

**LIFE AND DEATH AWAY FROM THE GOLDEN LAND:
THE PLIGHT OF BURMESE MIGRANT WORKERS IN THAILAND**

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I. INTRODUCTION

On December 26, 2004, at approximately 0059 GMT, an earthquake with a magnitude of 9.3 struck 150 miles off the coast of Sumatra, Indonesia.¹ The earthquake displaced billions of tons of seawater away from the fault-line, setting in motion tsunami waves as high as sixty-five feet.² The waves killed close to 229,866 people in eleven different countries.³ It was one of the worst natural disasters in history.⁴

Won, a Burmese migrant, was working at a construction site in southern Thailand when the tsunami washed over his workplace.⁵ Fortunately, he did not drown.⁶ However, he lost all his possessions, including his work permit.⁷ Instead of providing relief aid or accounting for Won's loved ones, the Thai government chose to raid

¹ Helen Lambourne, *Tsunami: Anatomy of a Disaster*, B.B.C NEWS, Mar. 27, 2005, available at <http://news.bbc.co.uk/2/hi/science/nature/4381395.stm>.

² *Id.*

³ United Nations, Office of the Special Envoy for Tsunami Recovery, *The Human Toll*, <http://www.tsunamispecialenvoy.org/country/humantoll.asp>.

⁴ *Tsunami Among World's Worst Disaster*, B.B.C. News, Dec. 30, 2004, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4128509.stm>. The actual number of lives lost to the tsunami is probably close to 300,000 people if the number of missing is included.

⁵ Donna Leinwand, *Tsunami Pushes a People Deeper into Hiding*, USA TODAY, Jan. 13, 2005, at 9A.

⁶ *Id.*

⁷ *Id.*

his neighborhood and to round up migrants found without legal documents.⁸ Won was detained in an immigration detention center and was likely deported.⁹

Stories like Won's were not uncommon in Thailand following the tsunami. Officially, over 7,000 registered Burmese migrants were affected by the disaster. However, the actual number may be substantially higher if unregistered Burmese migrants are factored in.¹⁰ Similar accounts recounting the treatment of Burmese migrants by the Thai government brought the plight of Burmese migrants into the international spotlight. Unlike Burmese refugees fleeing political and ethnic persecution, the international community had not previously paid much attention, if any, to Burmese economic migrants. There had been previous allegations of deportation, detention, and exploitation, but "the tsunami served to aggravate the situation and then to expose abuse."¹¹

In this paper, I set out to explore the plight of the estimated two million Burmese migrants living, working, and dying in Thailand. I include both documented and undocumented migrants in my discussion to highlight how registration status effects a migrant's reception and treatment in the Kingdom of Thailand, and how, in some cases, registration status makes no difference at all. It is my hope that, as more information about Burmese migrants reaches governments, intergovernmental agencies, non-profits, and concerned individuals, pressure will grow for Thailand to address the human rights abuses committed within its borders. This paper also critically analyzes the attempts the Thai government has made towards

⁸ *Id.*

⁹ *Id.* The article does not expressly state what happened to Won. However, it does state that he was taken to an immigration detention center. The Human Rights Education Institute of Burma, based in Thailand, states that 2,000 Burmese had been detained and were scheduled to be deported. *Id.*

¹⁰ *Burmese Migrant Tsunami Victims Suffer Discrimination in Thailand*, THAI PRESS REPORTS, Feb. 11, 2005.

¹¹ E-mail from Rachael Shigakane, Professor, University of California (July 20, 2005) (on file with author).

managing migration, providing social services, and bestowing rights to Burmese migrants through its legislation and policies.¹²

Section II explores the reasons for large Burmese migration into Thailand, specifically the tragic interethnic fighting, political instability, and economic disparity found in Myanmar. Section III covers the broad overview of the migrant population — its demographics, the various occupations migrant workers fill in Thailand, and their reception into Thai society. Section IV analyzes the steps that the Thai government is taking in managing and controlling migration through domestic legislation, international treaties, and bilateral agreements. Section V examines the failings in the Thai public policy towards Burmese migrants. This section concentrates on domestic laws where applicable; only when there is a lack of guidance from domestic laws does the analysis turn to international law. Lastly, in Section VI, suggestions are made for Thailand and other countries facing similar situations, to make migration mutually beneficial for both migrants and their destination countries.¹³

II. BEING PUSHED AND PULLED AWAY FROM MYANMAR

In recent years, large numbers of Burmese¹⁴ have migrated to Thailand. The Thai Ministry of Labour registered close to one

¹² Along with secondary sources, I use primary sources throughout the article. I interned at the International Organization of Migration (“IOM”) in Bangkok, Thailand in 2005. The International Organization for Migration is an intergovernmental agency founded in 1951 to resettle Europeans displaced persons, refugees, and migrants. International Organization for Migration, <http://www.iom.int> (last visited Mar. 16, 2007). Since then, it has become the leading international organization on migration with 112 member States and an operational budget of one billion US dollars in 2005. *Id.* One of my assignments included conducting simple surveys and interviews with Burmese migrants in order to collect information to use for creating and shaping health and labor policies. Besides interviewing Burmese migrants at outreach events, I also visited neighborhoods, workplaces, and community centers in ethnic enclaves. These interviews are mainly meant to supplement accompanying authoritative sources

¹³ The term “destination country” is used to describe the country to which the migrant or immigrant migrates.

¹⁴ For the purpose of this paper, I use the term “Burmese” to connote all people from Myanmar, not just ethnic Burmans. BUREAU OF E. ASIAN & PAC. AFFAIRS, U.S. DEP’T OF STATE, BACKGROUND NOTE: BURMA (Sept. 2006), <http://www.state.gov/r/pa/ei/bgn/35910.htm> [hereinafter Burma Background Note].

million migrants from Myanmar in 2004.¹⁵ Many more Burmese enter Thailand illegally and do not register with the government; estimates range from two to six million.¹⁶ There are approximately 143,000 refugees residing in Thailand who have escaped political and ethnic persecution in Myanmar,¹⁷ but the vast majority of Burmese in Thailand are economic migrants – those who enter seeking a better life, or sojourners hoping to send remittance home.¹⁸ Relative to Burmese refugees, little study or attention has been paid to Burmese migrants and the living conditions they face in Thailand. Nonetheless, it is important to note that causes of migration are interlinked, though they are separated for clarity in this paper. Myanmar's economy is in shambles,¹⁹ many would argue, because of economic sanctions, which

Ethnic Burmans compose 68% of the total population. However, there are over one hundred ethnic groups such as Shan, Karen, Arkanese, and Mon. *Id.* The use of "Burmese" is due to logistical reasons; the vast majority of statistical data collected by nongovernmental, intergovernmental, and governmental agencies have not made distinctions based on specific ethnicity. The term's usage is not meant to marginalize the diverse peoples of Myanmar.

¹⁵ SUREEPORN PUNPUING, FEMALE MIGRATION IN THAILAND: A STUDY OF MIGRANT DOMESTIC WORKERS 4 (2006) available at <http://www.unescap.org/esid/GAD/Events/RegSem22%2D24Nov06/Papers/SureepornPunpuing.pdf>. Portions of this article were presented in the *Regional Seminar on Strengthening the Capacity of National Machineries for Gender Equality to Shape Migration Policies and Protect Migrant Woman*, Bangkok, Thailand. (Nov. 22-24, 2006), organized by the Gender and Development Section of the United Nations Economic and Social Commission for Asia and the Pacific.

¹⁶ Thailand's population is approximately 63 million. STATISTICAL FORECASTING BUREAU, THAIL. MINISTRY OF INFO. & COMM. TECH., STATISTICAL YEARBOOK THAILAND 2004 (2005). Thus, if the estimate that 6 million illegal immigrants currently reside in Thailand was correct, it would mean that close to 10% of the Kingdom's population would be undocumented immigrants.

¹⁷ MATHEA FALCO, COUNCIL ON FOREIGN RELATIONS, INDEPENDENT TASK FORCE REPORT, BURMA: TIME FOR CHANGE 31 (2003). The Thai government refuses to recognize Burmese refugees as "refugees," as defined under the United Nations Convention on Refugees. The government labels them as "displaced persons."

¹⁸ *Id.*

¹⁹ Clive Parker & Louis Reh, *Concern Grows over Burma's Rapidly Increasing Inflation*, THE IRRAWADDY (Bangkok), Oct. 6, 2005, available at <http://www.irrawaddy.org/aviewer.asp?a=5052&z=153>.

are placed on the country due to social and political unrest. For this reason, to better understand why such large numbers of Burmese economic migrants exist, all causes of migration – social, political, and economic – must be examined.

A. *Interethnic Conflicts*

Myanmar²⁰ historically has been composed of numerous and diverse ethnic groups that have been in conflict with each other for centuries.²¹ However, many attribute the present day situation within Myanmar to British colonialism and the structuring of Myanmar's territory. "While conflicts and wars were waged for countless generations prior to British rule, the colonial era oversaw the transformation from traditional expressions of enmity to modern civil war."²² Colonialism brought "vast changes" to Myanmar's demography, political landscape, and political geography.²³ One

²⁰ There is controversy over the use of "Myanmar" rather than "Burma" to name the country. Many critics of the ruling military junta, especially opposition leaders and political exiles, refuses to acknowledge "Myanmar," which was instated after the military took control in 1988. See Laurent Rotroff, *Should the ICTB be the Next International Criminal Tribunal?: Examining the Burmese Junta as a Candidate for an International Criminal Tribunal for Burma*, 9 NEW ENG. J. INT'L & COMP. L. 491, n.2 (2003). In fact, even the U.S. State Department still refers to the country as "Burma" on all official documentations. See e.g., BUREAU OF E. ASIAN & PAC. AFFAIRS, U.S. DEP'T OF STATE, CONDITIONS IN BURMA AND U.S. POLICY TOWARD BURMA FOR THE PERIOD SEPTEMBER 28, 2004 – MARCH 27, 2005 (Mar. 29, 2005), <http://www.state.gov/p/eap/rls/rpt/43970.htm> (last visited Mar. 16, 2007). However, I use "Myanmar" because the international community has come to recognize it as such. In addition, "Myanmar" is the correct name in the Burmese language, which has been in use since the country's liberation from the British.

²¹ The original inhabitants in what is present day Myanmar were the Mon from Cambodia, the Mongol Burmans (Mien) from the eastern Himalayas, and Thai tribes from Thailand. U Aung Khin, *Burma Millenium Special*, 8 IRRAWADDY (Feb. 1, 2007), available at <http://www.irrawaddy.org/aviewer.asp?a=1762&z=107>. From the 11th to the 16th century, the region saw the rise and fall of numerous kingdoms, where one ethnic group subjugated the others through military might. *Id.* Myanmar remained composed of fractured groups with distinct self-determined kingdoms until the British colonized and unified the region in the 19th century. *Id.*

²² Louise Southalan, *Issue of Self-Determination in Burma*, LEGAL ISSUES ON BURMA J., Apr. 2004, No. 5, at 7-8.

²³ *Id.* at 8.

important change was the inclusion of numerous “mini-states” in the frontier borders.²⁴ Prior to colonialism, these regions had been relatively autonomous.²⁵ Furthermore, the British treated the various ethnic groups differently, especially by giving certain groups more self-rule than others,²⁶ thus fueling historic resentment and antagonism.²⁷ At the end of colonial domination, Myanmar’s border was carved out without consideration of the development of the people and without respect to ethnic diversity. Rather, the boundaries were decided by politics between the regional colonial powers.²⁸

In Myanmar today, there are over 100 ethnic groups, comprising seven major groups with numerous sub-groups and ethnic tribes.²⁹ Interethnic hostility between these groups, exacerbated by British colonialism, has remained a marked characteristic of Myanmar under the current military government. After British colonial rule ended in 1948, many minority groups took up arms against the new postcolonial state because they felt the government had broken promises made to them and because they believed there was an active campaign to “Burmanize” the smaller ethnic groups.³⁰ Due to the instabilities created by ethnic groups trying to separate from the postcolonial state, along with other stresses, the military seized power in 1962 and used armed persecution to protect national and territorial unity.³¹

Conflicts between ethnic minorities and the military junta have displaced many people within Myanmar and have pushed

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ MARTIN SMITH, *BURMA: INSURGENCY AND THE POLITICS OF ETHNICITY* 42-43 (2d ed., University Press, 1999).

