

## Briefing Document and Policy Recommendations on Migrant Workers Thailand's UPR The Human Rights and Development Foundation

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2<sup>nd</sup> October 2011

In light of the upcoming Universal Periodic Review (UPR) of Thailand, taking place in Geneva on October 5<sup>th</sup>, 2011, the Human Rights and Development Foundation (HRDF)<sup>1</sup> has prepared a briefing paper with high priority recommendations for policies aimed at stimulating immediate action to improve the current status of migrant workers and victims of human and labor trafficking in Thailand.

### Background

It is well-recognised that labour shortages in Thailand coupled with adverse events occurring in neighboring nations has attracted migrants into the country for several decades. Currently, over 3 million migrant workers primarily from Myanmar (80%), Cambodia and Laos reside in Thailand. As the Thai Government (TG) continues to find ways to reinforce the *temporary and pending deportation* status of the migrant workers sustaining its economy, a serious platform to underscore the contradictions and discuss the adverse result of these policies on the ground is necessary, along with recommendations for urgent actions. HRDF is particularly concerned about the TG's lack of long-term policies that address the needs of both the Thai economy and some of the people sustaining it. Current policies fail to respond to realities on the ground creating new perils which include systematic and widespread gross human rights violations, human trafficking, and labor trafficking.

We take this opportunity to highlight key concerns and respectfully urge your government's representatives to the United Nations in Geneva to raise the following issues during Thailand's UPR taking place in October 2011:

### Current Policy Responses

1. **National Verification Process:** For the past 20 years (since 1992) ad-hoc yearly cabinet resolutions have usurped the role of a comprehensive immigration policy in Thailand. These policies of "temporariness and pending deportation status" are irresponsible and force the migrants into a status of precariousness and illegality. Though Thailand signed Memorandums of Understandings (MOUs) in 2002 and 2003 with neighbouring countries aimed at cooperation for the formal recruitment and employment of migrants from these nations, the process has proven a sluggish response to genuine labour demands as from October 2010 to March 2011, only 28,695 migrants formally imported from neighbouring country of which 533 migrants from Myanmar have been formally recruited since its inception<sup>2</sup>. Thus, irregular migration channels to seek employment in Thailand persist. In February 2010, the TG announced yet another annual resolution calling for all migrant workers residing in Thailand to complete the National Verification (NV) process which would grant many migrants work permits, renewable annually. However, the NV process is convoluted and has led to the creation of more loopholes for systematic corruption and exploitation of migrants, such as NV brokers who charge exorbitant fees for their unregulated services. The NV policy resulted in further extortion of workers; recruitment through vast informal brokerage networks and exploitation by criminal groups has pushed deported migrant workers into bondage, forced labour and labour trafficking which is growing in scale in Thailand<sup>3</sup>. Despite TG's clear policy guarantying nationality verified migrant's access to the social security scheme, non-implementation and failure to enforce the registration of migrant workers to the social security fund by their employers is estimated to be less than 20% (from over 500,000 NV registered migrants) leaving them without health insurance<sup>4</sup>.

2. **Labour and Human Trafficking:** Thailand is a signatory to the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking of Persons, yet, employers in Thailand are seldom prosecuted for these violations and anti-money laundering measures against human traffickers are not imposed. Further, Thailand's inability to comply with the Trafficking Victims Protection Act's minimum standards is exemplified by the increased number of human trafficking cases in the form of exploitative forced labour and embezzlement. Most cases of exploitative human trafficking among

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<sup>1</sup> The Human Rights and Development Foundation (HRDF) is a non-profit, non-governmental organisation established and registered with the National Cultural Committee since 2000. HRDF works towards protection and promotion of human rights and access to justice, especially for migrant workers in Thailand.

