Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Thailand

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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in Asean: 
A BASELINE STUDY

by
Kitti Jayangakula
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6. Recommendations for Further Study

## BIBLIOGRAPHY
Formal Name: The Kingdom of Thailand  
Capital City: Bangkok

| Population¹ | Male: 32,967,826  
Female: 33,752,327  
Both sexes: 66,720,153 (July 2011 est.) |
| Life expectancy² | Male: 71.24 years  
Female: 76.08 years  
Both sexes: 73.6 years (2011 est.) |
| Age structure³ | 0-14 years: 19.9% (male 6,779,723/female 6,466,625)  
15-64 years: 70.9% (male 23,410,091/female 23,913,499)  
| Sex ratio⁴ | at birth: 1.054 male(s)/female  
under 15 years: 1.05 male(s)/female  
15-64 years: 0.98 male(s)/female  
65 years and over: 0.82 male(s)/female  
Total population: 0.98 male(s)/female |
| Religions⁵ | Buddhist 94.6%, Muslim 4.6%, Christian 0.7%, other 0.1% |
| Ethnic groups⁶ | Thai 75%, Chinese 14 %, other 11% |
Female: 90.5 (1995-2005)  
Both sexes: 94% (2005-2008) |
| Poverty line⁸ | THB 1,678 (approx. USD 55) (2010) |
| Gross Domestic Product⁹ | -2.2% (2010) |
| Net enrolment ratio in secondary school¹⁰ | Male: 68  
Female: 77 |

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² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.


¹⁰ “Statistic on Thailand.”
### Migration rate
Net 0.3 migrants/1,000 population (2010-2015)

| Number of citizens working overseas | Male: 121,168  
Female: 22,627 (2010) |
|------------------------------------|-----------------------|
| Number of foreign workers in country | Male: 755,822  
Female: 579,333 (2010) |
| Percentage of female-headed households | 8.4 |
| Labour force anticipation rate | Male: 79.3  
Female: 63.0 (May 2011) |
| Unemployment rate | Male: 0.6  
Female: 0.6 (May 2011) |
| Proportion of unpaid family workers | Male: 1.29  
Female: 26.68 (June 2006) |
| Fertility rate | 1.66 children born/women (2011 est.) |
| Maternal mortality rate | 48.0 |
| Infant mortality rate | Total 16.39 deaths/1,000 live births |
| Legal definition of 'child' | 'Child' means a person below 18 years of age, but does not include those who have attained majority through marriage. |
| Age of majority | 20 years old |
| Marriageable age | 17 years old |
| Age of consent | 15 years old |
| Age of criminal responsibility | 10 years old |
| Minimum age of employment | 15 years old |
| Minimum age of military recruitment and participation | 21 years old |

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16 Ibid.
18 “The CIA World Factbook.”
20 “The CIA World Factbook.”
21 The Child Protection Act B.E. 2546 (2003), Section 4.
22 The Civil and Commercial Code, Section 19.
23 Ibid., Section 1448.
24 The Penal Code, Section 277.
25 Ibid., Section 73.
26 The Labour Protection Act B.E. 2541 (1998), Section 44.
27 The Military Service Act B.E. 2497 (1954), Section 25.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
A. OVERVIEW

The Kingdom of Thailand is located in the Southeast Asian Region. Myanmar is to the west, Laos to the north and east, Cambodia to the southeast, and Malaysia to the south. The south coast of Thailand faces the Gulf of Thailand. Thailand is a constitutional monarchy country, where the King is the Head of State. The country has a bicameral parliamentary system, with a House of Representatives and a Senate. The political system remains multi-party, and thus the House of Representatives consists of representatives of diverse political parties.

As home to a population of 66.7 million, Thailand comprises diverse ethnic groups: 75% of Thais; 14% of Chinese; and 11% of other ethnic groups, which includes approximately 3% of Malay (1.7 million people, predominantly Muslims living in the three southernmost provinces).

Map 1: Map of Thailand

Source: Cartographic Section, Department of Field Support, United Nations
The Constitution in Section 30 recognises the principles of equality and non-discrimination, that:

- All persons are equal before the law and shall enjoy equal protection under the law.

- Men and women shall enjoy equal rights.

- Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view not inconsistent with the provisions of the Constitution, shall not be permitted.

In addition, a number of provisions of the Constitution concerning the rights of women and children have been guaranteed. For example, Section 52 recognises the enjoyment of the rights of children and youth to survive and to receive physical, mental, and intellectual development; and guarantees the rights of children and women to receive protection against violence and unfair treatment from the State. In addition, Section 35 protects women and children from the unlawful exploitation of their personal rights.

At an international level, Thailand endorsed the Universal Declaration of Human Rights of 1948 (UDHR) and is a signatory to 7 major human rights instruments, namely:

- (1) the International Covenant on Civil and Political Rights (ICCPR);
- (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (3) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol (OP-CEDAW);
- (4) the Convention on the Rights of the Child (CRC) and its two Optional Protocols on the Involvement of Children in Armed Conflict (OP-CRC-AS) and in the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC);
- (5) the Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- (6) the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- (7) the Convention on the Rights of Person with Disabilities (CRPD).

### Table 1: Universal Human Rights Treaties ratified by Thailand

<table>
<thead>
<tr>
<th>Universal human rights treaties</th>
<th>Date of ratification, accession or succession</th>
<th>Declarations/reservations</th>
<th>Recognition of specific competences of treaty bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICERD</td>
<td>January 28, 2003</td>
<td>Yes (Reservation, art. 4, 22)</td>
<td>Individual complaints (art. 14): No</td>
</tr>
<tr>
<td>ICESCR</td>
<td>September 5, 1999</td>
<td>Yes (Declaration, art. 1, para. 1)</td>
<td>–</td>
</tr>
<tr>
<td>ICCPR</td>
<td>October 29, 1996</td>
<td>Yes (Declarations, art.1., para. 1, 6, para. 5, 9, para. 3 and 20)</td>
<td>Inter-State complaints (art. 41): No</td>
</tr>
<tr>
<td>CEDAW</td>
<td>August 9, 1985</td>
<td>Yes (Reservation, art. 16, 29, para. 1)</td>
<td>–</td>
</tr>
<tr>
<td>OP-CEDAW</td>
<td>June 14, 2000</td>
<td>–</td>
<td>Individual complaints: Yes Inquiries (arts. 8 and 9): Yes</td>
</tr>
<tr>
<td>CAT</td>
<td>October 2, 2007</td>
<td>Yes (Reservation, art. 30, para. 1)</td>
<td>Inter-State complaints (art. 21): No Individual complaints (art. 22): No Inquiries (art. 20): Yes</td>
</tr>
<tr>
<td>CRC</td>
<td>March 27, 1992</td>
<td>Yes (Reservation, art. 22)</td>
<td>–</td>
</tr>
<tr>
<td>OP-CRC-AC</td>
<td>February 27, 2006</td>
<td>Binding declaration under art. 3: 18 years</td>
<td>–</td>
</tr>
<tr>
<td>OP-CRC-SC</td>
<td>January 11, 2006</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>CRPD</td>
<td>July 29, 2008</td>
<td>Yes (Declaration, art. 18)</td>
<td>–</td>
</tr>
</tbody>
</table>

Thailand is also a Party to the 4 Geneva Conventions of 1949 and became a Party to the United Nations Convention against Corruption on March 31, 2011. Moreover, the country signed the Rome Statute of the International Criminal Court and in January 2012 signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICAPED). As a result, the country has international obligations to respect the human rights of all persons according to those international human rights instruments.

