: www.nhrc.or.th/2012/wb/en/contentpage.php?id=2&menu_id=1&groupID=1&subID=2

21 Available from: www.mapfoundationcm.org/eng/index.php?option=com_content&view=article&id=22&Itemid=5

22 Available from: www.december18.net/history-and-achievements

CARAM Asia is a regional network concentrating on migration and health issues, with members spread across South-East Asia, North-East Asia, the Gulf and Middle East. Its main focuses are Participatory Action Research (PAR), national and regional advocacy, coalition building, and capacity building for CBOs and NGOs working with migrant communities. CARAM Asia has Special Consultative Status with the Economic and Social Council of the United Nations.

The Mekong Migration Network, with offices in Hong Kong and Chiang Mai, Thailand, monitors policies, issues and responses concerning migration in the Mekong region, and serves as a venue where migrant advocates can effectively exchange information and analysis.

Action Network for Migrants (ANM) is a network of non-governmental organizations in Thailand that work with Burmese, Lao and Cambodian migrants. ANM serves as a watchdog and advocacy organization to improve the rights, working conditions, and health of documented and undocumented migrants. ANM organizations have partnered in contributing to legal victories for migrant factory labourers as well as representing migrant interests at conferences and policy discussions.

The Labour Rights Promotion Network (LPN) is a grassroots organization founded in 2006 to promote the integration of migrant workers and their families into Thai society. LPN works to develop mechanisms for protection of rights and redress for victims of violations, build capacity among migrant worker networks, and promote education among migrant workers and their families, including the right to health, safe work, education and social services.

The State Enterprise Workers' Relation Confederation is a confederation of 43 state enterprise unions in Thailand representing over 170,000 members and affiliated with the International Trade Union Confederation (ITUC). It has been a strong advocate of migrant workers' rights and has filed a petition before the International Labour Organization's (ILO) Committee on Experts in the Application of Standards regarding discriminatory treatment of migrant workers in Thailand, particularly in respect of denial of access to the Workers Compensation Fund.

D. RATIFICATION RECORD

The following table illustrates Thailand's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	9 August 1985 a
ICCPR	29 October 1996 a
ICESCR	5 September 1999 a

ICERD	28 January 2003 a
ILO C29 Forced or Compulsory Labour	26 February 1969
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	8 February 1999
ILO C105 Abolition of Forced Labour	2 February 1969
ILO C111 Discrimination in Employment	-
ILO C138 Minimum Age for Admission to Employment	11 May 2004
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	16 February 2001

E. COMPLIANCE WITH CEDAW

In its 2006 Concluding Observations, the CEDAW Committee commended Thailand for its efforts to implement the CEDAW and the Beijing Platform for Action. The Committee specifically expressed its appreciation of Thailand's efforts to integrate the standards of the Convention into domestic laws and policies in areas related to trafficking, prostitution, nationality, employment, and education. The Committee also noted, however, that while these efforts have increased gender equality in the country, more work still must be done to counteract the prevalence of traditional, discriminatory attitudes toward women and the under-representation of women in politics and decision-making structures, including the judiciary. The Committee recommended that sensitization programmes should be implemented, and school curricula revised, in order to promote gender-progressive views and actions. The Committee also urged the Government to enact specific anti-discrimination legislation to allow women to vindicate the right to equality as guaranteed in both the Thai Constitution and CEDAW.

DISCRIMINATION

The 2007 Constitution (article 30) provides that all persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability,

physical or health condition, personal status, economic or social standing, religious belief, education or political view, shall not be permitted. While article 30 guarantees equal rights between men and women and prohibits discrimination, it does not explicitly define discrimination against women in accordance with article 1 of the CEDAW, which prohibits both direct and indirect discrimination and guarantees substantive equality for women.²³

The CEDAW Committee has criticized Thailand for the lack of an adequate definition of discrimination in legislation. To address this, Thailand has drafted a gender equality law, titled the Promotion of Opportunity and Gender Equality Act, which is meant to elaborate upon the Thai Constitution's provisions on gender equality. The draft law establishes a legal framework for advancing equal opportunities and eradicating gender discrimination in the public and private sectors. The law is an example of a good practice in that it explicitly extends the meaning of discrimination to indirect as well as direct discrimination. However, the law does not explicitly define the breadth of the anti-discrimination provision, and does not expressly guarantee "substantive equality," or equality of results – one of the core principles of the CEDAW. As the CEDAW Committee has noted, "[a] guarantee of substantive equality is critical in order to address the structural discrimination embedded in institutions as a result of past discrimination."²⁴

In its Concluding Observations the CEDAW Committee also expressed concern at the prevalence of stereotypical attitudes about the role and responsibilities of women and men in family life and in Thai society. The Committee noted that, "such stereotypes undermine women's social status, present a significant impediment to the implementation of the Convention, and are a root cause of the disadvantaged position of women in a number of areas, including the labour market and in political and public life."²⁵ The CEDAW Committee has encouraged States Parties to ensure that the media promotes gender equality and projects positive images of women. However, Thailand's draft gender equality law does not incorporate any provisions regarding the role of the media.²⁶

Thailand's labour laws and policies discriminate against women migrant workers in a number of ways. Specifically, while the Thai Labour Protection Act 1998 and amendment of 2007 require equal treatment of all employees, including migrant workers irrespective of their legal status, domestic workers are excluded from many provisions of the act, including provisions on: the maximum number of hours worked each day; maternity leave; prohibitions on termination due to pregnancy; and minimum wages. This has a discriminatory impact because the vast majority of domestic workers in Thailand are women.²⁷ In a recent positive move however, the Labour Ministry did enact new regulations ensuring that domestic workers receive at least one day off each week, and overtime pay for work on days off or national holidays. Employers must now also pay domestic workers' wages during sick leave.²⁸ This is an example of a good

