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**Thai Government Policies on
Pregnant Migrant Women against Human Rights and Thai Law**

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Content

	Page
Introduction	1
1. General situation on Migrant Workers in Thailand	2
2. Main Problems for Migrants and Pregnant Migrant Women in Thailand	2
3. The RTG Policies Affecting Pregnant Migrant Women	4
4. Migrant Worker Protection in Thailand	5
5. Thai Laws and Practices	
A) Constitution of Kingdom of Thailand B. E. 2540 (1997)	5
B) Immigration Act B. E. 2522 (1979)	6
C) Nationality Act B. E.2508 (1965)	7
D) Labour Protection Act B. E. 2541 (1998)	8
E) Law enforcement	9
6. Memorandum of Understanding (MOU) with Neighbouring Countries	
A) MOU concerning cooperation in regard to migrant workers	10
B) MOU in assisting trafficking victims	11
7. International Law and Obligation of Thailand	12
A) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	13
B) International Labour Organisation (ILO) Convention	14
C) Convention relating to the Status of Refugee 1951	15
8. Deportation of Pregnant Migrant Women against Human Rights and Thai Law	16
9. Conclusion	17

Introduction

The issue of migrant workers is presently receiving greater interest as it has now become a concern for Thai society due to an overwhelming number of migrant workers living in Thailand. In accepting this, the Royal Thai Government (RTG) have initiated a move-toward policy to systemize the issue of migrant workers. During the past few years, new policies have been announced by the RTG regarding migrant workers. Interestingly, whether these have been enacted to protect migrant workers or to protect the benefits of Thai society, migrant workers mostly become victims of various forms of human rights violation in Thailand.

In June 2004, the RTG made a policy adopted by the Cabinet that all Burmese, Laotian and Cambodian migrants illegally entering Thailand had to register with the Ministry of Interior (MOI). They were offered temporary legal stay in Thailand and the possibility of applying for work permits. Over a million migrants have since come to register benefiting from legal temporary stay and work permits. Forty five percent of these were women and about ten thousand of them were pregnant. At the end of the year, the RTG offered the solution to deport pregnant migrant women back to their countries. Deportation itself could come to cause serious harm to both mothers and their babies i.e. effectively encouraging pregnant migrant women to have illegally abortions, further forcing them to become illegal migrants vulnerable to exploitation by employers, and effectively come to contribute to the death of newborn baby.

This paper aims to show that the deportation of pregnant migrant women is against Human Rights and Thai Law. It will also display the situation and main problems of migrant workers as targets of various forms of exploitation in Thailand. Moreover it will present Thai laws related to the issue and compare how the deportation of pregnant migrant women is contrary to Thai Law i.e. the Constitution of the Kingdom of Thailand B. E. 2540 (1997), the Labour Protection Act B. E. 2541 (1998), and provide a clearer understand in of law enforcement in Thailand. It will further demonstrate the obligations of Thailand with regard to International Law and standards on providing protection to migrant women and how those obligations are being abandoned.

These issues of the deportation of pregnant migrant women and its consequences were blatantly exposed when humanitarian workers, NGOs, academicians, the Lawyers Council of Thailand, National Human Rights Commission, and National Security Council joined to oppose the enforcing of this policy. Due to such strong opposition from varied actors, the RTG changed their mind regarding the deportation of pregnant migrant women, the Announcement was therefore not enforced and failed to reach policy level. Although the issue of the deportation of pregnant migrant women was not enforced, from the point of view of human rights in Thailand, it demonstrated a lack of awareness from Government authorities at both policy making and practical levels. What has been exposed is that the revision of laws and regulations, on its own, is not a viable solution to improve human rights in Thai society. Permeating human rights awareness might be the answer for both society and policy makers.

1. General Situation on Migrant Workers in Thailand

Migrant workers in Thailand are mostly from neighboring countries, Burma, Laos and Cambodia, where long border lines exist between countries. No one knows the real number of migrant workers living in Thailand but it has been estimated at millions. As of February 16th 2005, as many as 1,284, 920 migrants¹ have come to register with the Ministry of Interior (MOI). No official number of illegal migrants is reported but it would not be incorrect to assume that it is significantly higher than the figure for legal migrants. These workers answer a demand in the market for cheap and unskilled labour, needed for agriculture farming and fisheries, construction, shops and restaurants and house-hold employment. Some migrants immediately become victims of human trafficking and the sex trade. Although it is well known that most migrant workers are exploited, new arrivals keep entering Thailand seeking better lives.