Apart from international human rights treaties, Thailand is bound to ensure decent work and labour rights of all workers in accordance with international labour standards set by the Declaration on Fundamental Principles and Rights at Work set by the International Labour Organisation (ILO) and ratified the 14 following labour conventions issued by ILO as follow:

Thailand recognises the importance of the rights of association and collective bargaining of union member and

The rights of women and children under the principle of equality and non-discrimination are mainly protected by the CEDAW and the CRC, respectively. In domestic level, those rights are recognised by the Constitution, consistent with the obligations under the CEDAW and CRC. Yet, in reality, inequality and discrimination of women and children are frequently manifested in Thai society, in particular, in the form of violence, exploitation for sexual and labour purposes of women and children, including woman and child migrants.

Regarding violence against women and children, there are many forms of violence, such as domestic violence, sexual harassment, rape, and corporal punishment. However, most of violence cases against women and children in Thailand relate to domestic violence. Apart from violence, Thailand also faces the problems of exploitation of women and children for sexual and other purposes, including child prostitution, child labour, trafficking in persons. Recently, the US Department of State Reports on Human Rights Practices, released on 8 April 2010, stated that:

Table 2: ILO Conventions ratified by Thailand

<table>
<thead>
<tr>
<th>No.</th>
<th>ILO Convention</th>
<th>Subject</th>
<th>Date of ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>C014</td>
<td>Weekly Rest (Industry) Convention, 1921</td>
<td>April 5, 1968</td>
</tr>
<tr>
<td>2.</td>
<td>C019</td>
<td>Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>April 5, 1968</td>
</tr>
<tr>
<td>4.</td>
<td>C080</td>
<td>Final Articles Revision Convention, 1946</td>
<td>December 5, 1947</td>
</tr>
<tr>
<td>5.</td>
<td>C088</td>
<td>Employment Service Convention, 1948</td>
<td>February 26, 1969</td>
</tr>
<tr>
<td>6.</td>
<td>C100</td>
<td>Equal Remuneration Convention, 1951</td>
<td>February 8, 1999</td>
</tr>
</tbody>
</table>


Thailand intends to ratify the ILO Conventions on Freedom of Association and Protection of the Right to Organise (No.87) and Right to Organise and Collective Bargaining (No.98).  

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Violence against women and children is a significant social and public health problem in many countries, including Thailand. The violence on women and children remains an important challenge.

Domestic Violence

Domestic violence is a form of violence against women, children as well as elderly, that is perpetrated by intimate partner and family members. It often occurs in private spaces and is often tacitly overlooked by society as a private or family matter. Domestic violence is one of major violence against women and children problems in Thailand, particularly intimate partner violence and child abuse at home. Prevalence of this problem in Thailand was reflected and pointed out in the Report on Human Rights Practices for Thailand of the US Department of State which stated that:

… [d]omestic violence against women was a significant problem [in 2009] … Some domestic violence crimes were prosecuted under provisions for assault or violence against person where harsher penalties could be levied. Additionally, domestic violence in Thailand frequently went unreported, and police often were unwilling to pursue reports of domestic violence.

In addition, a more recent 10-country study on domestic violence by the World Health Organisation (WHO) documented that the lifetime prevalence of physical and sexual domestic violence reported by Bangkok women was 22.9% and 29.9%, respectively. In addition, even though

\[\text{Prevalence}\]


the problem of violence has been highlighted by many sources, it has not been publicly discussed until recently because domestic violence against women has long been viewed as a private family matter in society.34

Statistically, according to the One Stop Crisis Center (OSCC) programme of the Ministry of Public Health (MPH), the number of violence against women and children cases in Thailand grows progressively. In 2004, data from 70 hospitals shows that there were 6,951 violence against women and children cases (approximately 19 cases per day). Figures doubled to more than 19,000 cases in 2007 (approximately 52 cases per day). In 2009, statistics from 617 hospitals show 23,499 cases of violence (approximately 64 cases per day).35 Interestingly, 80% involved domestic violence.36 Prevalence of domestic violence, particularly intimate partner violence, is an increasing problem. This affects women even during pregnancy and after giving birth.37

Sexual Abuse

Focusing on sexual abuse against women and children in Thailand, the MPH reported that from January to November 2009, an estimated 25,750 women and children were abused; approximately 12,000 women were above 18 year old and 13,000 were children.38 In addition, majority of the abused children were girls and most of the cases of those children involved sexual abuse.39 In addition, according to a recent WHO 10-country study, 40% of Thai women experience physical or sexual violence at least once during their lifetimes.40

Moreover, statistic collected by the Royal Thai Police (RTP) between 2009 and 2011 show that the number of rape cases reported to the police are as follow:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of rape cases reported</th>
<th>Number of suspected arrested</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>4,680</td>
<td>2,584</td>
</tr>
<tr>
<td>2010</td>
<td>4,255</td>
<td>2,397</td>
</tr>
<tr>
<td>2011</td>
<td>3,771</td>
<td>2,290</td>
</tr>
</tbody>
</table>

Notably, violence against women in Thailand exists not only at home, but also in their workplaces. Similarly, a number of NGO reports emphasise that the prevalence of violence against children in Thailand, including sexual violence against female children, is not only at home but also includes episodes of child abuse by teachers in school.41

Apart from rape, sexual harassment is also currently a challenging problem in Thai society. A 2006 survey collected data from 3,139 young people aged between 15 and 24 living in Bangkok and neighbouring provinces, including Nonthaburi, Pathumthani, and Samutprakan. It found that about 66% of female youths and 26% of male youths had experienced myriad forms of sexual harassment.42 Perpetrators of unwelcome sexual behaviour in public buses, trains, aircrafts, public areas, or neighbourhoods are often male strangers. In schools, universities, or workplaces, teachers or superiors are usually the criminals.43

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34 See Xu, Kerley and Sirisunyaluck, "Understanding Gender and Domestic Violence From a Sample of Married Women in Urban Thailand," 792.
39 Ibid.
While same-sex sexual harassment may be observed in Thailand, existing literatures and researches, however, affirm that the largest number of sexual harassment happen between men and women. Major victims of sexual harassment in Thai society are young women, ranging from students to working women. In particular, women employed as factory workers, house cleaners, flight attendants, bus hostesses, singers, celebrities, waitresses, and service women in entertainment places find themselves vulnerable to sexual harassment. Male harassers can be women's supervisors, teachers, co-workers, peers, subordinates and clients. This confirms the claim that sexual harassment is an indicator of women's powerlessness in a male-dominated society.\textsuperscript{44}