23 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Thailand* (CEDAW/C/THA/CO/5) (Thirty-fourth session, 2006). Available from: www2.ohchr.org/english/bodies/cedaw/

24 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries*, (March 2010), pp. 3-4. Available from: http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf

25 CEDAW Committee, *Concluding Observations*, para. 25.

26 UNIFEM, *Gender Equality Laws*, p. 5.

27 International Labour Organization, *Domestic Workers in Thailand: their situation, challenges, and the way forward* (n.p., January 2010), pp. 22-26. Available from: www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_120274.pdf

28 Opinion piece, "Domestics get a break", *Bangkok Post*, 14 November 2012. Available from: <http://bangkokpost.com/opinion/opinion/320278/domestic-help-given-a-break>

gender-sensitive rights-based practice in line with article 11 of the CEDAW, which ensures women equal remuneration, including benefits, and the right to equal treatment with respect to work of equal value.

Additionally, proposed Ministry of Labour regulations require all migrant women who become pregnant to leave their job and return to their country of origin to give birth. This regulation is discriminatory as it deprives migrant women of equal work opportunities and income. Because migrant women often are not able to access adequate reproductive health services, the rule may also cause women to undertake unsafe abortions in order to keep their job, which can cause serious injury, disability or death. In recognition of the discriminatory effect this type of regulation has on women, the CEDAW Committee has called upon States Parties to lift bans that prohibit women migrant workers from getting pregnant.²⁹ In response to harsh criticism, the Department of Employment recently proposed amending this regulation to allow pregnant migrant workers to remain in their jobs and give birth in Thailand. However, it is unclear when the change will be put into practice.³⁰

CEDAW article 11 guarantees women the right to all the same employment benefits and conditions as men, and requires States Parties to take all appropriate measures to ensure women job security on an equal basis with men. Thus, domestic workers must be afforded the same protections under the labour laws as other occupations, and migrant women cannot be dismissed from jobs due to pregnancy.

POLICY MEASURES

Thailand has enacted several policies related to migrant labour, including a registration process and amnesties to “regularize” workers from Cambodia, Myanmar and the Lao PDR. The Government has also made efforts to better facilitate the legal import of migrant workers from neighbouring countries in order to respond to the low-skilled labour needs of employers in Thailand. One think tank has described the efforts to register migrants with “irregular” status in Thailand as commendable “as one potential means to address systematic exploitation of migrant workers in Thailand. The Government’s moves forward in terms of prioritising legal worker import and nationality verification can likewise be praised as potential ways to ensure regularised migration and provide migrants with a stronger status that can empower them to demand rights and better treatment at the hands of their employers”.³¹

Other policies and programmes designed to protect migrant workers have included:

- Providing interpreters in the areas of the country that hire large numbers of migrant workers;

29 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 26(a). Available from: www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

30 *The Nation*, “Government to Allow Pregnant Migrant Workers to Give Birth Here”, Bangkok, 24 July 2012. Available from: www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html

31 Andy Hall, Mahidol Migration centre, *Low Skilled Migration and Thailand: Prospects for 2011*, (Bangkok, 1 July 2011), p. 5. Available from: www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC_3_DGD2011.pdf

- Coordinating with embassies to help migrant workers file cases against abusive employers;
- Producing and distributing pamphlets for migrant workers about their basic rights under the Labour Protection Act in origin-country languages;
- Using various media to provide information to employers and migrant workers about legal issues and places for assistance when their rights have been violated;
- Organizing special labour inspections at businesses to protect migrant workers in Bangkok and nearby provinces;
- Providing legal services and receiving complaints through the 24-hour telephone hotline; and
- Providing assistance and welfare to migrant workers who have been deceived with cooperation from the Ministry of Social Development and Human Security.³²

These are good rights-based policies as they aim to protect migrant workers' rights to information, safe workplaces, access to justice and redress. However despite these efforts, women migrant workers in Thailand continue to be vulnerable to discrimination, exploitation, abuse and trafficking.³³ To remedy these problems and better comply with obligations under the CEDAW, the Government must enact a long-term migration policy that promotes and protects the human rights of women migrant workers, and better recognizes their contribution to Thai society. Specifically, policies must increase migrant women's awareness of their rights and better enable them to avail themselves of redress mechanisms in the event of abuse. Additionally, gender-sensitive policies should aim to improve the social status of women and combat gender biases that result in migrant women working in mainly stereotypical female jobs such as domestic work, which is largely exempt from legal protection.

TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Thailand is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. Most Thai victims abroad are sex-trafficking victims who migrated for legitimate employment but were deceived into paying high recruitment fees and incurring large debts, which made them susceptible to exploitation at their destination. As a result, the CEDAW Committee has called upon Thailand to address the root cause of trafficking by increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as measures for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking.³⁴

There are also tens of thousands of foreign victims from neighbouring countries who have been trafficked into Thailand and forced, coerced, or defrauded into labour or commercial sexual exploitation. As a result, Thailand has been placed on the US State Department's Tier-2 Watch List for a third consecutive year. However, "it was granted a waiver from an otherwise

32 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment (2005)*, p. 47. Available from: www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf

33 International Organization for Migration, *Thailand Migration Report 2011*, pp. 114-5.

34 CEDAW Committee, *Concluding Observations*, para. 28.

required downgrade to Tier 3 because the Government has a written plan, that, if implemented, would constitute making significant efforts to meet minimum standards for the elimination of trafficking and is devoting significant resources to that plan.”³⁵