²⁸ Southalan, *supra* note 22, at 8.

²⁹ *Id.* at 7.

³⁰ Josef Silverstein, *Burma’s Uneven Struggle*, 7.4 J. DEMOCRACY 88, 88 (Oct. 1996).

³¹ *Id.* at 88.

numerous others out of the country completely.³² For example, since 2000, several thousand people have crossed into Thailand from Shan State, fleeing the fighting between the Shan State Army, the United Wa State Army and the Myanmar military junta.³³ In May and June of 2002 alone, over 600 people crossed into Thailand as a result of the fighting.³⁴ Furthermore, the government recently has focused its attention and power on civilians in or near rebel-held territory.³⁵ From 1992 onward, tens of thousands of ethnic minority villagers have been forced to relocate, and thousands of villages have been systematically destroyed.³⁶ Burmese civilians caught in the middle of these conflicts have poured into Thailand to find safety and refuge.

B. *Political Persecution and Instability*

Another major contributing factor to Burmese migration into Thailand is the political persecution and instability that run rampant in Myanmar. The military, operating under the name of the Socialist Program Party (BSPP), overthrew the democratic postcolonial government in 1962.³⁷ “In 1988, deteriorating economic conditions, official mismanagement, and violence against protesters finally provoked massive demonstrations demanding a return to civilian democratic rule.”³⁸ The social unrest reached a climax on August 8th, when protestors all over the country turned to the streets in protest of the BSPP government and to demand a return to democratic civilian

³² Southalan, *supra* note 22, at 1.

³³ BURMESE BORDER CONSORTIUM, PROGRAMME REPORT: JULY-DECEMBER 2001 (Bangkok 2002).

³⁴ *Id.*

³⁵ HUMAN RIGHTS WATCH, UNWANTED AND UNPROTECTED: BURMESE REFUGEES IN THAILAND, VOL. 10, NO. 6. (1998), *available at* <http://www.hrw.org/reports98/thai/>.

³⁶ *Id.*

³⁷ Lucien J. Dhooge, *The Wrong Way to Mandalay: The Massachusetts Selective Purchasing Act and The Constitution*, 37 AM. BUS. L. J. 387, 391 (2000).

³⁸ Silverstein, *supra* note 30, at 88.

rule.³⁹ In response, the military government opened fire on thousands of unarmed protestors.⁴⁰ Many were killed, beaten, and jailed.⁴¹ Burton Levin, United States Ambassador to Burma witnessed the horrific moment, commenting, “I saw soldiers hunting down students on the streets, and people huddled behind trees being picked off by snipers in buildings across the road.”⁴²

Subsequently, power shifted within the military government, soon renaming itself the State Law and Order Restoration Council (SLORC).⁴³ In order to protect its sovereignty and national and territorial unity, the military dictatorship enlarged its army to “more than 300,000 [troops] and equipped [itself] with more than \$2 billion worth of new weapons.”⁴⁴ It “banned or severely restricted freedoms of speech, assembly, and movement. Military courts enforced these martial-law edicts; torture of suspects and prisoners became common.”⁴⁵ Some estimates of political activists’ deaths at the hands of the military junta hover around 10,000.⁴⁶ There is also extensive testimony that the SLORC used rape as an official tool of repression, as well as imposing slave labor, and forced conscription into the military.⁴⁷ “Women, in particular, [have been] singled out as human

³⁹ Rotroff, *supra* note 20, at 498.

⁴⁰ *Id.* at 498-99.

⁴¹ Dhooge, *supra* note 37, at 391.

⁴² Alan Clements & Leslie Kean, FREE BURMA, *Burma’s Revolution of the Spirit: The Struggle Democratic Freedom and Dignity*, available at <http://www.ibiblio.org/freeburma/photos/phyo/explode.html> (last visited May 16, 2007).

⁴³ See Silverstein, *supra* note 30, at 88. See also *John Doe I v. UNOCAL Corp.*, 395 F.3d 932, 937 (9th Cir. 2002). The case was brought by Burmese villagers against a California based oil company for investing and working with the military junta to build an oil pipeline. *Id.* The cause of action was under the Alien Tort Claims Act, specifically that Unocal is liable for the human rights atrocity committed by the military. *Id.*

⁴⁴ Silverstein, *supra* note 30, at 89.

⁴⁵ *Id.*

⁴⁶ Mary Warren, *Burma*, NEW INTERNATIONALIST, Apr. 2005, at 36, available at <http://www.newint.org/issue377/profile.htm>.

shields and mine sweepers during their tenure as forced laborers ... [and have been treated] as if they are expendable.”⁴⁸

In 1990, the SLORC invalidated the results of a national election when the National League of Democracy (NLD), a pro-democracy opposition party, won more than 80% of the seats in the national assembly.⁴⁹ The SLORC ignored the election results, jailed NLD elected representatives, and persecuted political dissenters.⁵⁰ The government also placed Aung San Suu Kyi, leader of the NLD, under house arrest.⁵¹ Since then, there has been little progress toward a return to democratic rule in Myanmar despite strong and continuing international pressure on the military junta.⁵²

Like minorities who are forced to migrate because of interethnic conflict with the military junta, so too are political activists forced to migrate.⁵³ The military junta, in their efforts to squash political dissidents, will target anyone deemed to be a threat, whether they are truly political dissidents or not. A survey conducted by the Thai Ministry of Interior found that “4.3% of the illegal labour migrants from Myanmar and Cambodia came to Thailand because of political [persecution] and conscription of labor.”⁵⁴ Once inside the

⁴⁷ *Unocal*, 395 F.3d at 939.

⁴⁸ *Human Rights in Burma: Fifteen Years Post Military Coup: Joint Hearings Before the House Comm. on Int'l Relation*, 108th Cong. 61 (2004) (statement of Naw Musi, Burmese Refugee, Intern, Refugee International).

⁴⁹ See BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (Mar. 4, 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8378.htm>.

⁵⁰ FALCO, *supra* note 17, at 2.

⁵¹ Irwin Abrams, *Aung San suu Kyi of Burma*, in THE NOBLE PRIZE ANNUAL FOR 1991, at 77, available at <http://www.irwinabrams.com/books/excerpts/annual91.html>.

⁵² Myanmar had to forgo chairing the Association of South East Asian Nations (ASEAN) after pressure was mounted by ASEAN members. The United States and the European Union threatened to boycott the regional meeting because of Myanmar's failure to institute democratic reform. *Burma will not take Asean chair*, BBC NEWS, July 26, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4715283.stm>.

⁵³ See PUNPUING, *supra* note 15, at 4-5.

country, “many of these political refugees try” to leave the refugee camps in order to find work.⁵⁵ Thus, although they make up only a small percentage, political refugees are included in the economic migrant population.

C. *Economic Disparity between Myanmar and Thailand*

The greatest factor that is pulling Burmese migrants to enter Thailand is the economic disparity between Myanmar and Thailand. In 2004, the International Monetary Fund ranked Myanmar’s Gross Domestic Product (GDP)⁵⁶ as 108th out of 178 countries. This ranking is substantially lower than Thailand’s rank as 33rd. Thailand’s GDP was reported as US\$163,512,000 and Myanmar’s as US\$6,891,000.⁵⁷ In fact, Burmese migrants can make three or four times as much in daily wages in Thailand as they can in Myanmar. A study conducted by the World Vision Foundation of Thailand and the Asian Research Center for Migration between January and May 2003 (hereinafter “WVF and ARC 2003 Survey”) found that 50% to 90% of respondents in varying Thai provinces had received less than 50 baht (US\$1.25) per day while working in Myanmar.⁵⁸ This is a sharp contrast to the Thai minimum wage of 133 baht (US\$3.25) per day.⁵⁹

⁵⁴ Sumalee Pitayanon, *Migration of Labour into Thailand*, 13 CHULALONGKORN J. OF ECON. 2, 12 (May 2001), available at <http://www.econ.chula.ac.th/publication/journal/2001/cje130202.pdf>.

⁵⁵ *Id.*

⁵⁶ Gross Domestic Product is a measure of the value of economic production in a state during a fixed period of time. U.S. CENSUS BUREAU, GLOSSARY OF TERMS FOR THE ECONOMIC CENSUS, available at <http://bhs.econ.census.gov/econhelp/glossary>.

⁵⁷ See The International Monetary Fund, *World Economic Outlook Database* (Sept. 2005), <http://www.imf.org/external/pubs/ft/weo/2005/02/data/index.htm>.

⁵⁸ JERROLD W. HUGUET & SUREEPORN PUNPUING, INTERNATIONAL MIGRATION IN THAILAND 6 (2005), available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/iom_thailand.pdf. The “study found that 50 per cent of the respondents in Mae Sai had received less than 50 baht per day while working in Myanmar ... eighty-six per cent of the migrants in Mae Sot and 90 per cent of those in Ranong reported earning less than 50 baht per day in Myanmar.” *Id.*

There are numerous reasons why Myanmar is so relatively poor in comparison to Thailand, and when contrasted to developed nations like the United States, the disparity is even worse. One contrasting characteristic that is often identified between Myanmar and Thailand is that Thailand was never colonized, whereas Myanmar was under British and Japanese colonial rule for over sixty years.⁶⁰ Many argue that the world's present wealth stratification is a result of colonialism; colonial powers extracted resources from colonized countries and pushed them into poverty.⁶¹ Mismanagement and bad economic policies are also proposed as contributing factors.⁶² The military junta isolated Myanmar from the international community after gaining power in 1962 and created a centrally planned economy, leading the country to economic decline.⁶³ Others point to unchecked military spending,⁶⁴ arbitrary agricultural policies that keep prices artificially low, and arbitrary taxes.⁶⁵

More than likely, economic sanctions imposed on Myanmar have been the greatest cause of widespread poverty, inflation, and unemployment or underemployment. The European Union and the United States imposed sanctions on Myanmar in 1996.⁶⁶ Currently,

⁵⁹ Marwaan Macan-Markar, *Thailand: Burmese Migrants Find Low Pay and Harsh Work*, IPS-INTER PRESS SERV., Oct. 1, 2003, available at <http://www.ibiblio.org/obl/docs/BNI2003-10-06.htm>.

⁶⁰ Compare BUREAU OF E. ASIAN & PAC. AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTE: THAILAND (Nov. 2006), <http://www.state.gov/r/pa/ei/bgn/2814.htm> with Burma Background Note, *supra* 14.

⁶¹ See generally Lakshmi Iyer, *The Long-term Impact of Colonial Rule: Evidence from India* (Oct. 2004) (Harvard Business School Working Paper, No. 05-041, 2005), available at http://www.people.hbs.edu/liyer/liyer_colonial_oct2004.pdf.

⁶² See Anna E. Johansson, Comment, *A Silent Emergency Persists: The Limited Efficacy of U.S. Investment Sanctions on Burma*, 9 PAC. RIM L. & POL'Y J. 317, 319-20 (2000).

⁶³ *Id.*

⁶⁴ See *Washington On Burma: Rangoon Could Destabilise Region*, THE NATION (Bangkok), Apr. 11, 2005.

⁶⁵ HUGUET & PUNPUING, *supra* note 58, at 6-7.