During the past several years, local media have reported many cases of sexual harassment in schools, universities, and workplaces. In 2008 alone, 16 cases of sexual offenses in educational institutions classified as acts of sexual harassment were brought to public attention by the media. Eleven out of the 16 cases happened to secondary school pupils, while three cases were found among primary school girls and boys, while the remaining two happened to female university students.\textsuperscript{45} In workplaces, men in power often misuse their authority. They may seek sexual favours from female subordinates in exchange for job promotion. This exchange takes place in the context of an unequal power relationship between the superior and the subordinate, pushing women to endure sexual harassment, as they are afraid of a negative response.\textsuperscript{46}

**Corporal Punishment**

A number of research studies have revealed the nature and extent of corporal punishment in the home. A UNICEF survey of nearly 500 children in southern Thailand found that 38% had direct experience of violent punishment like beating with a stick or belt; 8% said this happens often.\textsuperscript{47} Moreover, a study funded by the National Health Foundation found that punishment of children in schools included hitting students with open palms, fists, clothes and blunt objects, kicking, applying heated materials and slapping the face. Up to 60% of the teachers surveyed supported the use of corporal punishment.\textsuperscript{48}

**b. Root Causes of Violence and Aggravating Practices**

**Historical and Cultural Roots**

Unequal power relations between men and women in public and private life are accepted and understood in Thai society as patriarchy and men's control over women.\textsuperscript{49} Violence against women may be viewed both as a means and a consequence of women's subordination. This points to the role of culture in justifying violence against women, as well as economic inequities that perpetuate women's vulnerability and limit women's ability to counter violence.\textsuperscript{50} Thai family structure historically has been patriarchal, and wives are expected to place their own self-interests behind those of their husband and children.\textsuperscript{51} Moreover, a woman's experience of violence is shaped by many factors, such as economic status, race, ethnicity, class, age, sexual orientation, disability, nationality, religion and culture.\textsuperscript{52}

In a cultural context, root causes are also influenced by religious beliefs. Thai culture is predominantly Buddhist and there is a strong focus on order, harmony, and responsibility within a family context. These Buddhist doctrines provide a normative basis for gender inequality. Thai women are widely described as bearers and supporters of Thai Buddhism, who provide routine support for monks and temple activities; they are often portrayed as normally inferior and barred from being ordained as monks. Women are forbidden from direct or indirect contact with monks because of their ‘lower karma’. Thai women

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\textsuperscript{44} Ibid.

\textsuperscript{45} Institute for Population and Social Research. 2009. *Thai Health* (Nakhon Pathom: Institute for Population and Social Research, Mahidol University, 2009), 5.

\textsuperscript{46} Thaweesit and Boonmongkon, *Sexuality Education and Sexual Harassment*.


\textsuperscript{50} Ibid.

\textsuperscript{51} Kerley, Kent R. et al. “Exposure to Family Violence in Childhood and Intimate Partner Perpetration or Victimization in Adulthood,” 338.

\textsuperscript{52} Ibid.
are taught to suffer bravely so that they can be reborn as a man in the next life. These clearly show that women's status in Thai Buddhism is secondary to that of men. Women are encouraged to be selfless, nurturing, devoted to their husbands, and prepared to make sacrifices for the well-being of their family.

Social Roots of the Problem

Alcohol, drugs, and gambling have close relation to violence and are also causes of violence on women and children in Thai society. Domestic violence perpetrated by husbands, lovers or relatives often involve abuse of alcohol and drugs. Similarly, violence against children resulting in emotional complications and behavioural problems involves the use of drugs, alcohol, and gambling.

c. Impact of Violence

Violence against women and children is now recognised as a serious human rights abuse, which threaten the fundamental rights of the victims of violence. Violence does not only affect the rights of the victims but also affects their well-being, livelihood, and life quality as a whole. Violence against women and children, domestic violence in particular, comprises physical, psychological and emotional/verbal abuses. Physical abuse is the actual, attempted, or threatened use of any physical force with the intent to injure, control, hurt, or make the victims afraid of the abusive male partner. Psychological abuse is threatening and intimidating behaviours and emotional/verbal abuse reflects behaviours intended to diminish a woman's self-esteem and to undermine her self-confidence. Violence not only affects the health of the victims but also carries social and economic impacts on society.

Health Impacts

Violence causes higher risk of poor physical, reproductive and mental health; social and sexual dysfunction; alcohol and drug abuse; suicide attempts. Violence against women during pregnancy has been associated with various obstetric risks, including late entry into prenatal care, increased smoking and substance abuse, vaginal infections, kidney infections, miscarriage/abortion, premature labour, foetal distress, bleeding in pregnancy and inadequate weight gain by the mother. The health impact from violence against pregnant women is not only on women themselves, but also contributes to low birth-weight, preterm delivery, and foetal growth retardation of their babies.

The consequences of sexual violence not only affect physical health but also include sexual health. In most cases, sexual violence is considerably less prevalent than physical violence; physical violence often accompanied sexual violence. Thailand, however, is an exception where women reported more sexual than physical partner violence. Therefore, in many of the Thai cases, violence affects sexual health, which may be the cause of HIV infections. In 2011, 10,097 persons were estimated to be newly infected with HIV/AIDS. This number amounts to 26% of female persons living with HIV/AIDS (PLHA) (2,633 cases) in Thailand. Interestingly, their husbands infected these women with HIV/AIDS.

Social Impacts

As social impacts, violence prevents women and children from full social, economic and political participation. It leads to stigmatization and transmission of violence to future generations. Notably, in some cases, violence may cause misbehaviours of children in society, as some parents

53 Xu, Kerley and Sirisunyaluck, “Understanding Gender and Domestic Violence From a Sample of Married Women in Urban Thailand,” 793.

54 Ibid.

55 Immigration and Refugee Board of Canada, Thailand: Domestic violence, including state protection, support services and recourse available to victims (January 2009 - December 2010); Amornrat Sricamsuk, “Thai Women's Experience of Intimate Partner Violence during the Perinatal Period: A Case Study Analysis,” Nursing and Health Sciences 11 (2009): 382.


60 ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 13

encourage their child to buy cigarettes and alcohol, or some parents with gambling problem praise their child when he/she gambles and wins.  

Economic Impacts

Apart from health and social impacts, violence also has economic impacts on society. Economic cost would be costs of services such as the provision of health care or victim support and the judicial process, lost earnings, output and tax revenue and the intangible costs of human suffering.  