2. Main Problems for Migrants and Pregnant Migrant Women in Thailand

Living in foreign countries, migrant workers are forced to face many difficulties. They are vulnerable to being victims of many kinds of exploitation especially those of whom are illegal.

Primarily, for migrants having entered into the country illegally and having not registered, the most urgent problem faced is having illegal status. Without acquiring legal status, migrants can be immediately arrested by Thai authorities at anytime, when walking on the street, working in a factory, being treated at a hospital, even while sleeping in a compound - nowhere is safe.

Due to the overwhelming number of illegal Burmese, Laos and Cambodian migrants, the Thai government has made a policy of deporting the above illegal nationals back to their countries of origin without bringing cases to court. After being arrested, these illegal migrants are normally deported. This method has proved tantamount to throwing a ball at a wall – it comes back - migrants temporarily remain in border areas and after some time organize their way back to Thailand. They have learned to negotiate with police paying bribes in exchange for their freedom. Consequently, many migrants are actively sought to arrest as police have now come to expect bribes.

Secondly, similarly for those who are officially registered and in possession of work permits, migrant ID cards and work permits are often

¹ Source: Research Project on “ Thai management policy on Migrant Workers and Health Dimension” by Institute for Population and Social Research, Mahidol University, Thailand.

seized by employers, for various reasons, the results of which can lead to arrest as migrant workers cannot show proof of their legal status.

Thirdly, being paid less than the minimum wage specified by law is the most common problem faced by migrant workers both illegal and legal. Although employees have the right to sue employers, many are unaware of their rights and those who are, are more concerned that any complaint made will consequently lose them their jobs. Most migrant employees, therefore decide to accept unfair and illegal wages and conditions.

Fourthly, the health issue is a concern for by both illegal and legal migrants although those who have work permit must possess health insurance. Without official documentation, (often retained by employers as mentioned previously) migrants cannot access the right to insurance. Those entering Thailand illegally remain afraid to go to hospitals from fear of being arrested there. In some hospitals following treatment – and in the knowledge that patients are illegal migrants - hospital staff have been known to contact Immigration Bureaus or local Police to come and arrest migrants. Therefore, as it becomes increasingly known that most illegal migrants receive poor treatment, some avoid treatment altogether. Under such circumstances, simple diseases can prove very harmful, lethal even i.e. two illegal Karen children aged 7 and 10 years died from diarrhea in the Kanchanaburi province².

Noticeably, pregnant women have been targeted by Thai government. For example, the most recent controversy regarding pregnant migrant women in Thailand is their own deportation. In 2004, RTG organizations met and agreed to deport registered migrants women on the grounds of pregnancy even though they have been previously registered and approved of for temporary stay. If this Announcement had been enforced, it would have effectively encouraged pregnant women to either seek illegal abortions or further force them to become illegal migrants rendering them vulnerable to exploitation by employers. These issues and their subsequent situations were blatantly exposed when humanitarian workers, NGOs, academicians, the Lawyers Council of Thailand, National Human Rights Commission, and National Security Council joined to oppose the enforcing of this policy. Due to such strong opposition from varied actors, the RTG changed their mind regarding the deportation of pregnant migrant women, the Announcement was therefore not enforced and failed to reach policy level.

Similarly, in 2003 pregnant women were again targeted by the RTG. Many pregnant illegal migrants were arrested after delivery of newborn babies at government hospitals. In the knowledge that patients were illegal migrants, hospital staff proceeded to contact Immigration Bureaus and local Police to arrest migrants on hospital grounds. Following arrest, both mothers and babies would be transferred to Immigration Bureaus. While waiting to be

² “Nowhere to Turn” A Report on Conditions of Burmese Asylum Seekers in Thailand and Impacts of Refugee Status Determination Suspension and the Absence of Mechanisms to Screen Asylum Seekers by International Rescue Committee and Jesuit Refugee Service

deported to countries of origin, mother and baby would be held in prison together with other illegal migrants who were also awaiting deportation. Rather than receiving care and treatment after delivery, they instead met appalling conditions and poor sanitation in prison, such action causing serious harm to the health of mother and newborn baby. Moreover life after deportation continued to engender additional problems - being in border areas, with no relatives, no assistance or money and in imperfect health, would effectively come to contribute to the death of newborn babies.

It took the co-ordinated effort of Humanitarian workers, NGOs, the National Human Right Committee (NHRC), the Lawyers Council of Thailand to expose such action by hospitals. They worked hard to negotiate with the Department of Social Development and Social Welfare and the Ministry of Public Health (MOPH) to find a viable solution for these migrants. Finally in March 2004 the MOPH announced to all Provincial Public Health Offices, new guidelines on migrant women and children to be implemented. In essence, it communicated that after pregnant migrants completed delivery, hospitals should not inform Immigration Bureaus or local Police but rather inform the emergency houses run by the Department of Social Development and Social Welfare, in order to provide emergency shelter and care whilst awaiting deportation.