⁶⁶ Myanmar was first sanctioned in 1995 through the Burma Freedom and Democracy Act of 1995. H.R. Res. 2892, 104th Cong. (1995)

debate is growing over the effectiveness of the sanctions and whether they are actually hurting the military junta or are instead punishing ordinary people.⁶⁷ “Anti-sanctions academics and lobbyists argue that the sanctions destroy Burma’s future, weaken infrastructure, strengthen the regime’s control and harm the public more than the junta.”⁶⁸ Economic sanctions have prevented direct foreign investments of much needed capital and income that would help lift the country’s economy.⁶⁹ More importantly, sanctions have caused uncontrolled inflation. From 2002 to 2003, there was a 50% average increase in consumer prices.⁷⁰ The 2005 to 2006 inflation rate is forecasted to be 20%.⁷¹ The uncontrolled inflation for basic commodities are a result of the country’s inability to import;⁷² whether it is cooking oil or fruits, many working class citizens are unable to afford the high prices.⁷³

Whatever the true causes, it is evident that low wages, high unemployment, and pervasive poverty are pushing people out of

(enacted). The sanctions were renewed in 2003. Press Release, The White House, Burmese Freedom and Democracy Act of 2003 and Executive Order (July 28, 2003), available at <http://www.whitehouse.gov/news/releases/2003/07/20030728-8.html>.

⁶⁷ See *Washington On Burma*, *supra* note 64.

⁶⁸ *Id.*

⁶⁹ But see Adrienne S. Khorasanee, Note and Comment: *Sacrificing Burma to Save Free Trade: The Burma Freedom Act and the World Trade Organization*, 35 Loy. L.A. L. Rev. 1295 (2002) (arguing that moral consciousness and social responsibility required the United States to impose sanctions on Myanmar).

⁷⁰ Clive Parker & Louis Reh, *supra* note 19. Many analysts attribute the uncontrolled inflation to the Myanmar government’s practice of printing the Burmese kyat on demand to pay for its deficit.

⁷¹ *Id.*

⁷² THERESA M. CAOUILLE & MARY E. PACK, PUSHING PAST THE DEFINITIONS: MIGRATION FROM BURMA TO THAILAND 25-26 (Refugees International and Open Society Institute, 2002) (citing migrant’s personal commentaries for their reasons of migrating).

⁷³ Interview with Daw Shwe Kyi, Burmese migrant, in Samut Songkrahm, Thailand. (Aug. 7, 2005). (recounting how inflation, coupled with a steady low wage, was impoverishing her family and how she had to smuggle in various commodities like cooking oil back home to Myanmar).

Myanmar and into Thailand. A 1997 survey conducted in six Thai provinces with a sizable number of illegal labor migrants indicates that more than 70% of the migrants entered Thailand because of higher income and better living conditions.⁷⁴ Migration is further fueled by the need for low wage labor in Thailand. The average annual growth of the Thai population is only 0.8%, and the prime labor force age group of fifteen to thirty-nine-year-olds is no longer growing at all.⁷⁵ A study conducted in 2000 by Chulalongkorn University's Asian Research Center for Migration reveals that there is a shortage of labor in Thailand, especially in the fields of agriculture, fisheries, and livestock.⁷⁶ It is estimated that an additional 107,235 workers are needed to fill the shortage.⁷⁷ While the labor force and the general Thai population are no longer growing, the population of neighboring countries like Myanmar continues to expand,⁷⁸ offering a steady supply of laborers.

III. OVERVIEW OF BURMESE ECONOMIC MIGRANTS IN THAILAND

In order to better understand and critique Thai policy towards Burmese migrants, it is important to understand not only why Burmese are leaving Myanmar, but also who the migrants are demographically. Migrants' gender, age, class, and education should be considered in policies that seek to make migration mutually beneficial to both migrants and the destination country. Demographic analysis should factor into policies aimed at both registered and unregistered migrants because there seems to be no quantifiable demographic difference between the two groups. Contributions to Thai society by Burmese migrants also need to be examined to contextualize why the Thai government's policies have been ambivalent toward migrant welfare and border security. Thai

⁷⁴ Pitayanon, *supra* note 54, at 12.

⁷⁵ HUGUET & PUNPUING, *supra* note 58, at 5.

⁷⁶ Pitayanon, *supra* note 54, at 11.

⁷⁷ Other industries with heavy shortages of labor were rice mills, construction, mining, cargo shipping, and warehouse and grain storage. *Id.*

⁷⁸ HUGUET & PUNPUING, *supra* note 58, at 5.

sentiments toward Burmese migrants are mixed: many Thais welcome their cheap labor but fear their perceived difference.

A. *Demographics of Migrants*

Burmese migrants vary in age, gender, family composition, and ethnicity. Though there is a greater demand for adolescent and young adult migrants, employed migrants tend to be between fourteen and forty-years-old.⁷⁹ There seems to be a relative balance in gender also. Of the work permits issued from July through December 2004, 497,372 went to males and 408,509 went to females. In other words, 45% of Burmese migrants with permits were women and 55% were men.⁸⁰ However, demand for female migrants is growing because women are targeted to fill positions in the garment-manufacturing, domestic, and sex-work industries.⁸¹ Oftentimes, families will send a young family member to Thailand to find work and to help support the rest of the family.⁸² These young people send remittances to their families from what little they are able to save.⁸³ On the other hand, some families immigrate together.⁸⁴ Additionally, young Burmese couples often start families within Thailand.⁸⁵ Migrants are

⁷⁹ CAOINETTE & PACK, *supra* note 72, at 14.

⁸⁰ Bureau of Migrant Worker Administration, Thai. Ministry of Labour, *available at* http://www.iom-seasia.org/index.php?page=stat_th.

⁸¹ THERESA M. CAOINETTE, *SMALL DREAMS BEYOND REACH: THE LIVES OF MIGRANT CHILDREN AND YOUTH ALONG THE BORDERS OF CHINA, MYANMAR AND THAILAND 6* (2001), *available at* http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/412_smalldreams.pdf.

⁸² CAOINETTE & PACK, *supra* note 72, at 14.

⁸³ *See id.*

⁸⁴ Interview with Daw Shwe Kyi, *supra* note 73. Daw Shwe Kyi described how she, her husband, and her eldest son immigrated into Thailand together. She refuses to let her second son come because life is hard in Thailand, and, as a parent, she says she will not let her child go through that kind of experience.

⁸⁵ Interview with Sandar Win, Burmese migrant, in Samut Songkrahm, Thai. (Aug. 7, 2005). Sandar Win and her mother immigrated to

composed of various ethnicities and do not necessarily share a common culture and language; the majority are Bamar, Shan, Karen, Karenni, and Mon.⁸⁶

Common characteristics of Burmese migrants include low levels of education, rural geographic origins, and poor or working class status. In the WVF and ARC 2003 survey, 17% of respondents reported that they had no formal education, 60% had studied for one to eight years, and only 20% had up to nine years of schooling.⁸⁷ The illiteracy rate is also high among migrants, especially women and children.⁸⁸ These migrants predominantly come from rural areas in Myanmar, where there tends to be more unemployment and underemployment.⁸⁹ Lastly, most migrants are poor or working class; they seem to be the most affected by the devastated Myanmar economy.

Once entered into Thailand, Burmese migrants tend to work either near the Thai-Myanmar border or migrate to central Thailand, specifically Bangkok.⁹⁰ Of the total work permits issued in the northern region, 97% were for Burmese migrants. In the southern region 90% of the total work permits were for Burmese migrants.⁹¹ These regions are geographically close to Myanmar. The stay for migrants in Thailand is usually long; the majority of those in the WVF and ARC 2003 survey had been in Thailand for three to five years, and 29% of the respondents had been in Thailand for more than five years.⁹² Migrants from Myanmar who work on the Thai border

Thailand in order to make a living. Her father had died when she was 8 years old and he was the only source of income for the family. She could not graduate from high school because of his death. Arriving in Thailand, she met her husband and they had a child.

⁸⁶ CAOINETTE & PACK, *supra* note 72, at 14.

⁸⁷ HUGUET & PUNPUING, *supra* note 58, at 31.

⁸⁸ CAOINETTE & PACK, *supra* note 72, at 14.

⁸⁹ HUGUET & PUNPUING, *supra* note 58, at 5.

⁹⁰ *Id.* at 30.

⁹¹ *Id.* at 30-31.

⁹² *Id.* at 31.

tend to work in fishing, seafood-processing, agriculture, manufacturing, and domestic service.⁹³

B. *Economic Contributions Made By Burmese Migrants to Thailand*

Thailand benefits enormously from Burmese migrants who fill unskilled labor shortages. As stated earlier, the general Thai population is only increasing by 0.8% per year, and the prime labor force, those fifteen to thirty-nine years of age, is no longer growing in size.⁹⁴ This has made it difficult for businesses to fill positions and stay competitive. The Asian Research Center for Migration survey in 2000 also revealed that a substantial number of firms reported that they would have to close down operations or cut their production level if they were prohibited from hiring foreign workers because there were not enough Thai workers available.⁹⁵ A 1998 survey chronicled the disaster that occurred when 81,000 foreign workers were dismissed from employment as a result of governmental policy; the firms were only able to fill 27,400 of the positions again with Thai workers.⁹⁶

In addition, Burmese migrants often work in occupations that are undesirable to Thai citizens because they are considered “dangerous, dirty, and degrading.”⁹⁷ Thai employers not only face a stagnant work force population, but also a citizenry with rising wealth and prosperity. Thai citizens, who have more options with regards to occupations, do not want to work in fields like fishery, agriculture, and industrial sectors.⁹⁸ An example can be seen in the fishing

⁹³ *Id.* at 33.

⁹⁴ *Id.* at 5.

⁹⁵ Pitayanon, *supra* note 54, at 13.

⁹⁶ *Id.* at 14.

⁹⁷ Kari Tapiola, ILO Executive Director for Standards and Principles, Remarks at the Celebration of the Entry into Force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Geneva, Palais des Nations (July 1, 2003); *see also* Marwaan Macan-Markar, *Thailand: Burmese Migrant Workers Underpaid and Exploited*, IPS-INTER PRESS SERV., Apr. 12, 2004.

industry where fishermen sail out into the ocean for long periods of time, ranging from a few months to several years.⁹⁹ The enormous physical and psychological toll endured helps explain why most workers in the fishing industry are Burmese migrants.¹⁰⁰ In fact, Thai workers would prefer to go to Taiwan, Singapore or Brunei to do similar work that Burmese migrants do in Thailand because the pay is five to ten times higher than the pay they would receive in Thailand.¹⁰¹ At an International Organization for Migration consultative forum, Manus Sookanijvichai, a member of the Ranong Province Chamber of Commerce, lamented that employers in Ranong province used to hire Thai workers from the Northeast, but almost all of those workers had immigrated to find work abroad.¹⁰² Most unskilled Thai workers migrate to work overseas, and illegal foreign workers, like Burmese migrants, are left to fill the dangerous, dirty, and difficult jobs in Thailand.¹⁰³

Besides filling domestic positions, Burmese migrants also allow Thai companies to better compete in the global market. Thai firms are able to reduce costs by hiring illegal migrant workers,

⁹⁸ *Id.*

⁹⁹ Interview with Myint Aung, Clinic Manager, Rak Thai Foundation, in Samut Sakhon, Thailand. (Aug. 8, 2005). Myint Aung explained that many of the Burmese migrants do not know what kind of employment contract they enter. Migrant workers go through sub contractors, usually recruiters they meet near the border, who do not explain the risks and burdens involved with a job.