2. De Jure State Responses

a. Bases of State Responsibility

International Level

Thailand ratified the CEDAW and OP-CEDAW. As a party to the CEDAW and its protocol, the government has to implement the obligations under the CEDAW as a guideline for formulating policies and plans relating to women, as well as laws and regulations to eliminate all forms of discrimination, including violence against women. Of the seven original reservations to the CEDAW, five reservations have been withdrawn, while two remain in effect i.e. Article 16 relating to marriage and family relations.  

Although the CEDAW does not include specific provisions on violence against women, nevertheless, the General Recommendation No. 19 of the CEDAW Committee in 1992 interpreted the term ‘discrimination’ in Article 1 of CEDAW to include:

... [v]iolence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.  

To protect future generations, Thailand ratified the CRC with a reservation on the right of the refugee child in Article 22, OP-CRC-SC and OP-CRC-AC. Within Article 2 of the CRC guarantees that the rights of the child shall be respected and ensured without discrimination. In addition, Article 19 provides that all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse shall be protected. Even the term ‘violence’ is contained in provision of Article 19; nonetheless, the General Comment No. 13 of the CRC Committee in 2011 define the term ‘violence’ in Article 19 that:

[...] is understood to mean 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children as listed in article 19, paragraph 1…

Regional Level

Apart from international level as stated earlier, all ASEAN countries, including Thailand adopted and signed the Declaration on the Elimination of Violence Against Women in the ASEAN Region (ASEAN DEVAW) during the 37th ASEAN Ministerial Meeting held in June 2004 in Jakarta, Indonesia. The Declaration strengthens regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, either individually or collectively. In this regard, the ASEAN DEVAW recognises that:

[...v]iolence against women both violates and impairs their human rights and fundamental freedoms limits
their access to and control of resources and activities and impedes the full development of their potential.

Thus, Thailand is obligated to eliminate discrimination against women, including gender-based violence according to CEDAW General Recommendation No. 19, and to protect children from violence pursuant to CRC General Comment No. 13. To comply with these obligations, Thailand issued a number of legal measures.

b. National Policies Against Violence

Legal Measures

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) addresses issues regarding violence against women and children in a number of Sections. It guarantees the protection of human dignity and rights and liberties. Section 4 states that:

The human dignity, rights and liberties and equality of the people shall be protected.

Section 30 enshrines equality and states that:

All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights…

Section 40(6) guarantees the right in judicial process. It provides that:

[a] child, youth, woman, senior person or the disabled or handicapped person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in cases relating to sexual violence …

Section 52 provides for the protection of the rights of children, youth and family members, that:

Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development according to their potentials in a suitable environment, with due regard to their participation.

Children, youth, women and family members shall have the right to receive protection against violence and unfair treatment from the State and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.’

Additionally, Section 81 also stipulates that:

The State shall pursue directive principles of State policies in relation to legislation and the administration of justice; as follows … (5) support the operation of organisations in the private sector providing legal aids to the public, in particular to those affected by family violence.

Apart from the Constitution, Thailand also enacted a number of domestic laws regarding the issue of violence against women and children as follow:

Laws relating to Domestic Violence

The Protection of Victims of Domestic Violence Act B.E. 2550 (2007) is a specific legislation relating to violence against women and children in particular. The Act has been enacted in Thailand since November 12, 2007. The Act addresses definition of domestic violence, which is defined as:

[a]ny action intended to inflict harm on a family’s member’s physical, mental or health condition and any use of coercion on unethical domination to compel a family member to commit, omit or accept any unlawful act, except for that committed through negligence.’

The Act aims to protect family members, which include spouses, former spouses, persons who live and cohabit together or used to do so as husband and wife without marriage registration, legitimate children, adopted children, family members and dependents living in the same household.67 The definition of domestic violence in the Act contains both physical and mental violence experienced by the members of the family. Interestingly, a complaint of domestic violence is not limited to only being filed by the victim, but allows anybody who sees or has information about domestic violence situation to file the complaint as a public duty of everyone.68

Furthermore, the Act imposes a fine of up to 6,000 baht (approximately USD 200) or up to six months’

68 Ibid., Section 5.
imprisonment or both for persons who commit acts of domestic violence.\textsuperscript{69} It also provides authorities, with court approval, the power to prohibit offender from remaining in their homes or contacting family members during trial. The law implements measures designed to facilitate the reporting of domestic violence complaints and reconciliation between the victim and the perpetrator. This law restricts media from reporting on domestic violence cases in the judicial system.\textsuperscript{70} Moreover, to resolve the problem of violence, the State Council has proposed a draft Act on the Prevention and Resolution of Domestic Violence to introduce additional laws to protect women from violence or amend existing laws in gender-responsive ways.\textsuperscript{71} In addition, currently, a draft of Gender Equality is under consideration by the Government and steps are being taken to ensure a more effective enforcement of the Protection of Victims of Domestic Violence Act.\textsuperscript{72}

\textit{Concerning Sexual Abuse Laws}

Regarding the sexual offenses in Thai criminal law, the Penal Code addresses sexual harassment mainly as sexual offenses under the criminal law. Serious forms of sexual harassment are recognised in the Code under categories such as sexual assault, indecent acts, rape or attempted rape.\textsuperscript{73} However, the term sexual harassment does not exist as such in the provisions of the Penal Code. Some sections are relevant to sexual harassment, especially offenses under Title IX: Offences relating to sexuality.\textsuperscript{7} Some provisions found here regard rape (Section 276), indecent acts (Section 278), and distribution or exhibition of obscene materials (Section 287).

In 2007, the definition of rape under Section 276 of the Penal Code was amended to cover rape of any sex, all types of sexual penetration, and criminalisation of marital rape and imposes more severe penalties on offenders who engaged in all forms of rape and sexual abuses, as follows:

\begin{quote}
Whoever has sexual intercourse with other person, being in the condition of inability to resist, by committing any act of violence or by making such another person misunderstand himself of herself as another person, shall be punished with imprisonment of four to twenty years and fined eight thousand to forty thousand baht
\end{quote}

The sexual intercourse according to the first paragraph means committing of doer’s sexual desire by using doer’s sexual organ, for committing other person’s sexual organ, anus or oral cavity, or using any things for committing against other person’s sexual organ or anus.

If the offence according to the first paragraph has been committed by carrying of using any gun of explosive or by participation of person in the nature of gang raping a girl of a boy in the same matter, the offender shall be punished with imprisonment of fifteen to twenty years and fine of thirty thousand to forty thousand bath or imprisonment for life.

In addition, this new provision removed the previous distinction under section 276 of the Penal Code, which had limited rape to sexual intercourse between a man and a woman who is not his wife, thus allowing a husband to rape his wife with impunity and women suffering from sexual violence could not take legal action against her husband.