It could be said that migrant workers whether or not they are legal, are constantly vulnerable to exploitation while living in Thailand. Thai authorities adhere to and enforce laws and regulations strictly without concern for human right violations. The Government Sector's response remains to produce ad hoc Announcements to resolve the situation but remain ineffective while repeating past mistakes.

3. The RTG Policies Affecting Pregnant Migrant Women

Presently, the Royal Thai Government have accepted that an overwhelming number of migrant workers are in Thailand and have initiated a move-toward 'policy' to systemize the issue of migrant workers. In June 2004, the RTG made an Announcement to the law that all Burmese, Laotian and Cambodian migrants illegally entering Thailand had to register with the MOI. Migrants that registered following the 2004 RTG announcement, were offered both temporary legal stay in Thailand and the possibility to apply for work permits lasting until the 30th June 2005. All migrants applying for work permits had to undergo medical testing. Those who failed (due to one of seven diseases forbidding entry i.e. infectious tuberculosis, severe leprosy, severe elephantitis, severe syphilis, drug addiction, serious alcoholism, and mental illness) would be deported to their countries of origin. The issuing of work permits to pregnant migrant women was accepted. Employees wanting to hire migrant workers must also register requesting the number of migrant workers needed. This registration was also opened for family members of migrant workers to be able to register for temporary stay permits.

On December 13th 2004, out of 9,383 pregnant migrant workers, 809 failed to medical tests due to diseases forbidding entry. This was reported at the meeting of the Committee of Foreign Workers Administration. The meeting agreed to immediately deport migrant workers who failed medical tests, furthermore, most organizations involved and associated with the RTG supported the deportation of pregnant women back to their countries of origin.

The main reasons attached to the deportation of pregnant migrant women by Thai authorities involved concerns regarding Thai nationality provided to each newly-born in Thailand. It becomes an issue due to concerning of the national security. Another was the responsibility of medical expenses for the delivery and post-natal care.

As of June 2005, the RTG have announced that those migrants, who had previously registered in 2004 and whose temporary stay permit is set to expire at the end of June 2005 must now apply for extensions in order to receive temporary stay permits till June 2006. However no attention has been drawn to the pregnancy issues this year.

4. Migrant Worker Protection in Thailand

The intention of Thai Law is to protect all equally. In principle, whether Thai or Foreign, everyone living in Thailand is protected under Thai Law, i.e. the Criminal Code, Civil Code and Labour Protection Act. The laws are afforded to migrant workers, whether having entered the country legally, whether or not registered and whether or not working legally. However, migrant workers in Thailand are systematically abused and exploited, apparently without rights. They seem unable to access the Thai judicial system. Why?

The most prominent reasons revolve around a lack of knowledge and ignorance regarding Thai law normally affording migrant workers protection. That even though protected by Thai law, migrants with illegal status will be accused and punished due to entering Thailand illegally. Therefore in fear of being arrested and deported, most decide not to involve themselves with authorities at all. Lastly, the inability to speak the local language proves a significant barrier to acquiring valuable information and assistance.

5. Thai Laws and Practices

A) The Constitution of the Kingdom of Thailand B. E. 2540 (1997)

The pinnacle of Thai Law is the Constitution of the Kingdom of Thailand 1997 which proclaims human dignity as one of the key principles behind the Constitution. It states, “**Article 4** - *The human dignity, right and liberty of the people shall be protected.*”

As legislated by the Constitution, all persons are equal and shall enjoy equal protection under the law. Migrant workers, whether legal or not are also included. Discrimination is prohibited by the Constitution particularly due to health condition as stated “**Article 30** ...*Unjust discrimination against a person on the grounds of difference in origin, race, language, sex, age, **physical or health condition**, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.*”

The Constitution also states, “**Section 52** - *A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centres of the State, as provided by law.*

The public health service by the State shall be provided thoroughly and efficiently and, for this purpose, participation by local government organisations and the private sector shall also be promoted insofar as it is possible.”

It stresses in particular that State authorities should exercise powers respecting human dignity, rights and liberties: “**Article 26** - *In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.*”

From the above, it is clear that the contents expressed in the Announcements - regarding deportation of migrant women on grounds of pregnancy - is in contradiction to what the Constitution states. Moreover, the action of deporting pregnant migrant women by State authorities contravenes the Constitution itself.