The TIP Report notes that foreign migrants in Thailand, most of whom work in fishing-related industries, low-end garment production, factories, and domestic work, are particularly at risk of being trafficked because unscrupulous employers withhold their travel documents, migrant registration cards, and work permits. Undocumented migrants are even more at risk “due to their economic status, education level, language barriers, and lack of knowledge of Thai law.” According to the Report, Thailand’s migrant labour policies increase migrants vulnerability to trafficking and create disincentives for victims to communicate with authorities, particularly undocumented workers. Additionally, “direct involvement in and facilitation of human trafficking by law enforcement officials reportedly remain a significant problem.”³⁶

The UN Special Rapporteur on Trafficking in Persons visited Thailand in August, 2011 and also noted Thailand’s “weak enforcement of its anti-trafficking framework, inadequate efforts to address trafficking of men, endemic corruption among law enforcement officials, and a systemic failure to properly identify victims and protect their rights and safety.”³⁷

PROSECUTION

In its 2006 Concluding Observations, the CEDAW Committee remained concerned about the persistence of trafficking and exploitation of women and girls in Thailand and the continuing phenomenon of sex tourism in the country. Subsequently, in 2008, Thailand enacted the Anti-Trafficking in Persons Act, which prohibits all forms of trafficking and prescribes penalties ranging from four to 10 years’ imprisonment. With the passage of the Act Thailand brought its law into compliance with international standards including Article 6 of the CEDAW, which obligates States parties to “take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”

Weak enforcement of the law, however, remains a major problem. For example, in cases of labour exploitation of migrants, the Government often facilitates informal dispute resolution rather than criminally prosecuting employers who have violated the law.³⁸ Additionally, corruption among Thai law-enforcement personnel allows human trafficking to prosper. Women and girls from the Lao PDR, Myanmar, Cambodia, China, Central Asia and eastern Europe who have been trafficked into Thailand to work in commercial sex venues report having their earnings withheld, being forced to provide sexual services to local police and authorities without payment and being subjected to physical abuse.³⁹ According to the TIP

35 US State Department, *Trafficking in Persons Report 2012 – Thailand* (2012). Available from: www.state.gov/j/tip/rls/tiprpt/2012/, p. 338.

36 *Ibid.*, p. 339.

37 *Ibid.*

38 *Ibid.*, p. 339.

39 Asia Regional Trafficking in Persons Project (ARTIP), *Trafficking in Persons and the Criminal Justice Sector: Country profiles*, (webpage, n.d.). Available from: www.artipproject.org/artip-tip-cjs/tip-country-profiles.html

Report, there are “credible reports that officials protected brothels, other commercial sex venues, and seafood and sweatshop facilities from raids and inspections, and that some officials engaged in commercial sex acts with child trafficking victims.”⁴⁰

PROTECTION

Thai law protects trafficking victims from being prosecuted for acts committed as a result of being trafficked, and the Government has developed screening procedures to help officials identify victims among vulnerable populations, including undocumented migrants in detention. However, according to the TIP report “serious deficiencies in the government’s victim identification efforts” lead to trafficking victims being unidentified. For example, only 56 victims of trafficking were identified among the thousands of undocumented migrants deported in 2011. The Report surmises that front-line officials are not adequately trained to identify victims, and distrust of officials and a fear of negative legal consequences stop many victims from coming forward.⁴¹ When victims are properly identified they are referred to one of nine regional shelters run by the Ministry of Social Development and Human Security (MSDHS), where they are meant to receive counselling, legal assistance, and medical care. However, according to the TIP Report, the shelters do not always have the human resource capacity to provide adequate assistance.⁴²

On a positive note, the Ministries of Labour and Interior issued regulations in 2011 that allow some foreign victims who initiate legal proceeding against their traffickers the right to a six-month work permit and visa, which is renewable for the duration of their court case. This is a good rights-based practice that will provide incentives for more victims to cooperate with officials in prosecuting traffickers. Unfortunately however, as the TIP Report noted, “high legal costs, language, bureaucratic, and immigration barriers, fear of retribution by traffickers, distrust of Thai officials, slow legal processes, and the financial needs of victims effectively prevented most victims from participating in the Thai legal process.”⁴³

PREVENTION

The Government has made efforts to prevent human trafficking, including: awareness raising, particularly among targeted high risk industries; regular meeting of the Anti-Trafficking in Persons Committee; distribution in 2011 of 150,000 leaflets in migrant workers’ languages that educate workers on their rights and their employers’ obligations to them; training of 49 translators to help respond to foreign-language queries to the anti-trafficking hotline; and adoption in March 2012 of a two-year national action plan to guide future actions.⁴⁴ These are

40 US State Department, *Trafficking in Persons Report 2012*, p. 339.

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

good practices that ensure women migrant workers have access to information about their rights, and mechanisms for seeking assistance when rights are violated.