<sup>2</sup> Source: Ministry of Labour, <http://wp.doe.go.th/node/207>

<sup>3</sup> Press Statement on Conclusion of Official Visit to Thailand, Special Rapporteur on Trafficking in Person Especially Women and Children, 19<sup>th</sup> August 2011

<sup>4</sup> Burmese worker died due to gap in Thai system, say NGOs, <http://www.nationmultimedia.com/home/2011/08/12/national/Burmese-worker-died-due-to-gap-in-Thai-system-say--30162614.html>

migrants are simply dismissed as non-payment of wages by employers, as a result, these victims of trafficking are not even recognized as victims; they are treated as migrants who entered into Thailand illegally, often times further penalized and deported without opportunity to claim for redress or file complaints under Thailand's Anti-Human Trafficking Law. Consequently, the prevention and suppression of human trafficking is not genuinely effective, therefore prosecution remains low, perpetrators continue to get away with impunity<sup>5</sup>.

3. **Denial of Access to Work Accident Compensation:** The Workmen's Compensation Act of 1997 and the Labour Protection Act of 1997 protect *all workers* in Thailand, without discrimination on the basis of nationality. Thailand is also a signatory to the ILO Convention No. 19 which calls for the Equality of Treatment under Work Accident Compensation as well as the International Convention on the Elimination of All Forms of Racial Discrimination. In contrast to these decrees, in 2001 Thailand passed the circular RS 0711/W751 stipulating that migrants entitled to work accident compensation must provide a passport or alien identification certificate along with a work permit. Yet, the TGs current short-term immigration policies directly interfere with these requirements and prevent migrants' eligibility to receive adequate compensation in cases of work-related accidents. Over 1 million migrant workers who legally registered in Thailand are systematically denied access to the Workmen's Compensation Fund. Furthermore, TG's recent established private insurance scheme<sup>6</sup> has stressed continue discriminatory exclusion of migrant workers from equal access to work accident compensation, there is no clear regulation on enforcement measure and it is likely that the scheme is based on voluntary basis.

### Key Recommendations

- 1) TG is **obliged to develop a long-term migrant worker policy**, with consideration on a balance between sustainable national development and a focus on upholding the human rights of migrants. **We urge the government to reform these policies and practices with a view to developing a more realistic, and inclusive policy which does not put migrants at risk of human rights violations either in Thailand or in their country of origin.**
- 2) TG must **take legal action against employers and government officials who benefit from human trafficking** and make it a priority to educate state and non-state actors on human trafficking in the form of exploitation of forced labor or forced services which should be differentiated from non-payment of wages. Only this will ensure effective protections and the prevention of human trafficking crimes through redress and rehabilitation to victims.
- 3) TG is encouraged to extend its invitation to the UN Special Rapporteur on the Human Rights of Migrants to conduct a mission to the country and to ratify International Convention on Protection of Migrant Workers and Their Family.
- 4) TG should **review domestic practice and policy relating to migrant rights protections** which are in conflict with stipulations contained in international accords to which Thailand is a signatory. Specifically, the RTG should revoke circular RS0711/W751 –which prevents migrant workers from accessing work-accident compensation – in accordance with the recommendations made by the ILO in their Report of the Committee of Experts in 2010.

### Closing Remarks

The aforementioned recommendations aimed at improving the status of migrant workers in Thailand should be seen as a call for concerted action to reduce exclusion and human rights violations in other ASEAN countries and around the world. The absence of a comprehensive immigration policy for migrant workers in Thailand and/or unequal access to systems put in place, are indicative of a broader set of practices which threaten not only human rights but the future of democracy and basic protections in Thailand. Thailand has obligations under its voluntary pledges to promote and protect *all human* rights in its very own territory including those of migrant workers. The TG should put in place the necessary structures across all sectors to take on board such recommendations and commit to a cross-sectoral approach that ensures political, social and economic environments that afford protections to all

Respectfully,  
*Human Rights and Development Foundation*

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<sup>5</sup>Human Rights and Development Foundation, <http://anti-labor-trafficking.org/prominent-case-report/43-alt-trafficking-prominent-case-report-.html>

<sup>6</sup>THE CABINET'S RESOLUTION ON 14 JUNE 2011: PROTECTION OF ALIEN WORKERS WHO ENTERED THAILAND ILLEGALLY BUT WHO HAVE BEEN GRANTED AN AMNESTY TO TEMPORARILY REMAIN IN THE KINGDOM OF THAILAND AND RECEIVE PERMISSION TO WORK, [HTTP://WWW.THAIGOV.GO.TH](http://www.thaigov.go.th)