B) Immigration Act B. E. 2522 (1979)

The Immigration Act B. E. 2522 (1979) is the law that most negatively affects migrant workers. A person's status will be considered under this law. In essence, those entering without visa and/or acting in breach of the immigration law are considered illegal and may be deported and/or penalized by other sanctions as stated in the Immigration Act:

“**Section 11** - *A person who enters the Kingdom or departs the Kingdom is required to go through the provided entrance or exit at the immigration station, port area, terminal or locality and on prescribed schedule as shall be announced in the Government Gazette by the Minister.*

Section 12 - No alien of the following characteristics shall be allowed an entry into the Kingdom:

(1) not in possession of passport or other passport substitute document and that which is still valid or in possession of passport or other passport substitute document, but visa has not been stamped or seen by the Thai Embassy or Consulate in foreign countries or from the Ministry of Foreign Affairs with the exception of the special case that no visa is required for certain category of alien. ... ”

Hence migrant workers who illegally enter Thailand will automatically have illegal status. Consequently, for those who are illegal, when their rights are abused i.e. being raped, being physically abused or being exploited, victims will decide not to become involved with the Thai juristic system due to fear of being accused, arrested and deported under Thai immigration law.

However, a channel for exempting irregular migrant workers from being arrested does exist. According to the section 17 of the Immigration Act, it provides the Minister of Interior (MOI) with discretion in applying (or not applying) the strictures of the immigration law as stated, “***SECTION 17 - Under special circumstance, the Minister, by the ;consent of the Cabinet, may authorize an entry into the Kingdom subject to any condition or exempt any alien from compliance with this Act***”. Thus those migrants who have been registered with the MOI will and can expect to receive rights to temporary stay in Thailand.

It can clearly be seen that pregnant migrant women registered with the MOI consequently have rights to temporary legal stay in Thailand. Therefore their deportation is a violation of their rights under the law.

C) Nationality Act B. E. 2508 (1965)

When regarding Thai nationality provided to each newly-born in Thailand, it is necessary to mention The National Act B. E. 2508 (1965) in this paper as it remains the main reason for the deportation of pregnant migrant women by Thai authorities. The State authorities remain concerned for National security if providing Thai nationality to all migrant children. Further concern involves eligibility for nationality at some point in the future as migrant children would have been present in Thailand since birth.

According to the National Act, Section 7, Thai nationality will be provided to a person whose either parent is a Thai national whether they are born inside or outside Thailand. Being born in Thailand does not establish the right to acquisition of Thai nationality. To be eligible for Thai nationality, each of parents must be of Thai citizenship.

Moreover the law specifically demonstrates that the children of migrant workers are not be provided Thai nationality even they are born in

Thailand. These migrant children y are an exception regarding the acquisition of Thai nationality as stated in the Nationality Act Section 7 bis.³

Therefore the acquisition of Thai nationality of migrant children who are born in Thailand should not have been concerned.

D) Labour Protection Act B. E. 2541 (1998)

In principle, the rights of all workers and labourers in Thailand are protected by the Labour Protection Act B. E. 2541(1998). It applies to all migrant worker whether or not they are legal and whether or not they have work permits. The Labour Protection Act guarantees humane working conditions, limitation on dangerous work, working time, rest periods, vacations, holidays, equal rights between male and female employees, minimum wages rates, appropriate employee age and prohibition of sexual harassment against employees namely women and children.

The Labour Protection Act is generally accepted as being consistent with international labour standards and provides the most comprehensive coverage. However as mentioned earlier, it has been found that in reality migrant workers are vulnerable to be exploited by employers due to lacking legal status and a general unawareness of their rights.

Moreover, the Labour Protection Act specifically mentions the provision of protection to female employees by limiting the permitted work for female employees.⁴ It also states in particular, rights for pregnant

³ The Nationality Act B. E. 2508 (1965) Chapter 1- Acquisition Of Thai Nationality;
Section 7 - The following persons are granted Thai nationality by birth:

(1) Persons who are born of a father or mother who is a Thai national, regardless of whether they are born inside or outside the Kingdom of Thailand,

(2) Persons who are born in the Kingdom of Thailand, except persons under Section 7 bis, paragraph one.

Section 7bis - A person who is born in the Kingdom of Thailand of a father or mother who is an alien are not granted Thai nationality if at the time of birth the lawful father or the father who is not married to the mother or the mother of that person is

(1) a person who has been granted a relaxation, of the rules to stay in the Kingdom of Thailand as a special, specified case,

(2) a person who has been permitted to enter the Kingdom of Thailand for a temporary period only, or

(3) a person who has entered the Kingdom of Thailand without receiving permission under immigration laws.