The fourth paragraph of new Section 276 also criminalises marital rape:

\begin{quote}
If the offence according to the first paragraph has been committed between spouses and the spouses desire to cohabit, the court may punish by the punishment lighter than described in the law as it may be considered of determine some conditions for case of punishment according to the judgement provided by the court and any party of the spouses does not desire to cohabit anymore and desire to divorce, that party shall inform the court and the court shall inform the public prosecutor to proceed with suing for divorce for them.
\end{quote}

According to the law, if the victim of rape is a minor who is between thirteen and fifteen years of age, whether the sexual intercourse was with or without the consent of the victim, the offender shall be imprisoned for four to twenty years and shall pay a fine ranging from 8,000–40,000 baht.

\textsuperscript{69} Ibid., Section 4.
\textsuperscript{71} ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 34.
If the victim is under thirteen years of age, regardless of consent of the victim, the offender shall be imprisoned for seven to twenty years and shall pay a fine ranging from 14,000–40,000 baht (approximately USD 450–1,300) or shall be imprisoned for life.\(^75\)

Regarding sexual harassment, the Penal Code that has been in use since 1956 has been applied to deal with sexual offenses. Verbal forms of sexual harassment may fall under the defamation provisions in Section 326 and those on sexual insult in Section 393; nevertheless, in all of the sections mentioned herein the term 'sexual harassment' has never been clearly addressed in the provisions of the Penal Code as such.

Although there is no offence of sexual harassment in the Penal Code, Section 16 of the Labour Protection Act B.E. 2541 (1998) stipulates that sexual harassment is prohibited in this manner:

> It is forbidden for an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children.

Additionally, the Civil Service Act B.E. 2551 (2008) stipulates that sexual harassment as a prohibited act. Further, the Civil Service Regulations Act on the Acts of Sexual Violation and Harassment B.E. 2553 (2010) defines five types of behaviour deemed to be sexual harassment in the workplace as follow:

1. Sexual or physical contact, such as kissing, holding or touching certain parts of the body;
2. Sexualised talk, such as criticising or joking about body parts and telling dirty jokes to an unwilling audience;
3. Sexual gestures, such as looking at others in a sexual manner;
4. Communication with sexual content such as sending letters, messages or e-mails with pornographic content; and
5. Other actions deemed sexual and disturbing to others.

\(^74\) The Penal Code, Section 277, amended by the Thai Penal Code Amendment Act (No.19), 2007

\(^75\) Ibid.

**Laws Related to Corporal Punishment**

In Thailand, corporal punishment is lawful at home, persons with parental authority over children has the right to impose reasonable punishment for the purpose of discipline. According to Section 1567(2) of the Civil and Commercial Code:

> A person exercising parental power (natural guardian) has the right: … (2) To punish the child in a reasonable manner for disciplinary purposes; …

However, at schools, corporal punishment is an unlawful act under the Ministry of Education Regulation on Student Punishment B.E.2548 (2005) and the National Committee on Child Protection Regulation on Working Procedures of Child Protection Officers Involved in Promoting Behaviour of Students B.E.2548 (2005).

**Administrative Measures**

Thailand has Plans and Strategies for the 'World Fit for Children': the National Policy to Stop Domestic Violence against Child and Women and the National Plan and Policy on the Prevention, Suppression and Combating Domestic and Transnational Trafficking in Children and Women.

Furthermore, Thailand runs a month-long public service campaign to Stop Violence against Children and Women throughout each November, coinciding with the annual International Day for the Elimination of Violence against Women on November 25. Additionally, for this nationwide campaign, the government further works with media and awards television programming and advertising that promote gender equality. Thailand's NGO community is also active in prevention campaigning.\(^76\)

Moreover, the government is continuing to expand and strengthen its successful national policies against violence on women and children by running a programme of One Stop Crisis Centre (OSCC) in all public hospitals to handle cases of violence against women as well as children. The OSCC is a multidisciplinary unit providing comprehensive services for victims of violence in Thailand. An OSCC is equipped with not only medical doctors and nurses, but also representatives from the police department, the office of attorney, emergency home and social workers from the MSDHS.

\(^76\) ESCAP, *Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region*, 34.
An OSCC usually assumes multifunctional roles, e.g., as a call centre to receive reported cases of violence against women; a coordinating centre with other units, e.g. police station, the court or the ministry, if needed; and a centre for violence against women information, mental support and advice, along with the physical treatments.77

Recently, Prime Minister Yingluck Shinawatra delivered the National Policy in Public Health Policy concerning the violence against women and children:

‘Improving people’s quality of life…reduce acts of violence against children and women,’ and ‘improving laws that protect women from domestic violence.’

In addition, the Policy of the current government also emphasises assistance for victims of violence that:

increasing the number and improving the quality of one-stop crisis centers that provide 24-hour assistance to children and women that are victims of domestic violence.78

c. Assessment of State Policies

Implementation of International Obligations

Thailand has been carrying out public education campaigns about the negative consequences of all treatment of children, promoting positive non-violent forms of discipline. In addition, the ‘draft Act on the Prevention and Resolution of Domestic Violence’ is a significant positive policy. However, the CEDAW Committee continues to be concerned about the prevalence of violence against women and girls and inadequacy of the punishment for perpetrators in the Act. Additionally, it noted that the ‘draft Act’ focuses on recommendation and family unity to the detriment of the right of women to live free from violence.79

Moreover, retaining reservations to Article 16 has been noted by the CEDAW Committee as being contrary to the object and purpose of the CEDAW.80

Sexual Abuse Laws

Even though the Civil Servant Regulations Act prohibits sexual harassment, NGOs claimed that the legal definition of harassment was vague and prosecution of harassment claims difficult.81 The Civil Service Commission’s sexual harassment and bullying hotline was shifted to the supervision of the Bureau of Disciplinary Standards during the year. It is noted that, during the time of transition and regulation drafting, they did not accept complaints. Most of the prior complaints were dismissed, as the petitions were unsigned, and the remainder was forwarded to the relevant agencies for internal investigations.82

The penalty imposed by law for rape is minimal. The Penal Code imposes imprisonment of four to twenty years and fines ranging from 8,000–40,000 baht (approximately USD 250 – 1,250). Children under 10 years old are not subject to criminal punishment.83 Those between 7 and 14 are not liable to any punishment either; instead the law gives the court the option to use juvenile procedures, depending on the children’s behaviour and environment and other mitigating circumstances.84 Those youths between 15 and 17 years of age may have to face criminal punishment, but the court may use its discretion to reduce the sentence.85

Laws Relating to Corporal Punishment

Corporal punishment at home for the purpose of discipline is lawful pursuant to Article 1567(2) of the Civil and Commercial Code. Corporal punishment at school, however, is unlawful under the Ministry of Education Regulation on Student Punishment and the National Committee on Child Protection Regulation on Working Procedures of Child Protection Officers Involved in Promoting Behaviour of Students. In fact, corporal punishment continues to be used. A study funded by the National Health Foundation in 2006 found that punishment of children in schools included hitting

77 Thailand National UPR Report, 12.
80 Ibid.
82 Ibid.
83 The Penal Code, Section 73.
84 Ibid., Section 74
85 Ibid., Section 75.
students with open palms, fists, clothes, and blunt objects, kicking, applying heated materials and slapping the face, with up to 60% of the teachers surveyed supporting the use of corporal punishment.86

Moreover, under article 61 of the Child Protection Act, corporal punishment is lawful in alternative care settings. An owner, guardian of safety, and staff of a nursery, remand home, welfare centre, safety protection centre and development and rehabilitation centre must not mentally or physically assault or impose harsh punishment on any child under their care and guardianship except where such acts are reasonably applied for disciplinary purpose in accordance with the regulations specified by the Minister. Article 65 of the Act provides for punishment of children, which must be carried out reasonably for disciplinary purposes.