¹⁰⁰ *Id.*

¹⁰¹ Pitayanon, *supra* note 54, at 14. In 2004, 148,600 Thais left to work abroad. Of those, 69,982 Thais left for Taiwan, 11,338 went to Singapore, and 5,680 migrated to Brunei. THAILAND OVERSEAS EMPLOYMENT ADMINISTRATION, STATISTICS OF THAI WORKERS BY COUNTRIES, YEAR 2004, at 1 (2005), http://www.overseas.doe.go.th/news/doc/doc_j.pdf. The majority of the occupations taken by Thais who go abroad to work are low-skilled such as agriculture and construction, though Thailand is sending more skilled workers each year. See THAILAND OVERSEAS EMPLOYMENT ADMINISTRATION, STATISTICS OF THAI WORKERS BY EDUCATION LEVELS, YEAR 1998-2003, http://www.overseas.doe.go.th/news/doc/doc_o.pdf.

¹⁰² Manus Sookanijvichai, Chamber of Commerce, Remarks at the “Awareness-Raising on Migrant Rights and Welfare for Government Officials, employers, Migrants and Host Community Members in Thailand” Consultative Forum, Ranong, Thailand. (May 18, 2005) [hereinafter Ranong Consultative Forum].

¹⁰³ Pitayanon, *supra* note 54, at 14.

whose wages are often lower than Thai workers.¹⁰⁴ Thai labor laws stipulate that foreign workers must be compensated with wages and employee benefits comparable to Thai nationals.¹⁰⁵ Unfortunately, however, foreign workers, especially illegal migrants, do not have the same bargaining power as Thai nationals, and therefore, are more susceptible to exploitation.¹⁰⁶ Employers use migrants' illegal immigration status and threaten deportation in order to get them to work in unconscionable conditions such as having 28-hour shifts in crowded factories with poor ventilation and safety measures.¹⁰⁷ Thus, Thai employers often pay Burmese migrants 60-70% of the wages paid to Thai citizens.¹⁰⁸ Employers have also been known to pay migrants less than the proscribed Thai minimum wage, force them to work mandatory overtime, or withhold wages.¹⁰⁹

C. *Thailand's Reception of Burmese Migrants*

Due to the enormous contributions made by Burmese migrants to the Thai economy, there is a general acknowledgement that Thailand has benefited from Burmese migrant labor. The Thai business community has been especially welcoming toward migrants. The consensus among business leaders is that migrants are an asset to Thailand; they contribute stability and reliable productivity, particularly in export industries, to the Thai economy.¹¹⁰ Even among the general population, there is an acceptance that migrants do contribute to the prospering Thai economy. In the 2000 Asian Research Center for Migration survey, Thai respondents believed that

¹⁰⁴ *Id.* at 13.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *See* Macan-Markar, *supra* note 97.

¹⁰⁸ Pitayanon, *supra* note 54, at 13.

¹⁰⁹ *See* Macan-Markar, *supra* note 97.

¹¹⁰ Mr. Suchat, Chamber of Commerce, Remarks at the "Awareness-Raising on Migrant Rights and Welfare for Government Officials, employers, Migrants and Host Community Members in Thailand" Consultative Forum, Tak, Thailand (June 2, 2005) [hereinafter Tak Consultative Forum].

foreign workers should be able to work the low skilled jobs that Thai firms are unable to fill.¹¹¹

Conversely, there is also widespread fear of Burmese migrants as a threat to Thai workers. One pervasive view is that Burmese migrants are stealing jobs away from Thai citizens.¹¹² Since Burmese migrants, especially the undocumented ones, are willing to work for very low wages and in unsafe environments, many view them as driving down working conditions.¹¹³ Some have argued that this fear is well-grounded and that the presence of migrants benefits employers, but adversely affects the wages of Thai low-skilled workers.¹¹⁴ The National Economic and Social Development Board estimated that the real income of the poorest 60% of Thai households fell by 0.4% because of migrant labor, whereas the real income of the richest 40% of households rose by 0.3%.¹¹⁵ Other critics say there have not been enough studies done on the economic impact of migrants.¹¹⁶ Still others hold that Thai low-skilled workers do not want to fill the positions taken by Burmese migrants, and thus, migrants do not directly compete against Thai workers.¹¹⁷

Burmese migrants are also viewed as criminals that destabilize Thai society and transgress on Thai laws and norms. The Thai media commonly plays on “themes of chaos, rebels, drug-running warlords, and dangers” within Myanmar’s borderlands.¹¹⁸ The media widely portrays Burmese migrants, especially illegal migrants, as a source of instability inside Thailand.¹¹⁹ A prime example of the criminalization

¹¹¹ Pitayanon, *supra* note 54, at 14.

¹¹² *See id.*

¹¹³ *Id.*

¹¹⁴ *See* HUGUET & PUNPUING, *supra* note 58, at 45.

¹¹⁵ *Id.*

¹¹⁶ *See* Pitayanon, *supra* note 54, at 14-15.

¹¹⁷ *See* Interview with Myint Aung, *supra* note 99; Pitayanon, *supra* note 54 at 13-14; and Sookanijvichai, *supra* note 102.

¹¹⁸ Prem Kumar Rajaram & Carl Grundy-Warr, *The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand*, 42 INT’L MIGRATION 34, 54 (2004).

of Burmese migrants can be seen in the Thai police response to looting post the 2004 tsunami. Thai police officials reported that Burmese migrant workers had looted collapsed hotels and stolen from the wreckage of tsunami victims' homes.¹²⁰ However, compared to the looting by Thais, the number of crimes committed by Burmese migrants was insignificant.¹²¹ Nonetheless, "the Burmese are blamed because of their nationality."¹²²

IV. THAI LEGISLATION AND POLICY TO MANAGE MIGRATION

The ambivalent sentiments about Burmese migrants have in turn affected Thai public policy towards them. With growing demands by employers to allow employment of foreign workers, the Thai government developed a registration program through Cabinet Decisions to monitor and permit migrant employment. It has also cooperated with regional countries through multilateral and bilateral agreements to better manage migration. Though these efforts are a step in the right direction to make migration mutually beneficial for all parties, they have often sidelined migrants' needs and well-being.

A. *Thai Cabinet Decisions to Regularize Migration*

Prior to 2001, the Thai government cautiously experimented with registration programs to regularize and control migration into Thailand from Myanmar. Initially, the cabinet decisions to regularize migration were limited to certain geographical locations and made applicable to only a few occupational sectors.¹²³ For example, in 1992, employers in only ten provinces near the Myanmar border were allowed to legally hire and register migrants with the Thai government.¹²⁴ The registration program for migrant workers has

¹¹⁹ *Id.*

¹²⁰ Sonny Inbaraj, *Tsunami Impact: Thai Sympathy for Burmese Migrants is Wearing Thin*, IPS – INTER PRESS SERV., Jan. 13, 2005.

¹²¹ *Id.*

¹²² *Id.*

¹²³ PHILIP MARTIN, THAILAND: IMPROVING THE MANAGEMENT OF FOREIGN WORKERS (International Labour Organization, 2004).

expanded consistently throughout the years. Cabinet Decisions in 2002 and 2003 permitted migrant to work in all sectors and provinces.¹²⁵ In 2004, over 1,280,000 migrants registered with the Ministry of Interior and 814,000 of those registrants applied for work permits with the Ministry of Labour.¹²⁶ 2004 was the first year that the Thai government permitted family members of migrants to register.¹²⁷

The registration process is fairly complex. First, a migrant must have registered with the Ministry of Interior in 2004.¹²⁸ Migrants from neighboring countries who missed the 2004 registration date cannot register later, nor can they obtain a work permit or a permit to stay legally in Thailand.¹²⁹ These migrants can be employed only as foreign workers and can work only in the domestic and manual labor sectors.¹³⁰ A migrant who registered with the Ministry of Interior in 2004 then must register with the Ministry of Labour to obtain a work permit, get a medical health check-up, and subscribe to the national health plan.¹³¹ The total registration fees are 3,800 baht: 600 baht for a health check-up, 1,300 baht for subscription to the national health plan, 1,800 baht for the work permit, and 100 baht for application fee.¹³² When all of these requirements are met, the government issues a thirteen-digit identification card to the migrant, which includes the employer's name, company's name, location, and employee position.¹³³

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Punpuing, *supra* note 15, at 7.

¹²⁸ Sookanijvichai, *supra* note 102.

¹²⁹ *Id.*

¹³⁰ Jarunan Prabkraisai, Provincial Labour Office, Remarks at Ranong Consultative Forum, *supra* note 102.

¹³¹ *Id.*

¹³² HUGUET & PUNPUING, *supra* note 58, at 38.

¹³³ Prabkraisai, *supra* note 130.

The registration process is a step toward managing migration for the benefit of both Thailand and Burmese migrants. The registration process allows the government to meet employers' demand for unskilled labor and enables Thailand to keep its exports priced competitively on the global market. It also provides the government with statistics: how many migrants are in the country, in what sectors, and in what province. In addition, the registration of migrants gives the Thai government greater control in addressing extremely important issues such as public health, human trafficking, and slave labor exploitation. A clear example is how the registration process enables the Thai government to screen migrants for communicable diseases.¹³⁴

Burmese migrants also benefit from regulated migration. They need not fear forcible separation from their family members. They are able to do everyday tasks such as buying groceries, visiting friends, and going out for entertainment.¹³⁵ Essentially, the permits allow the migrants to live life free from the perpetual fear of detainment, imprisonment, and deportation. By registering, migrants also receive access to health care services and facilities, annual medical examinations and sound medical advice¹³⁶ through the national health plan. Most of all the permits give migrants what they most want – the ability to work.

However, there are glaring failings with the registration process. The biggest problem is that the 3,800 baht registration fee is extremely high for Burmese migrants who typically make anywhere from 50 to 280 baht per day,¹³⁷ depending on the province and sector

¹³⁴ *Id.*, *supra* note 130 (explaining that there is a three-step process for migrant workers to obtain legal permission to work, which includes getting a health check and entering the nation's health scheme).

¹³⁵ Interview with Ma Win, Clinic Staff Member, Rak Thai Foundation, in Samut Songkrah, Thailand. (Aug. 7, 2005) (describing how certain members within the neighborhood compound could go out and entertain themselves at local restaurants and bars, while others who did not possess permits stayed close to the neighborhood).

¹³⁶ Interview with Maung Ko, Burmese migrant, in Pang Nga, Thailand. (July 2, 2005) (explaining how the doctor had warned him about smoking too much after his medical check up).

¹³⁷ See Naw Seng, *Labor-Burma: Thai Crackdown Means Life in Hiding, Uncertainty*, INTER PRESS SERV., Mar. 22, 2004 (reporting that migrants

of work. Even assuming that the employer is paying the migrant at legal minimum wage levels of 133 baht a day, calculating daily living expenses, it would take a migrant a substantial amount of time to save up 3,800 baht.¹³⁸ For this reason, most employers pay the registration fees for their migrant workers, and then, later take it out directly from the workers' pay.¹³⁹ Often, this pragmatic solution works. Other times, unscrupulous employers cheat migrant employees out of more than the registration fees. It is common for employers to hire middlemen to handle the registration process. Employers then charge the migrants for the cost of hiring the middlemen, transportation expenses, and other costs incurred in registration.¹⁴⁰ Fraud and embezzlement are frequent, especially because many migrants do not understand the registration process and do not know the exact fee that the employer should be extracting from their pay.¹⁴¹

Burmese migrants cannot change employers once registered. They must re-register and pay the registration fees again if they wish to do so.¹⁴² Employers argue that, without this regulation, migrant workers' turnover would be high; furthermore, employers would lose the money they invested in registration fees and have problems filling

working in Mae Sot, a province near the Thai-Burma border, can make as low as 20 baht a day); Interview with Maung Ko, *supra* note 136 (responding that he made 280 baht as a hotel worker in Pang Nga).