In cases considered appropriate, the Minister may consider and issue orders in specific cases that the persons mentioned in paragraph one are granted Thai nationality, in accordance with criteria prescribed by the Cabinet.

It shall be held that persons born in the Kingdom of Thailand who are not granted Thai nationality under paragraph one are persons who entered the Kingdom of Thailand without receiving permission under immigration laws, unless an order to the contrary is issued under those laws.

⁴ The Labour Protection Act B. E. 2541 (1998),Chapter 3 - Female Labour

employees such as maternity leave, the prohibition of work, the prohibition of working time and the prohibition of termination of female employees due to pregnancy.⁵

It could be seen that the real intention of the Labour Protection Act is to provide extra protection to female labourers and especially those who are pregnant. Therefore the deportation of migrant women due to pregnancy contravenes the intention of the Labour Protection Act.

E) Law Enforcement

Law enforcement is the most prevalent issue according to human rights problems regarding migrant workers. In principle, Thai laws affords

Section 38. A boss shall be prohibited from permitting female employees to perform any of the following work:

- (1) Mining work or construction work which must be done underground, under water, in a cave, in a tunnel or a shaft in a mountain, unless the characteristics of the work do not pose a hazard to the health or the body of the female employee.
- (2) Work which must be performed on a scaffold more than ten metres from the ground or more.
- (3) Production or transportation of explosives or inflammable materials.
- (4) Other work as prescribed in ministerial regulations.

⁵ The Labour Protection Act B. E. 2541 (1998), Chapter 3 - Female Labour

Section 39. A boss shall be prohibited from allowing a pregnant female employee to work between the hours of 22.00 hours and 06.00 hours, to work overtime, to work on holidays or to do any of the following work:

- (1) Work connected with vibrating machinery or engines.
- (2) Work which moves along or goes off together with a vehicle.
- (3) The work of lifting, toting, carrying with both hands, carrying suspended from the ends of a pole across the shoulder, carrying on the head, dragging or pushing a heavy object in excess of fifteen kilograms.
- (4) Work which is performed inside a ship.
- (5) Other work as prescribed in ministerial regulations.

Section 40. When a boss lets a female employee work between the hours of 22.00 hours and 06.00 hours, and the Labour Inspection Officer is of the opinion that that work is hazardous to the health and safety of that woman, the Labour Inspection Officer shall report it to the Director-General or a person assigned by the Director-General for consideration and issuance of an order ordering the boss to change the hours of work or to reduce the hours of work as may be deemed appropriate, and the boss shall comply with the said order.

Section 41. A pregnant female employee shall have the right to take maternity leave of not more than ninety days per pregnancy.

The leave days under paragraph one shall include the holidays which occur during the leave days.

Section 42. When a pregnant female employee produces a medical certificate from a doctor of first class modern medicine stating that she is unable to continue to perform her existing duties, that employee shall have the right to ask the boss to change her existing duties temporarily before or after delivery, and the boss shall consider changing the work to work which is appropriate for that employee.

Section 43. A boss shall be prohibited from terminating the employment of a female employee on the basis that she is pregnant.

protection to migrant workers whether having entered Thailand legally or not and whether or not working legally.

However in practice, migrant workers' rights are often abused and exploited even if registered or regularised. Employees face and continuously accept exploitation as in the example of the problem of being paid less than the minimum wage as specified by law. For those who are not registered and have illegal status, the situation is even worse and they remain much more vulnerable.

To advocate migrant worker rights in Thailand is thus both complicated and challenging for NGOs and humanitarian workers to expose and promote. It remains balanced between the promotion of individual rights and Thailand's own security concerns. In the past, after receiving information on rights and having learned that workers rights had been abused, most complaints resulted in unfair dismissal. To be able to provide knowledge on human rights is a right in itself. Care must be taken when providing such knowledge and negative consequences must be considered. It remains common that after experiencing trouble, employers have a negative attitude toward NGOs and are unwilling to further co-operate with them

Additionally, implementation of the law is hampered by the lack of efficacy and transparency on several fronts. It is aggravated by the rampant corruption amongst law enforcers themselves.

6. Memorandum of Understanding (MOU) with Neighbouring Countries

A) MOU concerning cooperation in regard to migrant workers

Presently the process of systemizing the migration of migrant worker from neighbouring countries i.e Burma, Laos and Cambodia is still in development. Thailand aims to know the concrete numbers and the location of all migrants both legal and illegal. To reach this aim, the RTG made the Announcement for illegal migrants to register with the MOI in 2004. The RTG's plan is that following registration, all migrant names will be sent to their countries of origin to verify and identify nationality. After proving nationality, the Governments of their respective countries of origin will issue all migrants with passports or identity documents. Thailand will then provide valid visas and issue temporary stay to migrants so that they can work legally in Thailand. This whole process is to change illegal into legal migrants.