The CRC Committee notes in its concluding observations in 2006 that corporal punishment is not compatible with the provision of the CRC and is not consistent with the requirement of respect for the child's dignity as specifically required by Article 28, paragraph 2 of the CRC. It urges Thailand to prohibit by law all forms of corporal punishment in the home and in all alternative care settings.87

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

To implement and monitor the measures dealing with violence against women and children, the Office of Women’s Affairs and Family Development under MSDHS has established the Coordinating Centre for the Act of Protection of Victims of Domestic Violence B.E. 2550 and has dedicated 5-10 staffs or civil servants to work for the centre. The centre’s main functions are to promote recognition and knowledge about the act for concerned units or organisations and the public by means of organising seminars and provide trainings for officers, as well as coordinate actions among concerned units or organisations in public, private sectors and civil society.88

In addition, the Operation Centre for the Protection of Victims of Domestic Violence has been established through a regulation of the Act of Protection of Victims of Domestic Violence since 2007 under the Ministry of Social Development and Human Security. The mandates are to provide immediate services for domestic violence victims; to coordinate, support and follow-up the practice of temporary protective orders; to coordinate with concerned officer/court regarding case settlement; to coordinate with local networks and administrative authorities and to collect data and information on domestic violence and report to the Office of Women’s Affairs and Family Development.89

The Bureau of Health Systems Development Department of the Ministry of Public Health has been established to oversee information systems of some 300 hospital-based One Stop Crisis Centre units, as described above. The Department of Prevention and Suppression of Crimes Concerning with Women and Children of the Royal Thai Police has been established to handle cases of violence against women. The Centre for the Protection of Children, Youth and Women was also established in the Royal Thai Police to assist children, youth and women who have been assaulted and sexually abused. This centre has adopted a more human rights and victim-centred approach, taking into account the vulnerabilities of the victims and their best interests. In addition, the Rights and Liberties Protection Department of the Ministry of Justice, was established in 2002 to protect victims of human rights violations including victims of domestic violence.90

b. Complaints Process

Responsibility for the administration of criminal law in Thailand is shared by several organisations: the Royal Thai Police, Office of the Attorney General, the Courts of Justice, the Ministry of Justice (Department of Probation and the Central observation and Protection) and the Ministry of Interior (Department of Corrections).

86 GIEACPC, Thailand Briefing for the Human Rights Council Universal Periodic Review.


89 Ibid.

90 Ibid.
In criminal cases such as rape or other sexual abuse cases, the victim has to submit the complaint before the inquiry officials. After an arrest, the arrestees are required to be taken promptly to a police station, where the arrest warrant is read and explained to them. According to the Criminal Procedure Code, investigation is conducted by the inquiry officials, who are mainly the police.

In the case of domestic violence, complaints can be made not only by the victim, but also by anybody who sees or has information about a domestic violence situation. The Protection of Victims of Domestic Violence Act states that it is the public duty of everyone to report domestic violence.

When a complaint is filed, the Act shortens the legal process so that the police have to investigate the complaint immediately and the public prosecutor has to file the case before the court within 48 hours. The court can force the offender to pay compensation to the victim and/or prohibit the perpetrator from returning to the house or getting in close contact with the victim.

c. Protection and Rehabilitation

The Protection of Victims of Domestic Violence Act provides legal grounds for the development of rehabilitation programmes for perpetrators of violence against women. The Act grants the court authority to assign rehabilitation, counselling, probation, public service, or parole to offender and/or to force the offender to pay compensation to the victim.

The Ministry of Social Development and Human Security has established a 24-hour hotline service also known as the Prachabodi Centre (hotline telephone number is ‘1300’). The centre’s principle functions is to receive reports on cases of violence, then coordinate with the organisations/units concerned, notably the Department of Social Development and Welfare, and the Provincial Office of Social Development and Human Security. The agencies will coordinate in directing the witnesses/victims/survivors of violence to appropriate services i.e. medical treatments, legal services or other forms of assistances. Moreover, the service is available for all victims of all forms of violence regardless of their nationalities.91

Additionally, the Department of Social Development and Welfare of the MSDHS has established free shelters called ‘Emergency Home for Children and Family’. The shelters are available in Bangkok and every province. Target groups include women and children who are victims of violence, sexual harassment, negligence, exploitation, orphans and women with unwanted pregnancy.92 The Association for the Promotion of the Status of Woman has also established Emergency Homes, which house more than 300 women. The target groups include women and children who are victims of domestic violence and women with unwanted pregnancy.93

The Department of Social Development and Welfare of the MSDHS has allocated an annual budget for rehabilitation/empowerment programmes for women and children who are victims of violence at the Kredtrakarn Centre for Women and Girls’ Protection and Career Development, located in Nontaburi province. The Centre provides compulsory education for women and girls, as well as career training in various areas e.g. culinary skills, hospitality services, and production of handicrafts.94

d. Prevention Strategy

The Office of Women’s Affairs and Family Development, together with partner organisations, organises an annual campaign each November as the Campaign Month Ending Violence against Women, designating the November 25 as the national ‘Ending VAW’ day. The campaign is launched at the beginning of the month of November every year, and is carried out throughout that month. The main message of the campaigns to promote public awareness of violence against women as a serious social problem in Thailand which has detrimental effects on the family, community, as well as on society as a whole.95

The Office of Women’s Affairs and Family Development has coordinated with, and requested cooperation from the media i.e. the country’s main television channels, newspapers and radio programmes to broadcast spots, news pieces and articles, which includes statistics on violence against women. The campaign includes organisation of national seminars and a popular campaign.