¹³⁸ Interview with Sein Min, Burmese Migrant, in Samut Songkrahm, Thail. (Aug. 7, 2005). Sein Min had to save for several months in order to pay for his registration fee. *Id.* When there is an emergency, such as an illness, Burmese migrants who do not have enough often have to borrow informally from one another in the community. *Id.*

¹³⁹ *Id.*

¹⁴⁰ Interview with Sandar Win, *supra* note 85. Sandar Win's mother had to pay 4,500 baht, over 700 baht more than the actual cost of the registration fee. *Id.* It is difficult for migrants to bargain or challenge the amount set by the employers. *Id.*

¹⁴¹ Interview with Maung Ko, *supra* note 136. Migrants generally do not know how much their employers are taking out from their monthly pay checks. *Id.* The confusion is exacerbated by the fact that employers often house and feed migrants – taking the cost of room and board from their pay checks too. *Id.* The transactions are very informal. *Id.*

¹⁴² HUGUET & PUNPUING, *supra* note 58, at 39.

empty positions and meeting production goals.¹⁴³ It is a common practice for employers to keep the original permit document and to only give the migrant a copy of it.¹⁴⁴ Though there are legitimate grounds for employer concerns,¹⁴⁵ restricting migrants to one employer creates opportunity for labor exploitation and abuse. Employers who withhold the permit can threaten migrants with deportation, thereby scaring migrants into silence and preventing them from reporting labor abuses. This can lead to severe exploitation such as when a factory owner in Tak province withheld two months pay, forced migrants to work fourteen hour days, and assaulted workers when they protested.¹⁴⁶ Officially, migrants can apply for another job and report their change of occupation with the Labour Office.¹⁴⁷ But, as mentioned above, knowledge of legal rights is generally poor among the migrant population.

Another failing of the registration process is that it does not afford migrants the right to move outside of the province in which they are registered. If a migrant is caught outside of his registered province, he is considered illegal and may be subjected to harassment and deportation.¹⁴⁸ Travel outside the province is restricted to very limited circumstances such as: (1) court appearances as a witness or to receive a court order, (2) response to a warrant, (3) hospitalization, or (4) authorization by the Department of Employment to work in another location owned by the registered employer or in response to a

¹⁴³ See *id.*; see also Akarat Rattanajan, Media, Remarks at “Awareness-Raising on Migrant Rights and Welfare for Government Officials, employers, Migrants and Host Community Members in Thailand” Consultative Forum, Mukdahan, Thailand. (May 26, 2005) [hereinafter Mukdahan Consultative Forum].

¹⁴⁴ Prabkraisai, *supra* note 130.

¹⁴⁵ *Id.* (citing the experience of a seafood company called Andaman Seafood, where the company had originally 543 registered migrants, but was left with 143 because migrants moved, returned to their country, or did not show up for work and disappeared).

¹⁴⁶ Macan-Markar, *supra* note 59.

¹⁴⁷ Prabkraisai, *supra* note 130.

¹⁴⁸ See Hanna Ingber, *Even Legal Migrants Face Problems*, The Irrawaddy (Bangkok), June 1, 2005, <http://www.irrawaddy.org/aviewer.asp?a=4682&z=150>.

labor shortage.¹⁴⁹ Employers support these restrictions because they fear losing migrants' registration fees.¹⁵⁰ The Thai government also wants to manage the physical movements of migrants. However, prohibiting inter-provincial movement separates migrants from their families and friends. It is routine for parents to send their children to another province to work.¹⁵¹ In cases of emergency, this restriction places undue burden on migrants.

B. *International Treaties and Bilateral Agreements*

In addition to domestic policies, Thailand has also sought to manage and regulate migration through international cooperation. In April 1999, the Thai government organized the International Symposium on Migration, which was attended by nineteen governments from Asia and the Pacific Region.¹⁵² The symposium was an endeavor by the Thai government to spearhead discussion and action on irregular migration in the region. The symposium's major accomplishment was the Bangkok Declaration which noted that globalization, economic crises, and natural disasters have made irregular migration "a major economic, social, humanitarian, political and security concern for a number of countries in the Asia-Pacific region."¹⁵³ The governments participating in the Bangkok Declaration agreed to: (1) share information and technical assistance with regards to irregular migration; (2) criminalize human trafficking, especially of women and children; and (3) cooperate in the return of

¹⁴⁹ Prabkraisai, *supra* note 130.

¹⁵⁰ HUGUET & PUNPUING, *supra* note 58, at 39.

¹⁵¹ CAOUILLE & PACK, *supra* note 72, at 30.

¹⁵² HUGUET & PUNPUING, *supra* note 58, at 35. The governments that took part in the Bangkok Declaration were Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam, as well as the Hong Kong Special Administrative Region. International Symposium on Migration, Apr. 21-23, 1999, *The Bangkok Declaration on Irregular Migration* [hereinafter *Bangkok Declaration*] (April 23, 1999).

¹⁵³ *Bangkok Declaration*, cl. 4.

irregular migrants.¹⁵⁴ Despite the participants' emphasis on broader regional cooperation, no significant multilateral efforts to address migration have occurred since the Bangkok Declaration was signed.¹⁵⁵

The Thai government has sought cooperation through bilateral agreements, especially with neighboring countries Laos, Cambodia, and Myanmar, where almost all of the 1.3 million irregular migrants originate. Memorandums of Understandings (MOUs) have been signed with Laos (October, 2002), Cambodia (May, 2003), and Myanmar (June, 2003).¹⁵⁶ Like the Bangkok Declaration, these MOUs address economic, social, and security concerns with regards to irregular migration.¹⁵⁷ New migrants entering Thailand, who are barred from obtaining a work permit because they did not register with the Ministry of Interior prior to 2004,¹⁵⁸ can still work in Thailand under the terms of their countries' respective MOUs.¹⁵⁹ Under the MOUs, migrants apply for a passport or a border-pass from their country of origin, and pay a fee of 5,000 baht for a two-year stay with the possibility of a two-year extension.¹⁶⁰ After a maximum of four years, the migrant workers must return to their country of origin and must wait three years before reapplying to work in the same destination country.¹⁶¹

The MOUs set up an elaborate system for the temporary employment of each country's citizens for work in the other country. Each bilateral agreement requires active participation of the two countries and, at minimum, annual consultations between high

¹⁵⁴ *Id.*

¹⁵⁵ HUGUET & PUNPUING, *supra* note 58, at 35.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ See Sookanijvichai, *supra* note 102 and Prabkraisai, *supra* note 130.

¹⁵⁹ Mr. Nara, Office of Foreign Worker Administration, Department of Employment, Remarks at Tak Consultative Forum, *supra* note 109.

¹⁶⁰ *Id.*

¹⁶¹ HUGUET & PUNPUING, *supra* note 58, at 36.

ranking officials of both countries.¹⁶² One government will prepare a list of jobs available, while the other government will prepare a list of selected applicants for those jobs, complete with information on their permanent addresses, references, and work experience.¹⁶³ When the applicants are chosen, both countries work to ensure that migrant workers meet the requirements for visas, work permits, health insurance, taxes, and employment contracts.¹⁶⁴ In addition, the MOUs stipulate that each country will set up a savings fund, into which migrants will be required to contribute 15% of their monthly salary.¹⁶⁵ Workers then receive their entire savings contributions, including interest, within seven days after returning to their permanent address.¹⁶⁶

There is little information available on the effectiveness of the MOU with Myanmar since it only took effect in August of 2005. Nonetheless, it is evident that the MOU does not account for the realities of the economic and social conditions in Myanmar. The 5,000 baht registration fee is economically out of reach for poor Burmese laborers, and even if the employer loans the migrant money for the fee, the potential for exploitation and abuse, as with the Cabinet Decisions, will still exist. Burmese migrants may also be unable to take the required three-year break. In their country of origin, high unemployment rates and insufficient wages make it difficult to support themselves or their families. Savings accrued in Thailand are generally insufficient to make up the difference. After paying for registration fees and daily living expenses, most Burmese migrants have little left to save.¹⁶⁷ Any extra money is often sent back to family remaining in Myanmar.¹⁶⁸ In addition, though the vast

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Interview with Daw Than Shwe, Burmese migrant, in Samut Songkrahm, Thai. (Aug. 7, 2005).

¹⁶⁸ Interview with Sein Min, *supra* note 138. Sein Min tries to send about 1,000-2,000 baht each month. His son is in school in Myanmar and to finance

majority of migrants leave Myanmar for economic reasons, large numbers of migrants also leave because of conflicts with the military junta.¹⁶⁹ It is unreasonable to think that these same migrants who are being pushed out of Myanmar due to unfair taxes, forced relocation, and violence will go to the military junta to enroll in the program. Refugees will not want to interact with the military junta for the registration process.

Logistically, the MOU between Thailand and Myanmar seems to be unreasonable. It is certainly difficult to gather all potential migrants' names, permanent addresses, references, and work experiences, and the bureaucratic costs of such an endeavor are tremendous. It might be nearly impossible to implement the savings fund provision since most Burmese migrants are from rural areas where there is no reliable postal system.¹⁷⁰ Hence, there will be no way for the migrants to obtain the money owed to them. Enforcement will also probably be lax or nonexistent. Neither the Thai nor the Myanmar government will be able to check whether a migrant has returned to his or her permanent address unless government officials plan to individually find and hand-deliver to each migrant the money owed to him or her. Furthermore, the governments will not be able to ensure that a migrant has taken a three-year break, especially because the borders are so porous.¹⁷¹

Although Thailand has made some efforts through the Bangkok Declaration and the Memorandum of Understandings with neighboring countries, it has not held itself to international standards for dealing with irregular migrants. Specifically, Thailand has failed to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (hereinafter

his education, it costs about 1,000 baht per month. Sein Min makes about 6,000 baht a month, most of it is spent on living expenses – rent, electricity, water and food.

¹⁶⁹ See *supra* notes 31-35, 52-54.

¹⁷⁰ Interview with Maung Ko, *supra* note 136.

¹⁷¹ Sukhumbhand Paribatra, Thai. Deputy Minister of Foreign Affairs, Address at the Conference on “Engaging Myanmar in East Asia” (Nov. 29, 1998), *available at* http://www.thaiembdc.org/pressctr/statemnt/others/dfm_1198.htm.

“Convention on Migrant Workers”), which took force in July 2003.¹⁷² The Convention on Migrant Workers is the definitive international treaty on migrant workers, and it holds signatories to numerous duties and obligations for the welfare of the migrant such as granting them the right to participate in unions,¹⁷³ giving them equal enjoyment as nationals with regards to social security,¹⁷⁴ and the right to back-pay even when expelled from the country.¹⁷⁵ The Kingdom has also failed to sign the Convention on the Reduction of Statelessness, which entered into force on December 12, 1975.¹⁷⁶ This Convention specifically addresses the issue of statelessness, a serious problem for Burmese migrant children in Thailand that the Thai government has completely ignored. The issue of statelessness and the Kingdom’s moral and legal responsibilities will be addressed later in this paper.

In Thailand’s defense, these two international treaties have not been widely accepted. Kate Jastram, Lecturer at Boalt Hall School of Law, notes that “no other destination country has ratified [the

¹⁷² International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003), *available at* <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty25.asp>.

¹⁷³ Art. 26 § 1(a) states that signatories must recognize the right of migrants and their families:
To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned.

¹⁷⁴ Art. 27 § 1 states:
With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties.

¹⁷⁵ Art. 22 § 9 states:
Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

¹⁷⁶ Convention on the Reduction of Statelessness, Aug. 30, 1961, 360 U.N.T.S. 117, (entered into force Dec. 13, 1975), *available at* http://www.unhcr.ch/html/menu3/b/o_reduce.htm.

Convention on Migrant Workers] either.”¹⁷⁷ In addition, the Convention on the Reduction of Statelessness has been ratified by only 26 countries.¹⁷⁸ Nonetheless, the Kingdom should look to these treaties as goals to strive towards and should uphold principles enshrined in the two treaties – equality, fairness, and protection for the vulnerable.