Practically, Thailand has now signed the MOUs with Burma, Laos and Cambodia increasing systematical management regarding the movement of migrant workers. However only Laos has succeeded in such. Some Laos migrant workers have been issued Laos passports while Cambodia and Burma have yet to officially corroborate the agreement.

Specific to Burma, due to political conflict between Burmese ethnic groups and the Government, many Burmese migrants do not want to be located deciding not to register with the MOI due to fear of persecution and/or prosecution by the Burmese government based on differing political beliefs.

B) MOU in assisting trafficking victims

Thailand is well-known and considered as a source, transit and destination for human trafficking. According to international standards on human trafficking, victims themselves should not be considered and treated as offenders but rather should be protected and assisted back to their homes safely. Currently Thailand has had to awaken itself regarding the help and assistance it provides to trafficking victims. However regarding Thai Law, currently there is no single Act that in itself states clearly and covers all aspects concerning human trafficking i.e. what constitutes trafficking crime, how should victims be determined and how to provide proper assistances to trafficking victims themselves. Each law related to human trafficking, when considered individually, is not yet consistent with international standards regarding trafficking. Therefore when trafficking crime occurs, Thai authorities have many laws to consider when prosecuting offenders and ensuring appropriate assistance to victims as explained briefly below:

Measures in Prevention and Suppression of Trafficking in Women and Children Act B. E. 2540 (1997) – This law has been improved and developed in order to give higher protection to trafficking victims. According to this law, victims will not be accused of illegally entering Thailand and engaging in prostitution but will be treated as injured persons who should receive assistance. However the law protects only female victims and children but not men.

Prostitution Prevention and Suppression Act B.E. 2539 (1996) - Trafficking is stipulated as ‘criminal’ under the Prostitution Prevention and Suppression Act B.E. 2539 (1996). This law duly protects all men, and children equally. It is comprehensive covering prostitution, not only between men and woman but also between men. It proscribes more severe punishment if an injured persons is under 18 and 15 years respectively. However this law does not proscribe on providing assistance regarding human trafficking victims.

Criminal Code - Criminal justice is generally recognized as an inalienable element of peace and order for society and country. The Criminal Code has long been considered as a significant part of the security and development of Thailand regulating to protect every person in Thailand. The Criminal Code defines human trafficking as ‘criminal’ and protects victims, both men and women and mentions what is ‘criminal’ and the punishment for

offenders. However the law does not proscribe on providing any assistance to trafficking victims.

Therefore in order to be consistent with the International trafficking instruments, Thailand has currently been amending the Prevention and Suppression of Trafficking in Women and Children Act B. E 2540 (1997) to cover not only women and children but men too.

Presently, various Memorandum of Understanding (MOU) signed between Thailand and neighbouring countries such as Burma, Laos and Cambodia allow the cooperation and sharing of responsibility for victims of trafficking. According to the MOU, trafficking victims found in Thailand will not be punished and accused of having illegally entered but will be treated as injured persons who should be provided with assistance and returned back to their home safely. Trafficking victims found in Thailand are now provided temporary shelter by the Department of Social Welfare while waiting for the deportation. A system for deportation has been developed and set-up. The established relationship between Thailand and Laos is now admired by NGOs for its capacity to offer improved assistance to trafficking victims. They claim it to have progressed the most if compared with Cambodia and Burma.

However although the MOU has been signed, NGOs and field workers mention obstacles at ground level when providing assistance to trafficking victims due to Thai authorities lack of understand and knowledge of the MOU itself. Trafficking victims are often still treated like offenders. Also the process of providing assistance to trafficking victims is slow, sometimes ineffective and inconsistent.

Although directly involving deportation, registered migrants are not considered trafficking victims. Pregnant migrant women are therefore not considered trafficking victims either and as such cannot benefit by the MOU Trafficking mechanism. This simultaneously reveals a deep inconsistency regarding unified and beneficial laws for deportation and discloses a profound unawareness of human rights.

7. International Law and the Obligation of Thailand

Regarding Thai jurisdiction, only Thai Law can be enforced in Thai courts, International Law cannot be referred to in Thai courts at all. Even after the ratification of international treaties, the treaties themselves are not utilised within the Thai judicial system. With respect to the ratification of international treaties, Thailand is obligated to revision of its laws and regulations for the purpose of promotion and protection of human rights. Revised laws and regulations, which are made consistent with international standard can then be used in Thai jurisprudence.