92 Ibid.
93 Ministry of Foreign Affair, “Thailand’s policies and initiatives on the prevention of violence against women.”
94 Ibid.
95 Ibid.
In addition, the MSDHS continues to develop a community-based system, operating in all regions of the country, to protect women from domestic violence. The programme focused on training community on women’s rights and abuse prevention to increase community awareness of these problems.96

4. Role of Non-State Actors

a. Assistance to Victims

According to the US Department of State Reports on Human Rights Practices of 2009, there are emergency hotlines, counselling services and temporary shelters that are supported by non-governmental organisations in Thailand.97 According to a Bangkok Post news article on August 21, 2010, reporting on the high level of domestic violence cases in Thailand’s Upper North provinces, also indicates that there are 10 branches of the Friends of Women Foundation set up across the country that help women and children victims of domestic violence.

b. Prevention Programs

In 2009, following the success of the ‘Say NO’ campaign in mobilizing youth voices, UNIFEM (now UN Women) initiated a Regional Programme to End Violence Against Women by Addressing the Normative Dimensions of Gender-Based Violence. This Programme was piloted in Thailand through initiatives with students in Thai schools as well as international schools and universities.98

Additionally, UNIFEM collaborated with the Office of the Basic Education Commission at the Ministry of Education to develop the joint programme ‘Youth Say NO to Violence Against Women in Thailand’. The objectives of this programme are, firstly, to build knowledge and understanding of Thai youth about the perceptions, attitudes and behaviours that justify violence against women and children and to gain the support and buy-in of teachers and school administrators to help implement the programmes with youth. Secondly, to organise student-led school-based activities geared toward raising awareness and reducing violence against women and children and finally, to analyse 2008 Basic Education Curriculum and provide recommendations on integrating VAW modules into learning.99

c. Monitoring and Cooperation

NGO Networks play an important role in protecting and assisting children and women who are victims of all forms of violence. Those NGOs have worked hand in hand with the state agencies in the protection and prevention of violence against women, a multi-stakeholder partnership that has been proven over time to be very effective in combating violence against women in Thailand. The example of such cooperation are the development of an on-line database of violence against women (http://www.violence.in.th), the organising of national, regional and provincial seminars on violence against women -related topics, as well as the promotion of a national campaign on violence against women by setting November as the Campaign Month for Ending Violence against Women and Sunday as Family Day Campaign.100

5. Progress Indicators and Challenges

Although the Penal Code prohibits sexual violations, i.e. rape, indecent acts, and distribution or exhibition of obscene materials, and the Civil Servant Regulations Act prohibits sexual harassment, in reality, there are some obstacles to eliminating violence against women as well as children. These obstacles include lack of political will, structural gender inequality, anti-women’s rights and political backlash (in some cases influenced by various cultural or religious fundamentalism), controversy over strategies and approach, inadequate and uneven data, inadequate resources and the need for coordinated and multifaceted efforts by government, non-governmental organisations and other actors.101

According to the Penal Code, rape is illegal and the Code permits authorities to prosecute rape cases, and the prosecution process begins. Nonetheless, the Juvenile

97 Ibid.
100 Ministry of Foreign Affairs, “Thailand’s policies and initiatives on the prevention of violence against women.”
101 ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 11 – 12.
Observation and Protection Department reported that sexual violence in Thai society was increasing gradually. Importantly, some youths probably have the attitude that rape is an acceptable action in his group, or among his peers. Hence, the attitude on rape and other sexual abuse is a challenge in combating violence against women in Thai society.

Conflict in the southernmost provinces of Narathiwat, Yala and Pattani is also a challenge because it affects women and children both directly and indirectly. Regarding indirect effect of violence, the data submitted by the Society for Threatened People, an NGO in special consultative status, shows that the health of pregnant women in the southernmost provinces has sharply deteriorated due to violence. The number of women dying in childbirth due to pregnancy complications has skyrocketed because the widespread violence prevents the women from getting sufficient prenatal care. The lack of health personnel and the violent attacks have forced hospitals to cut down their outreach services to the bare minimum. Many pregnant women are suffering from malnutrition, stress and anaemia, leading to an extremely low-weight of new-borns. While the national birth weight is 2.5 kg, many new-borns in the South weigh as low as 800 grams at birth, which results in many illnesses. Many of them die before their first birthday. The infant mortality in southern Thailand is 30% higher than the national average.

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6. Recommendations for Further Study

Violence against Women Sex Workers

Violence against female sex workers, both physically and sexually, by clients or brothel supervisors is one of the major problems in Thailand. A study in 2007 of female sex workers highlighted that 15% of women had experienced violence in the week before the survey. In addition, sex workers who experienced violence find that if they report any crime, even very violent crimes like rape, they are threatened with arrest on prostitution charges and frequently turned away from the police station. They also find that they struggle to have complaints taken seriously as well. Unable to seek help from police and local authorities for fear of being prosecuted or unfairly judged due to stigmatization, sex workers have to tolerate these abuses, which also make them vulnerable to HIV.

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C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

Over the past century, rampant poverty and political instability has marred the ASEAN region and has undoubtedly led to the infiltration of organised criminal networks seeking to exploit vulnerable men, women, and children. Exploitation of women and children has become a substantial problem in Thailand, which takes many forms of exploitation i.e. forced labour, child soldier, illegal migration for the purpose of forced labour, and trafficking in persons for sexual purposes such as prostitution in the sex industry. Women and children are often lured into commercial sex and forced into prostitution at the hands of their captors.

Human Trafficking

Thailand is a source, transit and destination country for trafficking of children and women for sexual purposes and labour, including forced begging. As a country of origin, a lot of Thai women and children, including hill tribe women and girls are trafficked for sexual exploitation, in particular, within the country women were trafficked from the impoverished Northeast and the North to Bangkok. However, internal trafficking of women appeared to be on the decline, due to prevention programs and better economic opportunities. On the other hand, a number of women and children are trafficked to Japan, Malaysia, South Africa, Bahrain, Australia, Singapore, Europe, Canada and the United States for sexual and labour exploitation is increasing gradually.

As a transit country, criminals have used Thailand as a gateway for trafficking victims to various countries, including Malaysia and Hong Kong. A number of women and girls from Burma, Cambodia, and Vietnam transit through Thailand’s southern border to Malaysia for sexual exploitation primarily in Johor Bahru, across from Singapore. Burmese, Khmer, Laos and ethnic minority girls have also been reportedly trafficked in border areas and into major urban centres and through Thailand to third countries such as Malaysia, Japan and destinations in Europe and North America.

As a destination country, Thailand is a target for trafficking women and children to be exploited from the countries close to its borders such as Laos, Myanmar, Cambodia, and China, including Russia and Uzbekistan, for sexual and labour exploitation. Children are trafficked for commercial sex and forced labour in begging, fishing, and fish processing. Many Burmese victims voluntarily migrate to Thailand and are later coerced into working in agriculture, factories, construction, commercial fisheries industries, begging, or as domestic workers. The number of migrants in Thailand is increasing annually; migrants (including ethnic minorities and stateless people) are at a greater risk of being trafficked than Thai nationals.

Undocumented migrants remain particularly vulnerable to trafficking, due to their economic status, education level, language barrier, and lack of knowledge of Thai law. Trafficked migrants in Thailand have been found employed in maritime fishing, seafood processing, low-end garment production, and domestic work.