Migrant worker advocates, however, have expressed concern that the government's process for registering and legalizing migrant workers may hinder efforts to prevent trafficking. Specifically, fees associated with the Nationality Verification programme, as well as costs imposed by poorly regulated and unlicensed labour brokers, may increase the vulnerability of migrant workers to trafficking and debt bondage.⁴⁵ Pursuant to General Recommendation 26, "States Parties must adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. They must also closely monitor recruiting agencies, and prosecute them for acts of violence, coercion, deception, or exploitation."⁴⁶

EMPLOYMENT

Thailand's strong economy, high levels of education and low levels of unemployment have made it increasingly difficult for employers to recruit Thai nationals into low-wage, labour-intensive work. This combined with the fact that wages in neighbouring countries are significantly lower, has encouraged millions of people from Myanmar, Cambodia and the Lao PDR to migrate to Thailand for work. According to a Human Rights Watch report, "many Thai industries such as fishing and seafood processing, construction, agriculture and animal husbandry, and manufacturing (garment, textiles and footwear) have essentially become dependent on documented and undocumented migrant as the core of their workforce."⁴⁷ Despite the fact that these low-cost workers help support Thailand's growing economy, migrant workers are often viewed as a threat to Thai communities, the interests of Thai workers and national sovereignty. This view has shaped government policies on migration, which many argue violate migrant workers human rights.⁴⁸

Employment of foreign workers is governed by the Alien Employment Act of 2008 which limits the occupations in which foreigners can work, giving priority to Thai nationals. Foreigners wishing to work in Thailand must obtain a valid visa and a work permit from the Ministry of Labour's Department of Employment. Acknowledging that many migrants enter the country through informal channels, the Government periodically opens registration for irregular migrants from Myanmar, the Lao PDR and Cambodia, which provide migrant workers with one year of legal status in Thailand. Following registration, migrant workers and employers who wish to hire them, may seek a work permit from the Ministry of Labour. Registration opportunities for irregular migrant workers to legalize their status constitutes a good rights-based practice. However, Thailand's registration process has been criticized for being too complicated and expensive for many irregular migrants to take advantage of, who therefore remain vulnerable to the abuse and exploitation that often results from illegal

45 Ibid.

46 CEDAW Committee, *General recommendation No. 26*, para. 26(h).

47 Human Rights Watch, *From the Crocodile to the Tiger*, p. 19-20.

48 Ibid.

status.⁴⁹ Additionally, because those migrants who do register are compelled to remain with the employer who legally registered them, or face immediate arrest and deportation if they cannot secure new employment within seven days, many fear complaining to authorities about the abuse they endure.⁵⁰ In recognition of this problem, the CEDAW Committee has urged States parties to the Convention to “introduce flexibility in the process of changing employers or sponsors without deportation in cases of workers complaining of abuse.”⁵¹

All employees in Thailand, including migrant workers are covered under the 1998 Act on Labour Protection (amended in 2007). However some occupations, such as domestic workers, are excluded from certain provisions of the Act. The Labour Protection Act requires employers to ensure that all employees, including domestic workers, are provided with: advance notice of termination of contracts; transportation costs for migrant workers to return to their country of origin; protection from sexual harassment; equal pay for equal work; and payments of salaries at least once a month.

However, domestic workers are excluded from a number of protections and entitlements specified under the Labour Act, including:

- Arrangements for basic welfare services such as drinking water and toilets, as well as basic medical care for employees. It is left up to the employer whether or not to provide these services to their domestic help.
- Entitlement to minimum wage and overtime pay, and protections from wage deductions.
- Entitlements to: a maximum number of work hours per day; mandatory one day off per week; national holidays; sick leave; personal leave; maternity leave; or leave for personal development/training – all of which are provided to other employees covered under the Labour Act. Instead, work hours and leave arrangements must be agreed upon between domestic workers and their employers.
- Social security benefits.

Domestic workers make up a large percentage of women migrant workers in Thailand. According to migrant worker advocates, many of these women incur large debts to come to Thailand to work, and once they arrive are often subjected to exploitative conditions, including “having their wages withheld, being housed in unacceptable accommodation, having their freedom of movement and association restricted, being expected to fulfil unrealistic work demands and regular exposure to domestic (and often sexual) violence.”⁵²

Thus excluding domestic workers from provisions of the Labour Law leaves women vulnerable to exploitation and abuse in the workplace and violates article 11 of the CEDAW which obligates States Parties to take all appropriate measures to eliminate discrimination in employment. In General Recommendation 26, the CEDAW Committee explicitly calls upon States Parties to the CEDAW to “ensure that constitutional and civil law, as well as labour codes provide to women migrant workers, the same rights and protection that is extended

49 Ibid.

50 Ibid.

51 CEDAW Committee, *General recommendation No. 26*, para. 26(c)(ii).

52 ARTIP, *Trafficking in Persons*.

to all workers in the country. In particular they should ensure that occupations dominated by women migrant worker such as domestic work are protected by labour laws including wage and hour regulations, health and safety codes, holiday and leave regulations.”⁵³

BILATERAL AGREEMENTS

In 2003, Thailand signed Memoranda of Understanding (MoUs) on Cooperation in the Employment of Workers with the Lao PDR, Cambodia and Myanmar. These were signed to better promote formal procedures for employment, improve protection of migrant workers in Thailand and undermine irregular migration.⁵⁴ Under the MoUs, Thailand “shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country” and that workers are “entitled to wages and other benefits due for local workers based on principles of non-discrimination and equality of sex, race and religion.”⁵⁵

The creation of bilateral MoUs between countries of origin and countries of employment provides effective government-to-government channels of communication on migration, sets out methods of migration management to be jointly implemented, and guarantees migrant workers coverage under the Labour Law.⁵⁶ In General Recommendation 26 the CEDAW Committee encourages “States Parties who are sending, receiving and transit countries to enter into bilateral or regional agreements or memoranda of understanding protecting the rights of women migrant workers.”⁵⁷

However, despite the potential benefits these MoUs have for migrants and employers, they have not been effectively implemented and regulated, which has resulted in the continuing exploitation of migrant workers in Thailand.⁵⁸ The Mahidol Migration centre think tank, in a 2012 report, argued that significant changes are needed, including:

- “Individuals/agents involved in the MoU process should be regulated through a transparent system of accountability, registration and supervision;
- Costs of the MoU process should be significantly reduced and Thai employers should bear financial responsibility rather than shifting the burden to workers, as required by the model employment contract;
- Effective recruitment of workers should be undertaken using public awareness raising in Myanmar and amongst existing Myanmar migrants and their communities in Thailand;
- Information campaigns for the general public and pre departure training for departing migrants should be implemented to ensure workers understand employment contract, costs and the general situation in Thailand;
- Workers’ temporary passports, Thai work permits, Myanmar national ID cards and Myanmar

53 CEDAW Committee, *General recommendation No. 26*, para. 26(b).

54 Mahidol Migration centre, *Experiences of Myanmar Migrant Workers in Thailand with the MOU Import Process*, (Bangkok, 6 May 2012), p. 3. Available from <http://oppenheimer.mcgill.ca/Experiences-of-Myanmar-Migrant>

55 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 140.

56 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

57 CEDAW Committee, *General recommendation No. 26*, para. 27(a).

58 Mahidol Migration centre, *Experiences of Myanmar Migrant Workers in Thailand*, p. 3.

labour cards should not be confiscated by anyone as these are the personal property of the worker;

- Migrants entering Thailand legally should not have their residence status tied only to one employer and they should be allowed to change employers to prevent forced labour conditions arising;
- No restrictions should be placed on the freedom of movement of migrants legally coming into Thailand;
- The MoU process should be made simpler and quicker to avoid long waiting time for migrants at borders and alternatives to using border areas only should be considered to reduce cost and distance travelled;
- All workers should be given their employment contract in a language they understand and its contents should be properly explained to them before signing;
- Myanmar should provide effective consular services to migrants in Thailand and advertise this assistance;
- Arrangements should be made between both countries to avoid multiple health checks.”⁵⁹

MINIMUM WAGE AND MINIMUM AGE

Minimum Age

Section 44 of the Labour Protection Act prohibits employers from hiring children under the age of 15 for work, and allows only certain types of jobs for ages 15-18 years. However, poor monitoring has led to instances of both employers and employees lying about the age of migrant workers. Specifically, there have been reports of girls below the age of 15 being employed as domestic workers, and underage children working on fishing boats and in seafood processing.⁶⁰ Thailand is a Party to the Convention on the Rights of the Child (CRC), which recognizes the rights of children to be “protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” The CRC also obligates States Parties to “provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”⁶¹ Thus, Thailand must effectively enforce minimum age laws in order to better protect migrant children, and meet its obligations under the CRC.

Minimum Wage

The minimum wage in Thailand is determined by the National Wage Committee. In April, 2012 the Government increased the daily minimum wage to 300 baht in seven provinces including Bangkok. However, while the Thai Labour Protection Act states that all labourers,

59 Ibid.

60 Raks Thai Foundation and others, *A Joint Submission on Migrant Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review* (Bangkok, October 2011), para. 24. Available from: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS4-JointSubmission4-eng.pdf>

61 UNICEF, *Convention on the Rights of the Child*, art. 32. Available from: www.unicef.org/crc/

including migrant workers, are protected equally under the law, there are regular reports of migrants receiving considerably less than minimum wage and no overtime payment.^{62,63} For example, in 2011, women from Myanmar working in garment factories in Mae Sot in northern Thailand reported receiving only 69 baht (2.30 dollars) for a 10- or 11-hour working day. Yet the legal minimum wage in Mae Sot at the time was 153 baht (5.10 dollars) a day.⁶⁴ Lack of enforcement of laws protecting migrant women workers is in violation of the CEDAW and contradicts the CEDAW Committee's General Recommendation that States Parties design monitoring systems to ensure that employers respect the rights of all migrant women workers.⁶⁵

As stated earlier, domestic workers are not covered by the Labour Law and thus are not legally entitled to a minimum wage. Excluding occupations that are filled predominantly by women, such as domestic help, from minimum wage laws is discriminatory and conflicts with article 11 of the CEDAW, which requires States parties to uphold women's rights to equal remuneration in employment. In its General Recommendation 26 the CEDAW Committee notes that women migrant workers who are not protected by labour laws are even more vulnerable than local women because they have fewer options for obtaining other work, and may even become undocumented if they leave their job. Additionally, the Committee observes that "non-migrant local women workers may have some economic protection by way of family support if they are unemployed, but women migrant workers are less likely to have such protection. Women migrant workers thus face hazards on the basis of sex and gender, as well as on the basis of their migrant status."⁶⁶

REGULATION OF RECRUITMENT AGENCIES

Since 2006, recruitment agents have played an important role in the formal system of matching migrant workers from neighbouring countries with employers in Thailand. MoUs between Thailand and Myanmar, the Lao PDR, and Cambodia regulate the process of recruiting workers into Thailand and detail the various obligations of recruitment agents and employers. In March 2007 the Ministry of Labour also published and disseminated Guidelines on Procedures of Formal Recruitment 2007 to set standards of conduct for government officials with regard to the new regulations and to assist employers who want to hire formal migrants.