Currently Thailand has ratified 5 main conventions relating to human rights as detailed below⁶:

- 1) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- 2) Convention on the Rights of the Child (CRC)
- 3) International Covenant on Civil and Political Rights (ICCPR)
- 4) International Covenant on Economic, Social and Cultural Rights – (ICESCR)
- 5) Convention on the Elimination of All Forms of Racial Discrimination (CERD)

In this paper, only conventions relating to Woman and Migrant Rights according to the deportation of pregnant migrant women will be referred to.

A) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Thailand has accession to the Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the 9th August 1985. At its beginning, Thailand made 7 reservations regarding CEDAW. All except 2 reservations - Article 16⁷ and 29⁸ - have been withdrawn. Thailand

⁶ Source: Office of the National Human Rights Commission of Thailand (<http://www.nhrc.or.th/>) as of 17 June 2005

⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

therefore has an obligation regarding these remaining articles; to revise its laws and regulations for the purpose of promotion and protection of all rights regarding the CEDAW.

Prohibition for discrimination against women on the grounds of pregnancy is clearly stated in the CEDAW,

“Article 11 - ... 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: ... (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;”

To consider to Thai Law - the Constitution of the Kingdom of Thailand and the Labour Protection Act - it can be seen that the Law enacts on providing protection to women and female workers consistent with international standard regarding Women's Rights. However the deportation of pregnant migrant women is directly against the CEDEW.

Having accession to the CEDAW means Thailand not only has to revise its laws and regulations for the purpose of promotion and protection of all rights regarding the CEDAW, but must further ensure that all policies made by the authorities do not break the Rights mentioned in the CEDAW. Therefore it is the responsibility of Thailand to suspend the deportation of pregnant migrant women.

B) International Labour Organisation (ILO) Convention

Thailand is a party to the core Labour Convention as well as other ILO Conventions and has ratified fourteen ILO instruments. Therefore, it could be seen that the Labour Protection Act B. E. 2541 (1998) cited earlier has been developed and protect labourers to standards acceptable to International law.

⁸ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

C) Convention relating to the Status of Refugee 1951

It is necessary and poignant to mention the Convention relating to the Status of Refugee 1951 due to its principle – “the prohibition of expulsion or return” so-called “Non-Refoulement”.⁹ The Non-Refoulement prohibits refugees to be forcibly returned to the frontiers of territories where their lives or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. Currently the Non-Refoulement principle has become international customary law. No countries or states shall contravene the Non-Refoulement principle. Although Thailand has not ratified the 1951 Refugee Convention, Thailand is obligated to respect the Non-Refoulement principle as customary law.

Not only has Thailand not ratified the Convention Related to Refugee Status 1951, but furthermore does not have refugee law. The term ‘Refugee’ is not defined under Thai Law, no definition exists. The RTG has provided a definition for refugees living in temporary shelters along Thai-Burma border-areas as ‘people fleeing from fighting’. These ‘people fleeing from fighting’ are allowed to stay in temporary shelters allowing UNHCR, Inter-NGOs and also local NGOs to provide assistance. However it could be seen that the definition of ‘people fleeing from fighting’ by the RTG does not cover all kinds of refugees according to the definition given in the 1951 Refugee Convention.¹⁰

As mentioned earlier, to consider the legal status of refugees, Thailand uses the Immigration Act B. E. 2522 (1979). Basically those entering without visa and/or acting in breach of the immigration law are deemed illegal. In the case of Burmese, Laotian and Cambodian workers illegally entering Thailand and working without permits, they will be accused and deported back to their countries of origin. Moreover to be recognized by the United Nation of Human Commission on Refugee (UNHCR) will not

⁹ Source: UNHCR, Convention relating to the Status of Refugees 1951, *Article 33. Prohibition of expulsion or return ("refoulement")*

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

¹⁰ Source: UNHCR, Convention relating to the Status of Refugees 1951, *Article 1. Definition of the term "refugee"*

A. For the purposes of the present Convention, the term "refugee, shall apply to any person who: ...

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

provide legal status under Thai Law; therefore refugees recognized by UNHCR will neither have legal status nor be able to stay in Thailand legally.