V. THE REALITIES OF LIFE AND DEATH

Thai domestic laws are, for the most part, supportive of migrant workers’ human rights. Specifically, in regards to health, labor, and education, Thai laws explicitly protect migrants’ welfare. Twelve years of basic education is accessible to all children, regardless of nationality. Migrants cannot be turned away from public health facilities. Thai labor laws make no distinction in regards to minimum wage, maximum daily hours, and other job safety measures. Yet, the ideals of equity and justice in Thai laws do not coincide with the realities of daily migrant lives.

A. Education

All children in Thailand, regardless of nationality, ethnicity, or registration status, are guaranteed a basic education under the National Education Act B.E. 2542 (1999), which explicitly states: “All individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.”¹⁷⁹ Thus, Thai schools are required by law to offer basic education to migrant children for twelve years. Beginning at age seven, children are required to attend school for nine years of compulsory education.¹⁸⁰ At the age of sixteen, or after

¹⁷⁷ Interview with Kate Jastram, Lecturer, Boalt Hall School of Law, in Berkeley, Cal. (Dec. 7, 2005).

¹⁷⁸ U.N. Treaty Collection, Feb. 5, 2002, *available at* http://www.unhchr.ch/html/menu3/b/treaty4_.htm.

¹⁷⁹ National Education Act B.E. 2542 (1999), Ch. 2 § 10 (Thail.), *available at* <http://www.moe.go.th/English/edu-act.htm>.

¹⁸⁰ *Id.* at Ch. 3 § 17.

completion of ninth grade, the minor can opt out of further schooling, but the government must still provide the option to continue.¹⁸¹ Furthermore, the state is required by the National Education Act to meet the learning needs of students with special circumstances; the Act stipulates: “Persons with physical, mental, intellectual, emotional, social, communication and learning deficiencies; those with physical disabilities; or the cripples; or those unable to support themselves; or those destitute or disadvantaged; shall have the rights and opportunities to receive basic education specially provided.”¹⁸² Lastly, migrant children can attend Thai schools. Prior to the National Education Act passing, noncitizen children were only allowed to attend schools in certain areas.¹⁸³

Although migrant children possess these educational rights, rarely do they get to exercise or benefit from them. According to the Ministry of Education, of the 93,000 children under the age of fifteen registered with the Ministry of Interior in July 2004, there were only 13,459 students (a mere 14%) from Cambodia, Laos, and Myanmar attending Thai schools.¹⁸⁴ Moreover, this number is probably higher than the actual percentage because the number of students enrolled reflects children of professionals rather than migrant workers.¹⁸⁵

The greatest obstacle facing migrant children in obtaining an education is the lack of knowledge about Thai law, both within the general population and within the migrant population. Despite the fact that all children aged seven to sixteen are guaranteed an education, immigration officers and governmental agencies believe that it is illegal for schools to provide education to migrant children.¹⁸⁶ As a result, some schools turn away migrant children.¹⁸⁷

¹⁸¹ *Id.*

¹⁸² *Id.* at Ch. 2 §10.

¹⁸³ Right to Education Workshop, Tak Consultative Forum, *supra* note 110.

¹⁸⁴ HUGUET & PUNPUING, *supra* note 58, at 43.

¹⁸⁵ *Id.*

¹⁸⁶ *See id.*

¹⁸⁷ *Id.* (stating that “[s]ome migrants report that local schools simply do not accept the children of migrants”).

Similarly, migrant parents are not aware of the right they possess to enroll their children in Thai schools nor are they aware that a basic education is free of charge.¹⁸⁸ Both the ignorance of officials and of migrant parents prevents migrant children from obtaining the education they deserve.

Instead of attending Thai schools, many migrant children attend schools set up by nongovernmental agencies, if they attend school at all. These schools are predominantly located near Burmese migrant enclaves such as Samut Sakhon (Mahachai), a seaport city that has become known as “Little Burma.”¹⁸⁹ The quality of education at these schools is extremely low, which is probably the result of a lack of resources. These schools are generally composed of about twenty to thirty students ranging in age from five to twelve. A single teacher must try to teach at varying levels of complexity depending on the students’ ages and mental capabilities.¹⁹⁰ The only subjects taught are reading and writing; other subjects such as math, science, and history are ignored.¹⁹¹ There are no desks or tables, and children often share books and instruction packets.¹⁹² In the case of migrant children, the Thai government fails to fulfill its obligations to provide all children within the Kingdom of Thailand quality, free basic education as established in the National Education Act.

Migrant children likely fall under the categories afforded extra protection in Ch. 2, Sec. 10 of the National Education Act which, as previously discussed, requires the Thai government to meet the needs of students with special circumstances such as children with physical and mental disabilities, children who are destitute, and children who are otherwise disadvantaged.¹⁹³ Migrant children are clearly “disadvantaged,” especially considering the language and cultural barriers that they face. In small community schools, Burmese migrant

¹⁸⁸ Interview with Ma Win, Clinic Staff Member, Rak Thai Foundation, in Bangkok, Thailand. (July 21, 2005).

¹⁸⁹ *Id.*

¹⁹⁰ Interview with Tha Zin Htet, Clinic Teacher, Rak Thai Foundation, in Samut Songkhram, Thailand. (Aug. 7, 2005).

¹⁹¹ *Id.*

¹⁹² Author’s personal observations from visiting several schools in Mahachai.

¹⁹³ See National Education Act, *supra* note 179, at Ch. 2 §10.

children are taught in Burmese, Thai, and other minority ethnic languages.¹⁹⁴ In public state schools, however, language support is missing for children attending Thai public schools,¹⁹⁵ who are faced with teachers unable to communicate with them in Burmese or their ethnic languages.¹⁹⁶ In addition, the Thai government has not been concerned with the economic disadvantages that migrant students face. Many Burmese children do not attend school at all and many of those who do attend drop out at age eleven or twelve to work illegally and to help support their families.¹⁹⁷ Community school teachers often offer instruction to drop-outs during work breaks.¹⁹⁸ A very vivid example of the Thai government not living up to the ideals enshrined in the National Education Act is the fact that the government does not reimburse schools for the cost of lunches given to illegal migrant children: the school must bear the cost.¹⁹⁹ If all children are guaranteed quality basic education, then the government should not reprimand schools that provide education and services to Burmese migrant children.

B. *Right to Safe Working Conditions*

Very similar to education, the right to health of Burmese migrants is integrated into Thai labor laws and health policies. With respect to labor law, Burmese migrants are protected under the Labour Protection Act B.E. 2541 (1998). The Labour Protection Act stipulates migrants' rights to daily working hours, breaks, holidays, wages, and overtime payment. For example, §23 prohibits employers from mandating workers to work more than six days a week and eight

¹⁹⁴ *Id.* (explaining how on certain days Thai language was taught and on other days Burmese and Mon were taught).

¹⁹⁵ HUGUET & PUNPUING, *supra* note 58, at 43.

¹⁹⁶ Right to Education Workshop, *supra* note 183.

¹⁹⁷ Interview with Teacher from 2nd Mahachai Clinic.

¹⁹⁸ *Id.*

¹⁹⁹ Right to Education Workshop, *supra* note 183.

hours a day.²⁰⁰ Workers must have thirteen national holidays annually.²⁰¹ The Labour Protection Act also prohibits employers from forcing workers to work overtime “unless the consent of the employee has been obtained on a case-by-case basis.”²⁰² In addition, employees must be given a rest period of no less than one hour a day for five consecutive hours worked.²⁰³ These are just a few examples of the rights available to migrant workers through the Labour Protection Act.

In regards to the labor protections afforded in the Labour Protection Act, employers routinely pay less than the prevailing wage of 133 baht. In border towns like Mae Sot, Burmese migrants have reportedly worked for 20 baht (US \$0.50) a day.²⁰⁴ There have been cases where migrant workers were forced to work overtime and denied sleep.²⁰⁵ A lack of compliance with legal rights prevents Burmese migrants from actively organizing against such exploitation. In addition, many are fearful of employer backlash, even if they are registered and have a legitimate cause of action against the employer.²⁰⁶ There have been allegations of harassment, violence, and even murder of migrant leaders.²⁰⁷ There are also numerous

²⁰⁰ Labour Protection Act B.E. 2541 (1998) § 23 (Thail.), available at http://www.mol.go.th/download/laborlaw/labourProtection1998_en.pdf.

²⁰¹ *Id.* § 29.

²⁰² *Id.* § 24.

²⁰³ *Id.* § 27

²⁰⁴ Naw Seng, *supra* note 137.

²⁰⁵ Macan-Markar, *supra* note 97.

²⁰⁶ See generally Denis Arnold & Kevin Hewison, *Exploitation in Global Supply Chains: Burmese Migrant Workers in Mae Sot, Thailand*, 35 J. CONTEMPORARY ASIA 319-340 (2005) (listing a number of incidents exemplifying how Burmese migrants who choose to organize are often retaliated against with beatings, deportation, and sometimes, murder).

²⁰⁷ ASIAN LEGAL RESEARCH CTR., STATEMENT ON ‘ABUSE OF MIGRANT WORKERS IN THAILAND’ (Apr. 7, 2004), available at <http://www.alrc.net/pr/mainfile.php/2004pr/61/>; see also AMNESTY INTERNATIONAL REPORT 2004 THAILAND, available at <http://web.amnesty.org/report2004/tha-summary-eng>.

instances of Burmese migrant women being raped and sexually assaulted by employers.²⁰⁸

Protection and rights gaps within the Labour Protection Act also exist; for instance, the act does not grant Burmese migrants the right to form unions.²⁰⁹ While they are permitted to join already established Thai unions within their workplace, most migrants are reluctant to join out of fear of employer backlash and because Thai union members do not want migrants to join.²¹⁰ Cultural and language barriers prevent Thai unions to effectively outreach to Burmese migrants.²¹¹ Thai unions also see migrants as a high risk group because they are subject to deportation and have uncertain legal status.²¹² Furthermore, migrants who have no knowledge or history of union organizing often view unions as another “Thai fee” imposed on them.²¹³ Thai labor laws also do not apply to small businesses that employ fewer than ten workers,²¹⁴ and agricultural and domestic workers are also explicitly excluded from the Labour Protection Act.²¹⁵ Migrant workers that fall within these excluded categories are essentially without protection from labor law abuses.

C. *Right to Health*

Burmese migrants who are registered with the Ministry of Interior are able to get access to health services. The Ministry of Public Health stated that in provinces where migrants are registered and possess permits to work, they may receive health services ranging from treatment, disease control, health promotion, and

²⁰⁸ See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: THAILAND (Feb. 2004).

²⁰⁹ HUGUET & PUNPUING, *supra* note 58, at 48.

²¹⁰ *Id.*

²¹¹ Arnold & Hewison, *supra* note 206, at 323-324

²¹² *Id.*

²¹³ *Id.*

²¹⁴ HUGUET & PUNPUING, *supra* note 58, at 48.

²¹⁵ Martin, *supra* note 123, at 28.

rehabilitation.²¹⁶ Migrants working in the fisheries can obtain health services in any hospital within the coastal provinces.²¹⁷ Through the registration process outlined by the Cabinet Decisions, migrants can also obtain health checkups and enlist in the national health scheme.²¹⁸ Once in the national health scheme, migrants need only pay 30 baht for any service needed, and the Thai government is responsible for picking up any costs above the 30 baht fee.²¹⁹

Although these laws and policies do a great deal in protecting Burmese migrants' health, noncompliance is pervasive. Mirroring the problems faced with labor laws, migrants' awareness of their right to healthcare is equally abysmal. Very few migrants understand the registration system and do not realize that, with the registration fee, they have access to medical services in Thai public healthcare facilities.²²⁰ For this reason, many do not seek medical help even when they are in need of it.²²¹ In addition, there is no systemic policy on the provision of emergency healthcare for unregistered migrants.²²² There have been examples of provinces providing healthcare to Burmese migrants, whether registered or not, such as the healthcare available in the Mukdahan province.²²³ Nonetheless, most Thai

²¹⁶ Mr. Chuvong Seangkong, World Vision Foundation, Ranong Consultative Forum, *supra* note 102.