These efforts at formalizing the recruitment process were meant to promote the legality, safety and protection of migrant workers. However, research shows that the high cost of formal recruitment and long procedure times were major disincentives to migrating through formal channels. Additionally, limited oversight of recruitment agents allows unscrupulous actors who knowingly providing false information to migrants and charge exorbitant fees to

62 US State Department, *Human Rights Report 2011*, p. 53.

63 Raks Thai Foundation and others, *A Joint Submission*

64 War on Want, *Restricted Rights, Migrant Women Workers in Cambodia, Thailand and Malaysia*, (London, May 2012), p. 7. Available from: <http://www.waronwant.org/attachments/WOW%20Migration%20Report%20low%20res.pdf>

65 CEDAW Committee, *General recommendation No. 26*, para. 26(h).

66 *Ibid.*, para. 15.

often go unpunished.⁶⁷ To address this problem, in May 2011 the Ministry of Labour signed a two-year agreement to draw on ILO technical support to improve the recruitment of workers.⁶⁸ Enhanced regulation of recruitment agencies is in compliance with the CEDAW Committee's recommendation that States Parties "closely monitor recruiting agencies, and prosecute them for acts of violence, coercion, deception or exploitation."⁶⁹

HEALTH CARE

Government regulations require that all migrant workers applying for a work permit must undergo a physical examination including a chest x-ray, blood tests for syphilis, microfilariasis, malaria, leprosy, and other diseases, and urine tests for amphetamine use and pregnancy. Migrants are then categorized into three groups, according to test results: - (1) healthy, (2) curable, and (3) prohibited. Those who are deemed healthy or have a curable disease are granted a work permit, however all those in the prohibited category are deported. Pregnant migrants may be tested for HIV and those who test positive can receive anti-viral drugs to prevent the infection from spreading to the foetus. Those who are found to have tuberculosis or syphilis (the two most common diseases identified) are treated and followed up until the completion of their treatment. Migrants are issued a health insurance card that entitles them to benefits under the same scheme as Thai citizens, where a consultation only costs 30 baht, including outpatient and inpatient services, emergency treatment, health promotion and disease prevention, all of which is provided by contracted hospitals.⁷⁰

Thailand is considered a leading country in the region in recognizing the importance of migrant workers' access to health.⁷¹ The fact that Thailand does not mandate HIV testing for migrant workers is a good human rights-based practice that is respectful of migrant workers rights to privacy. Additionally, Government policies providing migrants with the same access to health care as Thai nationals complies with the CEDAW Committee's General Recommendation 26 which obligates governments to ensure health care services for women migrant workers.⁷²

For those tests that migrant workers are required to undergo, the CEDAW Committee obligates governments to ensure confidentiality of results, provide referrals to health services, and provide linguistically and culturally appropriate pre- and post-test counselling, taking into account gender sensitivities.⁷³ The Government must also re-evaluate its policy denying migrant workers who suffer work-related injuries or illness access to the Workmen's Compensation Fund. The ILO has ruled that Thailand's denial of work-accident compensation to migrants under the fund breaches its obligations under ILO Convention 19, but registered migrants have still not been given access to the fund.⁷⁴

67 International Labour Organization, *The Mekong Challenge: An Honest Broker – Improving Cross-border Recruitment Practices for the Benefit of Government, Workers and Employers*, (Geneva, 2008), p. 45.

68 US State Department, *Human Rights Report 2011*, p. 55.

69 Ibid.

70 Dr Chanvit Tharathep, *Migrants Health in Thailand*.

71 Joint United Nations Initiative on Mobility and HIV in Southeast Asia (JUNIMA), *Homepage*. Available from: www.junima.org/?q=node/12

72 CEDAW Committee, *General recommendation No. 26*, para. 26(i).

73 Ibid.

74 Andy Hall, Mahidol Migration centre, "Thai Health Care Leaves Migrant Workers in Cold", *Mizzima*, 30 May 2012. Available from: www.mizzima.com/edop/commentary/7221-thai-health-care-leaves-foreign-workers-in-cold.html

EQUALITY BEFORE THE LAW

Freedom of Association and the Right to Collective Bargaining

The 1975 Labour Relations Act and the 1998 Labour Protection Act provide for the right to organize for private sector workers. At least 10 workers in the same factory or industry are needed to form a trade union, and trade unions must be registered with the Ministry of Labour. However, article 88 of the Labour Relations Act limits the right to establish a trade union to Thai nationals. Similarly, article 100 provides that only persons with Thai nationality can be members of the union executive committee and sub-committees set out as the legal leadership of the union. As a result, migrant workers may be regular members of a trade union, but the union must be founded and led by Thais. While some registered migrants do join unions run by Thai nationals, because of language barriers and the segregation of Thai and migrant workers by industry, their numbers are low.⁷⁵

In 2008, the Labour Rights Subcommittee of the National Human Rights Commission reported that, although all migrant workers are covered by Thailand's labour laws, in practice, migrant workers do not benefit from the laws' protections. Subcommittee investigations revealed that "when migrant workers appointed a representative to bargain about wages or welfare, the employers harassed them, discretely arranged for physical attacks against them, had them arrested and charged with criminal offences, and when there was bargaining taking place or a dispute within the factory, they called in the police to inspect the workplace. Those workers with migrant worker IDs would be quickly terminated, making them equivalent to persons who entered the country illegally, and the police quickly arrested and deported them — even though they have filed complaints that were in the process of being investigated or were in the courts."⁷⁶

The CEDAW Committee's General Recommendation 26 urges States Parties to ensure that "constitutional and civil law, as well as labour codes provide to women migrant workers, the same rights and protection that is extended to all workers in the country including the right to organize and freely associate."⁷⁷ Thus, laws prohibiting migrant workers from establishing trade unions or serving as leaders within unions is discriminatory and in violation of the CEDAW.

Freedom of Expression and Freedom of Movement

In 2006, several provinces in Thailand passed local decrees restricting migrant workers' use of mobile phones, imposing curfews, and prohibiting them from driving vehicles. These restrictions made purchasing food and accessing essential services such as health care difficult and expensive, and made migrant workers more vulnerable to violence and exploitation because they are unable to easily access assistance when needed.⁷⁸ As a result, in 2008 the NHRC ruled that the decrees violated the Thai Constitution of 2007 which provides that: "All persons shall be equal before the law and shall enjoy equal protection under it....