Since 2004 the RTG has forced UNHCR to suspend providing Refugee Status Determination (RSD) to all asylum seekers from Burma. By the end of March 2005, the RTG had forced all refugees previously recognized by UNHCR before 2004 to enter temporary shelters along Thai – Burma border-areas. It could be seen that at present, no channel exists for new arrivals from Burma seeking asylum and protection in Thailand. There are neither systems nor mechanisms of screening whether or not registered migrants are refugees and whether or not those pregnant migrant women – who could have previously been deported – were refugees either.

It is clearly visible that the policies of suspending the provision of RSD to Burmese asylum seekers and that of the deportation of migrants will put genuine refugees in risk of being deported. The deportation policy on pregnant migrant women may fall in between the gaps of the main principle of the 1951 Refugee Convention of Non-Refoulement.

8. Deportation of Pregnant Migrant Women against Human Rights and Thai Law

Pregnant woman is generally vulnerable and needed special protection and cares. The deportation of pregnant migrant women is unacceptable action by any senses. It is physically harmful to the health of mother and newborn baby. Life after deportation would effectively come to contribute to the death of newborn baby. Moreover, as demonstrated earlier, the deportation of pregnant migrant women are definitely against Human Rights and Thai Law.

Firstly, the deportation of migrant women on grounds of pregnancy is in contradiction to what the Constitution of the Kingdom of Thailand B. E. 2540 (1997) states. Moreover, the action of deporting pregnant migrant women by State authorities contravenes the Constitution itself.

Secondly, the pregnant migrant women have been registered with the MOI and have received rights to legally temporary stay in Thailand under the Immigration Act B. E. 2522 (1979). Their deportation is a violation of their rights under the law.

Thirdly, the Labour Protection Act B.E. 2541 (1998) states to provide extra protection to female labourers especially to those of whom are pregnant. It prohibits the termination of female employees due to pregnancy. Therefore, when considered as the termination of female employees due to pregnancy, the deportation of pregnant migrant women is in contravention of the Labour Protection Act.

Fourthly, and in proximity to the above paragraph, the dismissal on the grounds of pregnancy is discrimination against women and is prohibited according to the Convention on the Elimination of All Forms of Discrimination against Women that Thailand has accession and obligation to the convention.

Lastly with policies as they stand, and with no mechanisms of screening to determine whether migrants – registered or illegal - are refugees, the deportation policy on pregnant migrant women may fail the customary law of Non-Refoulement regarding to the Convention relating to the Status of Refugee 1951.

9. Conclusion

It could be concluded that the deportation of pregnant migrant women is contradictory to Human Rights and Thai Law.

Fortunately, due to the hard work and organized protest against such recommendations by humanitarian workers, NGOs, academicians and civil societies i.e. Lawyers Council of Thailand, National Human Rights Committee, the announcement of the deportation of pregnant migrant women has not succeeded in becoming policy. No explanation has been given from the Committee of Foreign Worker Administration or any involved organizations from the government sector regarding why this policy was revoked.

Moreover the current Announcement in June 2005 of the extension of work permits for registered migrants does not prohibit pregnant migrant women from extending their work permits. In fact, the issue of the deportation of pregnant migrant women failed to arise this year. It seems as if there was never a issue regarding their deportation.

However in my opinion, if we notice the behavior of the RTG from 2003 till 2004, we would see that they have not learned or changed their attitude on migrants. Within a one year period, the RTG made similar mistakes twice – deporting mothers and their newborn babies following delivery in 2003 and deporting pregnant migrant women in 2004. On both occasions, opposition by civil society was needed. The Government Sector's ad hoc announcements resolved the situation without learning from it. The authorities lack a sufficient understanding of human rights and it is probable that they will continue to commit similar mistakes in the future. However, it could be seen that in Thailand, humanitarian workers, NGOs and civil societies have co-operated effectively resulting in better solutions.

In Thailand, from the point of view of human rights, the problems do not lie with the Law itself. If we consider Thai Law as separate in themselves, it is apparent that they provide protection consistent with

international standards. Thai Lawmakers do appear to understand and already cater toward human rights, continuously trying to improve and amend Thai Law in accordance with required standards. The best examples of their work can be found in the Constitution of the Kingdom of Thailand and the Labour Protection Act where both laws clearly provide protection consistent with international standards required.

The problems in Thailand regarding human rights issues are situated within law enforcement and Government authorities. Thai authorities both at policy and practical levels need to become more aware and develop an understanding regarding human rights in order to improve their legislation. Law enforcement often remains ineffective due to factors such as corruption, lack of co-operation between authorities, authorities lacking sufficient understanding of international and local laws in relation to human rights.

Hopefully, by promoting a greater understanding of Trans-boundary issues in the Greater Mekong Sub-region, the current situation regarding Trans-boundary human rights will advance in the future.