²¹⁷ *Id.*

²¹⁸ *See id.*

²¹⁹ *See* MIGRANT WORKERS FROM BURMA AND THAILAND: POLICY REVIEW AND PROTECTION MECHANISMS 28 (Alison Vicary ed. 2003), *available at* http://www.econ.mq.edu.au/__data/assets/pdf_file/17412/Chula_MW_Conference.pdf.

²²⁰ David Wilson, *Meeting the Health Needs of Migrant Workers Affected by the Tsunami: Burmese migrant workers in Thailand are a vulnerable group*, PLOS MEDICINE (June 28, 2005), <http://medicine.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pmed.0020176>.

²²¹ *Id.*

²²² *Id.*

²²³ Mr. Chamnan Kiartwongnok, Department of Labour Protection and Welfare, Mukdahan Consultative Forum, *supra* note 143.

public healthcare facilities and hospitals do not provide such services to unregistered migrants.²²⁴ If they were to do so, then the costs accrued would be placed squarely on themselves because the Thai government will not reimburse them.²²⁵ This distinction between regular and irregular, registered and unregistered, only confounds migrants about their right to health. It is also extremely bad public policy. Migrants suffering from communicable diseases do not seek out treatment, which only exacerbates their conditions, and causes them to be a health risk to the general population.²²⁶

D. *Citizenship and Statelessness*

Thai citizenship law only acts as a detriment to the well-being of Burmese migrants, especially migrant children. There is a growing phenomenon of stateless Burmese children in Thailand.²²⁷ The lack of both Burmese and Thai citizenship essentially ensures that children will be subjected to labor and sexual exploitation.²²⁸ These children cannot get quality education or legal employment in Thailand.²²⁹ More than likely, stateless children are not registered and, therefore, do not have the right to stay or work in Thailand. Thus, these children are extremely vulnerable for recruitment into illegal activities such as prostitution or drug trafficking.²³⁰ In addition, they cannot return to Burma because they do not have proper identification or

²²⁴ HUGUET & PUNPUING, *supra* note 58, at 71.

²²⁵ *See id.* at 38.

²²⁶ HUMAN RIGHTS DOCUMENTATION UNIT, HUMAN RIGHTS YEARBOOK: IN BURMA 2003, (2004), <http://www.ibiblio.org/obl/docs/HRDU2003-04/The%20Situation%20of%20Migrant%20Workers.htm>.

²²⁷ HUGUET & PUNPUING, *supra* note 58, at 64.

²²⁸ Nyo Nyo, *Burmese Children in Thailand: Legal Aspects*, 10 LEGAL ISSUES ON BURMA J. 51, 52 (2001).

²²⁹ HUGUET & PUNPUING, *supra* note 58, at 64.

²³⁰ *Id.*

traveling permits, both of which can only be obtained if they had Burmese citizenship.²³¹

Although these children are born to Burmese migrants, they are not considered Burmese citizens because Myanmar law requires that a child be registered within a month of birth, and a birth certificate must be issued.²³² The certificate allows the child to register in the household registration, which grants access to health services, school, and travel permits.²³³ At the age of twelve, the child can then apply for an identification card with a birth certificate and household registration.²³⁴ Without a birth certificate and a house registration document, a child cannot be officially recognized as a citizen of Myanmar.²³⁵

Burmese migrant children born in Thailand cannot obtain a birth record or get official registration of their births, and thus, are effectively denied any possibility of applying for Myanmar citizenship.²³⁶ The Kingdom has no official guidance on the issuance of birth certificates and registration for alien minors.²³⁷ Thus, whether or not a Burmese migrant child receives a birth certificate largely depends on the hospital and the doctor the child's mother visited.²³⁸ Most Thai hospitals do not provide them with certificates.²³⁹ In Ranong and Samut Sakhon, two areas with high concentrations of Burmese migrants, hospitals remove the birth records of these babies from the doctor's appointment book to prevent the children from claiming Thai nationality.²⁴⁰

²³¹ HUMAN RIGHTS DOCUMENTATION UNIT, *supra* note 225.

²³² CAOINETTE & PACK, *supra* note 72, at 33.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *See id.*

²³⁷ HUMAN RIGHTS DOCUMENTATION UNIT, *supra* note 225.

²³⁸ Nyo Nyo, *supra* note 228, at 54

²³⁹ HUMAN RIGHTS DOCUMENTATION UNIT, *supra* note 225.

²⁴⁰ Nyo Nyo, *supra* note 228, at 54; *see also* Poona Antaseeda, *Children of a Lesser Nation*, Bangkok Post, Oct. 7, 2001.

The procedural difficulties in obtaining citizenship in Myanmar would not be a problem if Thailand's citizenship law was not hostile towards migrant children. The Nationality Act B.E. 2508, amended by Act B.E. 2535 (1992), describes how Thai nationality can be obtained.²⁴¹ Prior to a 1972 amendment, citizenship could be achieved by reason of birth in Thailand.²⁴² Currently, however, citizenship by birth (*jus sanguinis*) can be obtained if the child's mother or father holds Thai nationality, regardless of where the birth occurs.²⁴³ Thai nationality can also be obtained by birth if the child is born within Thailand's border (*jus soli*), but exceptions exist.²⁴⁴ Burmese migrant children are barred benefit from the *jus soli* provision by an additional clause that states:

A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was:

- (1) the person having been given leniency for temporary residence in Kingdom as a special case;
- (2) the person having been permitted to stay temporarily in the Kingdom;
- (3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration²⁴⁵

Therefore, if the child's mother is a Burmese migrant and is in the Thai Kingdom either illegally or via temporary permission, the child cannot become a Thai citizen. Even when Burmese migrants follow

²⁴¹ Nationality Act, B.E. 2508, amended by Acts B.E. 2535, Ch. 1 § 7(1) (1992) (Thail.).

²⁴² Nyo Nyo, *supra* note 228, at 54.

²⁴³ See Nationality Act, *supra* note 241.

²⁴⁴ *Id.* at Ch 1 § 7 (2).

²⁴⁵ *Id.* at Ch. 1 § 7 *bis*.

Thai immigration laws and enter the country legally, their children are afforded no protection. With both Thai citizenship and Burmese citizenship unavailable to them, Burmese migrant children become stateless.

In addition to not gaining Thai citizenship at birth, it is also highly improbable that Burmese migrants can obtain citizenship through the naturalization process. The Nationality Act states:

An alien who possesses the following qualifications may apply for naturalisation as a Thai:

- (1) becoming *sui juris* in accordance with Thai law and the law under which he has nationality;
- (2) having good behaviour;
- (3) having regular occupation;
- (4) having a domicile in the Thai Kingdom for a consecutive period of not less than five years till the day of filing the application for naturalisation;
- (5) having knowledge of Thai language as prescribed in the Regulations.²⁴⁶

Textually, the Act does not explicitly prohibit Burmese migrants from naturalization. It does not mention that immigrants who enter the country illegally cannot apply for citizenship. Likewise, while Chapter 1 § 7 of the Act bars alien children, whether their parents entered the country legally or illegally, from citizenship *at the time of birth*, it never mentions whether these same children can apply for citizenship once they become of age and qualify under the five requirements laid out in Chapter 1 § 10.²⁴⁷ Theoretically, a Burmese migrant who is at least twenty years old,²⁴⁸ has had regular occupation, has lived in Thailand for more than five years, and is competent in the Thai language could apply for naturalization.

²⁴⁶ *Id.* at Ch. 1 § 10.

²⁴⁷ *Id.* at Ch. 1 § 7.

²⁴⁸ Thail. Civil and Commercial Code § 19 states, “A person, on the completion of twenty years of age ceases to be a minor and becomes *sui juris*.”

Nonetheless, Burmese migrants will undoubtedly be excluded from the naturalization process. There is great discretion involved in granting citizenship. The discretion to grant,²⁴⁹ and even to revoke,²⁵⁰ citizenship lies with the Minister of Interior. The requirement that aliens must be of “good behavior” will most likely exclude migrants who entered the country illegally. Similarly, the Thai government has ensured that Burmese migrants who enter the country legally with the government’s permission will be unable to naturalize. The Nationality Act mandates that an alien must have resided in Thailand for a consecutive period of no less than five years.²⁵¹ As stated earlier, the Memorandum of Understanding with Myanmar permits Burmese migrants to apply to stay for two years, with a possibility of extending for another two years.²⁵² However, after four years, the Burmese migrant must return to Myanmar for a three year period before reapplying to work in Thailand.²⁵³ These policies essentially guarantee that no Burmese migrant will be able to participate in the naturalization process.

Thailand’s domestic laws may not provide a cause of action, but its international obligations do. Thailand ratified the International Covenant on Civil and Political Rights (ICCPR) on December 29, 1996.²⁵⁴ According to Article 24 of the ICCPR, children have the right to be registered immediately after birth, the right to have a name, and the right to acquire a nationality.²⁵⁵ Although Thailand did make reservations and declarations to the ICCPR, it did not do so on Article

²⁴⁹ Nationality Act, *supra* note 241, at Ch. 1 § 12

²⁵⁰ *Id.* at Ch. 2 § 19

²⁵¹ *Id.* at Ch. 1 § 10.

²⁵² HUGUET & PUNPUING, *supra* note 58, at 36.

²⁵³ *Id.*

²⁵⁴ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATISES 10 (June 9, 2004), *available at* <http://www.unhcr.ch/pdf/report.pdf>.

²⁵⁵ International Covenant on Civil and Political Rights art. 24, Dec. 9, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

24.²⁵⁶ The Kingdom made reservations and declarations on Article 1,²⁵⁷ Article 6,²⁵⁸ Article 9,²⁵⁹ and Article 20²⁶⁰ but fully accepted the rest of the terms outlined in the Covenant. Thus, Thailand is legally bound to distribute birth records and to register Burmese migrant children.

The ICCPR is not the only international treaty that Thailand may be violating in regards to the issue of statelessness. The Convention on the Rights of the Child (CRC), which Thailand ratified on April 26, 1992,²⁶¹ specifically addresses the issue of statelessness and birth registration in Article 7, stating:

1. The child shall be registered

²⁵⁶ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: DECLARATIONS AND RESERVATIONS, *available at* http://www.ohchr.org/english/countries/ratification/4_1.htm.

²⁵⁷ Thailand interpreted “self determination” as being compatible with the definition used in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on June 25, 1993. *Id.*

²⁵⁸ Article 6, paragraph 5 states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” ICCPR, *supra* note 216, art. 6, para. 5.

The kingdom expressed its belief that its Penal Code complies with the principle enshrined in the Covenant because it gives Thai courts the opportunity to use age as a mitigating factor and in practice the death penalty has not been imposed on any person under the age of 18 years. *See* DECLARATIONS AND RESERVATIONS, *supra* note 217.

²⁵⁹ Article 9, paragraph 3 states, “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” ICCPR, *supra* note 255, art. 9, para. 3.

The kingdom declared that the Criminal Procedure Code of Thailand provides that a person in cannot be kept in custody for more than 48 hours. However, it reserved the right to extending the period “as long as such necessity persists,” but also declaring that the period cannot be longer than 7 days. *See* DECLARATIONS AND RESERVATIONS, *supra* note 256.