75 US State Department, *Human Rights Report 2011*, p.47.

76 Human Rights Watch, *From the Crocodile to the Tiger*, p. 81.

77 CEDAW Committee, *General recommendation No. 26*, para. 26(b).

78 Human Rights Watch, *From the Crocodile to the Tiger*, p. 31-35.

Unjust discrimination against a person on grounds of difference in origin, race, language, sex, age, physical conditions or health, economic or social status...shall not be permitted” (article 30); “A person shall enjoy the liberty to communicate with one another by lawful means” (article 36); and “A person shall enjoy the liberty of peaceful and unarmed assembly” (article 63). However, because the NHRC has no enforcement authority, provincial governors and the Ministry of Interior have ignored its ruling.⁷⁹ The Government must evaluate provincial decrees in areas where migrants work to ensure they comply with Thailand’s obligations to the CEDAW as well as to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which holds that no restrictions to freedom of movement may be placed on individuals on the basis of race, colour, or national origin.

To counteract the negative effect of some of the provincial policies, the Department of Land Transport issued a decision on 13 December, 2009 allowing registered migrant workers to apply for and receive ownership documents for a motorcycle.⁸⁰ Additionally, in March 2010, migrant workers were granted the right to obtain drivers licences.⁸¹ These are positive steps that enhance the protection of migrant workers’ rights to freedom of movement and comply with the CEDAW Committees General Recommendation 26 which obligates States Parties to adopt policies and programmes with the aim of enabling women migrant workers to integrate into their new society.⁸²

WOMEN’S ACCESS TO JUSTICE

Redress For Violations Of Workers’ Rights

According to sections 123 and 125 of the Labour Protection Act employees may submit complaints to labour inspection officials regarding violations of workplace laws. Employers and employees both have the right to appeal any decision made to the Labour Court. The government also operates a 24-hour telephone hotline for migrant workers who seek legal assistance and who wish to file complaints.⁸³ All migrant workers, including those who are undocumented, may file complaints under the labour, criminal and civil laws. However, undocumented workers are subject to immediate deportation once discovered, and thus they are far less likely to access formal justice mechanisms.

Both documented and undocumented migrant workers complain of impunity for employer abuses against migrants. Many migrant workers are also unaware of their rights, reflecting weaknesses in human rights education in their countries of origin, as well as a lack of information provided by the Government in the migrants’ languages about their rights under Thai law. In 2009, Human Rights Watch documented arbitrary arrests, killings, beatings, torture

79 Ibid, p. 35.

80 Human Rights and Development Foundation, UPR Submission, *Summary on Human Rights Situation of Migrant Workers in Thailand* (Bangkok, 2010), p. 3. Available from: <http://hrdfoundation.org/?p=506&lang=en>

81 Naw Noreen, “Thais Protest Burma Migrant Driving Licenses”, *Democratic Voice of Burma*, Yangon, 22 July 2010. Available from www.dvb.no/news/thais-protest-burma-migrant-driving-licenses/10872

82 CEDAW Committee, *General recommendation No. 26*, para. 26(k).

83 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 144-145.

and systematic extortion inflicted on migrants by police and local officials with impunity. Thus, fear of retribution, unresponsive Thai justice institutions, and language barriers often leave migrants without access to redress.⁸⁴

By failing to ensure that women migrant workers, both documented and undocumented, are truly able to access justice mechanisms, Thailand is not complying with the CEDAW Committee's General Recommendation 26, which obligates States Parties to ensure access to remedies when rights are violated. Additionally, with respect to undocumented workers, the CEDAW Committee counsels governments to "repeal or amend laws or practices that prevent undocumented workers from using the courts and other systems of redress. If deportation cannot be avoided, States Parties need to treat each case individually with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin".⁸⁵

F. ANALYSIS AND CONCLUSIONS

Every year tens of thousands of migrants, mostly from Cambodia, Myanmar and the Lao PDR, enter Thailand seeking work. Policies related to migration have therefore become a regular part of the Thai Government's agenda. Reports have shown that illegal migrants vastly outnumber registered migrants, a statistic which many policy-makers view as a threat to national security. Many Thais also fear that migrants are taking jobs and opportunities from local people. Therefore, much attention has been focused on implementing policies that address the issue of undocumented migrant workers. However, the Government also acknowledges that migrants are a major contributor to the country's economic growth, and has taken steps to increase their numbers in order to fill demands in various sectors and industries. This has been beneficial for Thai industries and families with two working parents who need extra help at home. Both the recognition of migrant workers' contributions, combined with significant advocacy efforts by migrant worker advocates, have pushed the Government to take a more human rights-driven approach to migrant worker protection.

The CEDAW Committee has taken note of some of these efforts particularly in relation to trafficking, noting its appreciation for the Government's formulation of a National Policy and Plan on the Prevention and Suppression of Domestic and International Trafficking and the establishment of an operation centre to prevent trafficking. Other gender-sensitive good practices that better protect the rights of migrant women that have been undertaken by the Government include:

- Ratification of 8 of the 9 core international human rights treaties, including the CEDAW, and withdrawal of reservations to article 16 of the CEDAW.
- Assignment of a high-ranking official as Chief Gender Equality Officer and the appointment of a Gender Focal Point to promote gender equality in every ministry and department.

⁸⁴ Human Rights Watch, *From the Crocodile to the Tiger*.

⁸⁵ CEDAW Committee, *General recommendation No. 26*, paras. 26(c) and (l).

- Temporary special measures taken to achieve gender balance in the the National Human Rights Commission and the Village and Urban Fund Committee.
- A drafts Promotion of Opportunity and Equality Act to promote gender equality.
- Criminalization of marital rape.
- The 2007 Protection of Victims of Domestic Violence Act, which provides for protection and rehabilitation of victims.
- Periodic registration opportunities for illegal/irregular migrant workers to apply for legal status, obtain a work permit and access social security and healthcare benefits.
- One-stop service centres in Bangkok and 16 provinces providing detailed information to migrant workers on the registration process and fees.
- Requirements that employers seeking to hire migrant domestic workers must register and ensure hiring is fully in accordance with law.
- Bilateral MoUs with several countries of origin, providing effective government-to-government channels for communication on migration issues, setting out methods of migration management to be jointly implemented, and guaranteeing women migrant workers coverage under the labour law.
- A Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong, signed by Thailand, Cambodia, China, the Lao PDR, Myanmar, and Viet Nam.
- Formulation of the National Policy and Plan on the Prevention and Suppression of Domestic and International Trafficking in Children and Women, and the establishment of the Operation Centre on Human Trafficking under the Ministry of Social Development and Human Security and the National Committee to Prevent and Suppress Human Trafficking.
- The Prevention and Suppression of Human trafficking Act, passed in 2008.
- Laws that protect trafficking victims from being prosecuted for acts committed as a result of being trafficked.
- Screening procedures to help officials identify victims among vulnerable populations, including undocumented migrants in detention.
- Regional shelters run by the MSDHS to provide counselling, legal assistance, and medical care to trafficking victims.
- Regulations issued by the Ministries of Labour and Interior in 2011 that allow some foreign victims who initiate legal proceeding against their traffickers the right to a six-month work permit and visa, renewable for the duration of their court case.
- Distribution in 2011 of 150,000 leaflets in migrant workers' languages that educate workers on their rights and their employers' obligations to them.
- Training of translators to help respond to foreign-language queries to the anti-trafficking hotline.
- Coverage of most migrant workers under the 1998 Act on Labour Protection.
- Migrants are issued a health insurance card that entitles them to the same benefits under the 30-baht health scheme as Thai citizens, including outpatient and inpatient services, emergency treatment, health promotion and disease prevention, all of which is provided by contracted hospitals.
- Pregnant HIV-positive women can get access to anti-retroviral drugs.
- The law allows migrant workers to join legally registered trade unions.
- Community radio programmemeing aimed at migrant workers, providing information in their languages about their rights, laws, regulations, and other matters.
- A 24-hour telephone hotline for migrant workers who seek legal assistance and who wish

to file complaints.

- Interpreters in the areas of the country that hire a lot of migrant workers.
- Coordination with embassies to help migrant workers file cases against abusive employers.
- The use of various media to provide information to employers and migrant workers about legal issues and places for assistance when their rights have been violated.
- The organizing of special labour inspections at businesses to protect migrant workers in Bangkok and nearby provinces.
- Decision by the Department of Land Transport to allow registered migrant workers to apply for and receive ownership documents for a motorcycle; and granting migrants the right to obtain driver's licences.

Despite these positive developments, women migrant workers in Thailand continue to suffer from discrimination based on their gender as well as their migrant status. As a result many still work long hours for poor wages, have little or no time off, are subjected to dangerous working conditions and have little access to justice mechanisms to seek redress for violations. Domestic workers receive almost no protection under the labour laws and are at the mercy of their employers for decent working conditions. Those migrant women who seek to organize and collectively assert their rights are subject to intimidation, threats and retaliation for filing grievances. Therefore, further changes must be made in the law as well as in enforcement mechanisms in order to ensure migrant women achieve substantive equality.

G. RECOMMENDATIONS

- Accede to Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and ratify the ILO Convention on the Protection of Domestic Workers.
- Gender-sensitive policies should aim to improve the social status of women and combat gender biases that result in migrant women working in mainly stereotypical female jobs, such as domestic work, which are largely exempt from legal protections.
- Address the root cause of trafficking by increasing efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as measures for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking.
- Aggressively prosecute law enforcement officials found to be involved in human trafficking.
- Provide better oversight of employers to ensure against withholding migrant workers travel documents and work permits.
- Train front-line officials to identify trafficking victims.
- Incorporate in the Constitution or the Gender Equality Bill the full definition of discrimination, encompassing both direct and indirect discrimination in line with article 1 of CEDAW.
- Provide training for lawyers, judges and law-enforcement officers on CEDAW and the procedures under its Optional Protocol and develop the capacity of women to claim their rights.
- Ensure that occupations dominated by women migrant workers, such as domestic work, are protected by labour laws, including wage and hour regulations, health and safety

codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate.

- Amend articles 88 and 100 of the Labour Relations Act of 1975 to allow for persons of all nationalities to apply to establish a trade union and to serve as a legally recognized trade union officer, and ensure that the revised Labour Relations Act is fully in compliance with the standards set out in ILO Convention No. 87 (Freedom of Association).
- Adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers. Implement accreditation programmes to ensure good practices among recruitment agencies.
- Put in place easily accessible dispute-resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse.
- Reform the registration process to make it less complicated and less expensive for migrants.
- Ensure that workers can change employers without losing legal status and without having to obtain their first employer's permission.
- Ensure no restrictions are placed on the freedom of movement of migrants who are legally in Thailand.
- Effectively enforce minimum age laws in order to better protect migrant children.
- Effectively enforce minimum wage laws.
- Amend regulations so that migrant workers receive coverage under the Workman's Compensation Fund.
- Do not deport migrant women who become pregnant.

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