²⁶⁰ Thailand interpreted the term “war” to mean “war in the contravention of international law.” *Id.*

²⁶¹ STATUS OF RATIFICATIONS, *supra* note 254.

immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.²⁶²

Fearing that ratification of this part of the Convention would obligate Thailand to address the issue of statelessness, the Kingdom reserved its right to not enforce Article 7 and Article 22, stating, “[T]he application of articles 7 [and] 22 . . . of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.”²⁶³ However, these reservations do not release the Kingdom from duties imposed by the Convention on the Rights of the Child. Thailand’s continued silence and inaction on the issue of statelessness is contrary to the object and purpose of the CRC and Article 2 of the Convention, which stipulates:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.²⁶⁴

²⁶² Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

²⁶³ *Thailand: Not so Smiling to Its Indigenous Hill Tribes*, Asian Ctr. for Human Rights Review, July 31, 2005, available at <http://www.achrweb.org/Review/2005/81-05.htm>.

²⁶⁴ CRC, *supra* note 261, at art. 2.

Thus, it is clear that the Kingdom must meet its duties as required by international law and grant Burmese migrant children birth records, official registration, and a right to nationality.

VI. PROVIDING TRUE REFUGE

Thai laws, for the most part, are humane and supportive of Burmese migrants. However, they are largely left unenforced. Widespread ignorance of the laws within the Burmese migrant community, as well as among lower-level governmental officials, and school and public health workers has prevented the implementation of those rights.²⁶⁵ The Thai government's under-funding of programs to meet the education, labor, and health needs of migrants also undermines the effectiveness and application of these laws. In addition, the Kingdom continues to skirt its responsibilities to meet international human rights norms by not seeking to integrate migrants into Thai society or giving them effective access to socioeconomic mobility. These problems must be resolved.

A. *Non-Governmental Organizations Must Raise Awareness of Migrants' Rights to Quality Education, Access to Health Services, and Safe Working Conditions*

In order to address issues of educational, health, and work inequities previously mentioned, the Burmese migrant community needs outreach and education. Migrants cannot exercise rights that they do not know they possess. Non-governmental organizations (NGOs) should take on this responsibility. Generally, NGOs are more realistically capable of raising awareness within marginalized groups because of their non-governmental and humanitarian character. NGOs also tend to have more connections within migrant communities because they provide direct services, whereas government and inter-governmental agencies work more at the macro-policy level.

Efforts to increase awareness of migrants' legal rights have begun. The International Organization of Migration, with the

²⁶⁵ See HUGUET & PUNPUING, *supra* note 58, at 43.

cooperation of the Ministry of Labour, recently initiated a campaign entitled “Awareness-raising on migrant rights and welfare for government officials, employers, migrants and host community members.”²⁶⁶ The two-year project’s goals are to develop workshop modules and to train individuals who can then lead workshops on migrant rights.²⁶⁷ The target areas are the border provinces of Thailand, where large numbers of migrants reside.²⁶⁸ This project is especially important because there is a tremendous lack of knowledge regarding migrant rights, not only within the migrant community, but also among employers and provincial government officials. Educating employers and governmental officials, whose acts and policies have the most direct impact on migrants’ lives, is a step in the right direction toward curbing unlawful treatment of migrants.

Although this program is an important contribution, it cannot fully realize legal rights for Burmese migrants on its own. There must be additional campaigns and programs undertaken by civil society. These programs must be sensitive to the language, cultural, and gender differences that exist within the individual ethnic groups that comprise the Burmese migrant community. They must also be sensitive to the differences that exist between the migrant community and general Thai society. A method to ensure the effectiveness of programs within the Burmese migrant community is to train and place Burmese migrants in management and policy positions. This practice is exemplified by the Rak Thai Foundation, a Thai non-profit organization that has consistently been lauded for its efforts in providing reproductive health, family planning, and HIV awareness tools to Burmese migrants.²⁶⁹ Realizing that Burmese migrant women were not using their community clinics because the doctors there were Thai men, the foundation replaced those physicians with Burmese women who were able to provide the language and cultural sensitivity that was crucial to issues involving reproductive health.²⁷⁰

²⁶⁶ Press Release, Int’l Org. of Migration, Press Briefing Notes: Thailand – Consultative Forums on Migrant Rights (May 17, 2005), *available at* <http://www.old.iom.int/en/archive/PBN170505.shtml> (last visited Apr. 28, 2007).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Interview with Ma Win, *supra* note 188.

²⁷⁰ *Id.*

Non-governmental agencies and non-profits should address the widespread ignorance of legal rights through tailored outreach programs similar to this model.

B. *The Thai Government Must Clarify Rights of Migrants and Enforce Existing Laws*

Even with full and complete awareness, the Burmese migrant community will not be able to exercise their rights without proper enforcement by the Thai government. Policies and laws passed down from the central government are ignored or misinterpreted by different Ministries, provincial officials, and employers. A comprehensive awareness campaign led by the Ministries of Education, Health, Labour, and Interior should be implemented with the goals of clarifying existing law and creating uniformity in how immigration officers, school principals, hospital staffs, and employers understand Thai laws. As discussed above, one area that currently causes widespread confusion is whether birth certificates should be granted to migrant children. Confusion about the law prevents migrants from exerting their rights. It also prevents medical officials from providing services and treatment to migrants because of their own good-faith belief that they are complying with governmental policies.

Additionally, the Thai government must not prevent full realization of migrant rights by depriving lawfully operating hospitals and schools of funding. From school lunches, to textbooks, to bilingual teachers, the government should reimburse schools for all necessary expenses incurred in educating migrant children. If the National Education Act is to have any real effect and meaning, schools cannot be punished for following the law and educating migrant children. Similarly, the government should reimburse hospitals that provide emergency care to migrants, regardless of whether they are registered or not. Without these reimbursements, hospitals will continue to turn away migrants. Deprivation of access to public health services has enormous ramifications, especially for communicable diseases such as bird flu or HIV. Unless the government provides services to all sectors of the migrant community, both legal and illegal, these health risks could potentially spill over into the general Thai population. When much needed governmental

funding is withheld, Thai law becomes, in effect, no law. The Thai government must do more than pass symbolic legislation; it must commit itself to making the ideals incorporated in such legislation a reality.

The government must also divorce immigration law from educational, health, and labor activities. Even if Burmese migrant parents understood their right to send their children to Thai schools, many would not exercise this right out of fear that the government would deport the child or would use the child to find the parents and deport the entire family.²⁷¹ Fear of deportation also prevents non-registered migrants from using health facilities or from reporting gross labor law violations.²⁷² Thus, police officers and immigration officials should be prohibited from using school attendance and medical care for purposes of enforcing immigration policies. Also, the uncertainty of one's immigration status should not be discussed when children are registering for school or when nurses and doctors are administering treatment.

C. *The Thai Government Should Reinstate Citizenship by Birth Principles and Seek to Integrate Burmese Migrants into Thai Society*

Thailand should reinstate citizenship by birth. It is problematic for Thailand to view ethnic Burmese children born or raised in the Kingdom as inherently alien and unable to naturalize as Thai citizens. Many Burmese migrant children are unfamiliar with Burmese culture and society and are unable to speak Burmese.²⁷³ Growing up or spending their entire lives in the Kingdom, they are almost culturally and socially identical to ethnic-Thais. They speak Thai, they behave like other Thai children, and they have Thai mores and values.²⁷⁴ Denying citizenship to these children ties citizenship to

²⁷¹ Caroline Guinard, *Promising "Education for All" in Thailand: what are the true benefits for migrant children behind this new policy*, BURMA ISSUES (Peace Way Foundation, Bangkok, Thailand), Feb. 2006, at 6,7, available at, <http://www.burmaissues.org/En/Newsletter/BINews2006-02-03.html>.

²⁷² HUMAN RIGHTS DOCUMENTATION UNIT, *supra* note 225.

²⁷³ Nyo Nyo, *supra* note 228, at 54.

²⁷⁴ *See id.*

race and ethnicity rather than residence and culture and denies thousands of children the opportunity to integrate into Thai society.

Tying citizenship to race and ethnicity and preventing socioeconomic mobility can be enormously detrimental to all of Thailand. Perceptions of discrimination, whether true or not, by Thai Muslims in southern Thailand have been a factor in numerous bombings,²⁷⁵ murders, and beheadings.²⁷⁶ Resentment caused by the lack of opportunities afforded to minority Muslims in the south has led to violence and turmoil²⁷⁷ similar to conditions that contributed to last year's riots in France's Muslim quarters.²⁷⁸ Thailand should learn from these experiences in other countries, such as France, that denying full membership in society may have far-reaching detrimental effects.

Thailand has to offer migrants a path toward socioeconomic mobility and integration into Thai society. Without this option, Burmese youths who identify themselves as Thai will become disillusioned and disconnected with the Kingdom. Migrant children, especially unregistered children, will remain within the lowest rungs of Thai society because they cannot receive education or legal employment. These children and youths could turn to antisocial behavior²⁷⁹ including venting their frustrations on the government.

If reverting back to a policy of citizenship by birth is not a viable option, the Thai government should, at the very minimum, ensure that all alien children born in Thailand receive a birth certificate and are registered. This would give Burmese migrant children a chance to obtain Burmese citizenship, which would allow them to return to Myanmar. Returning would relieve Thailand of having to protect or provide for these children, and the children would have the opportunity to gain a meaningful education and occupation

²⁷⁵ *Four hurt in south Thailand bomb blast*, BBC MONITORING ASIA PAC. – POLITICAL, Feb. 16, 2005.

²⁷⁶ *Thai Deputy Prime Minister and Interior Ministry Slam Beheading of Innocent Citizen in South of Thailand*, THAI PRESS REPORTS, June 24, 2005.

²⁷⁷ *Thailand's Restive South*, BBC NEWS, July 15, 2005, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3955543.stm>.

²⁷⁸ See Molly Moore, *As Youth Riots Spread Across France, Muslim Groups Attempt to Intervene*, WASH. POST, Nov. 5, 2005, at A1.

²⁷⁹ HUGUET & PUNPUING, *supra* note 58, at 64.

back in Myanmar. The likelihood of the migrant children experiencing a better life in Myanmar is slim, especially because many of their parents are poor and uneducated. Nonetheless, it is an option with far less potential for exploitation than staying in Thailand illegally and unregistered.

D. *International Organizations and Other Nation-States Committed to Human Rights Must Apply Pressure on Thailand to Ameliorate the Lives of Burmese Migrants*

Lastly, the international community should vigilantly monitor Thailand's treatment of Burmese migrants, and should apply public pressure on the country when it denies human rights to its residents and workers. Stories of extrajudicial killings, systemic rape, and murder of migrants in border provinces²⁸⁰ must be not only publicized but also investigated. With Thailand's right of national sovereignty in mind, other nations should diplomatically criticize the Kingdom for lax enforcement of its own laws and for withholding crucial funding to implement those laws. The international community should also strongly urge Thailand to sign and adhere to important international treaties and agreements on issues of migration such as the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Convention on Refugees. In addition, Thailand should be encouraged to repeal the reservations it made with Articles 7 and 22 of the Convention on the Rights of the Child.

VI. CONCLUSION

Thailand faces enormous challenges and tremendous opportunities regarding the issue of migration. Many of the factors contributing to the influx of migration from neighboring countries, especially Myanmar, are not within the Kingdom's control. Yet, Thailand must face the reality that it is a regional leader in development and wealth and is a magnet for migrant workers. Thailand can make migration mutually beneficial, and it has the legal framework to do so. At the minimum, the Thai government simply needs to implement and enforce current laws. The Kingdom should, however, aspire to meet the human rights standards of the

²⁸⁰ See generally Arnold & Hewison, *supra* note 206, at 330.

international community, especially those dealing with children's rights.

The 2004 Tsunami waves battered the shores of eleven different countries, burying close to a quarter of a million people. As its waves receded, revealing its damage and carnage, the tsunami also shined light onto a quiet atrocity that had been occurring in Thailand for some time – the plight of Burmese migrants.