Statistically, the data collected by the Anti-Human Trafficking Operation Centre of the Mirror Foundation shows the number of human trafficking cases as follow:


109 Akapin Chatchom, “Human Trafficking in Southeast Asia: Prevention and Suppression in Thailand” (paper presented at the ALIN International Academic Conference on Asia’s Emerging Laws in the Digital Age, Faculty of Law, Chulalongkorn University, Bangkok, Thailand, December 6-7, 2007).

110 The number of refugees and displaced person from Myanmar (with estimated 135,000 official and unofficial residents) are now living in nine border camps for displaced persons from Myanmar in Thailand. They are sometimes considered under the umbrella of ‘migrants’; see Andy West, Children on the Move in South-East Asia: Why child protection systems are needed (London: Grasshopper Design Company, 2008), 5 – 6.

Table 4: Statistics of human trafficking cases in Thailand during 2008-2011, collected by the Mirror Foundation

<table>
<thead>
<tr>
<th>Year</th>
<th>Fisheries</th>
<th>Begging</th>
<th>Prostitution</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>27</td>
<td>49</td>
<td>8</td>
<td>2</td>
<td>96</td>
</tr>
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<td>2009</td>
<td>138</td>
<td>98</td>
<td>12</td>
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<td>48</td>
<td>158</td>
<td>17</td>
<td>3</td>
<td>243</td>
</tr>
<tr>
<td>2011</td>
<td>38</td>
<td>134</td>
<td>15</td>
<td>0</td>
<td>189</td>
</tr>
</tbody>
</table>

Worst Forms of Child Labour

Generally, Thai labour law prohibits employment of children under the age of 15.\(^{112}\) Nevertheless, one exception exists for children 13 to 15 years old who have parental permission to perform agricultural work during school breaks or non-school hours as long as the employers provide a safe work environment. Children aged 13-15 and 15-18 are not to be employed in prohibited occupations, or under conditions that do not meet standards set out under Thai labour law (which currently varies between the two groups), or in circumstances not covered by Thai law (for example as homeworkers or in agriculture).

Thailand has been successful in reducing child labour past 15 years of age due to positive measures on social and economic development and a reduction in population growth. The number of child labourers in Thailand has decreased to 510,000 in 2010, compared to 580,000 in 2006 and 640,000 in 1996.\(^{113}\) However, some forms of child labour persist. The synthesis report of Thammasat University in 2006 on Assessing the Worst Forms of Child Labour in Selected Provinces of Thailand: Chiang Rai, Tak, Udon Thani, Samut Sakhon, Songkla and Pattani, which is a comprehensive research conducted in six selected provinces of Thailand, shows that children in those provinces experienced worst forms of child labour as described by ILO Convention No. 182.\(^{114}\)

The data from 2,744 child labourers in six selected provinces of Thailand shows that a very high proportion of all the child labourers were exposed to hazardous working conditions such as dust and smoke (40%), noise (26%), chemical substances (26%) and 'moral harms' (15%). Furthermore, many children faced various forms of abuse by employers such as; physical confinement (15%), physical punishment (8%), general harassment (20%), sexual harassment (7%), rape (1%) and verbal humiliation (15%). In general, child labourers were paid less than adults even if they carried out the same tasks. Half of the child labourers surveyed was paid less than 2,000 baht (approximately USD 65) per month. This is roughly half of the daily legal minimum wage in Thailand.\(^{115}\)

Prostitution and Sex Tourism

Child prostitution, which is a form of worst form of child labour pursuant to the ILO Convention No. 182, remains a significant problem in Thailand. It appears in various forms: from forcing girls (and less commonly boys) from neighbouring countries and local hill tribes into prostitution, ‘debt-bondage’ into brothels, to living on the streets with their peers, and voluntarily selling sex when opportunity arises.\(^{116}\) According to the Ministry of Social Development and Human Security, the general trends show a decline in a number of Thai children trafficked into the local sex industry. Instead, they are being trafficked abroad, to Japan and Australia via Malaysia and Hong Kong.\(^{117}\) With this trend, however, is an increase in the number of foreign children trafficked to Thailand for sexual exploitation.\(^{118}\) Boys and girls from Cambodia, China (Yunnan Province), Lao PDR,

\(^{112}\) Labour Protection Act B.E. 2541 (1998), Section 44.


\(^{115}\) Ibid.


\(^{117}\) Ibid.

\(^{118}\) Ibid.
Myanmar, and Vietnam, as well as ethnic minority groups living in northern Thailand, for example hill tribe people, are trafficked to larger Thai cities for sexual exploitation.

Consistent with the UNICEF, an estimated 1.8 million children (mainly girls but also a significant number of boys) enter the multi-billion dollar commercial sex trade annually in Southeast Asia. In addition, the estimated number of child prostitutes in Thailand varies depending on the source of the figures and the method of estimation. Remarkably, among those statistics, an estimate of 60,000 children under 18 are involved in prostitution, and 75,000 children under the age of 16 are involved in the sex industry, working in brothels, bars, and nightclub.

The sex industry contributes more than USD 22 billion annually to Thailand’s gross domestic product. This statistic underscores why the sex industry is so entrenched in Thai culture. Commercial sex has become a multibillion business, more lucrative than the drug trade. As a result, Thailand has become a destination country, receiving women from other Asian and non-Asian countries.

Child sex tourism is defined as the commercial sexual exploitation of children by persons who travel from their own country to another. Trends show that Thailand is one of the most popular countries of destination for child sex tourism, where sex tourists are attracted mainly because child prostitutes can be obtained cheaply and easily. In Thailand, sex tourism takes place in a variety of ways: the ago-go bars of the Patpong and Nana areas in Bangkok and Pattaya; and in many regions of the country. The islands, especially Phuket, are hot spots for sex tourism. Children, including men and women, are readily available in sex establishment and are approached directly in the street by tourists seeking sexual contact.

Child Soldiers in the Southern Thailand

With regard to child soldiers, there were no reports of persons under the age of 18 conscripted or recruited into government armed forces. However, the scale and exact nature of children’s involvement in non-state armed groups remains unclear. The separatist group in southern Thailand recruited teenagers under the age of 18 to carry out attacks by using Islamic schools to indoctrinate ethnic Muslim–Malay children with a separatist agenda. There is evidence that children have been targeted for recruitment by non-state armed groups and used by them in a variety of roles, including direct participation in hostilities.

Furthermore, the report of the Working Group on Justice for Peace on ‘Human Rights under Attack’ shows that the Ruam Thai Team, which is a group of people formed by residents in Yala, Pattani, Narathiwat and some districts in Songkhla, has reportedly expanded its defence force training to include 300 children with some as young as 8-10 years old. The group began to provide weapons


125 Ibid.

126 Ibid.

127 IIMA and VIDES, “Joint Statement on The Situation on the Rights of the Child in Thailand.”


and training for residents in the South in 2005 in order to defend themselves against the insurgents. In addition, this group was involved in an attack in May 2007 in Kolomudo village, which left five youths dead.

Moreover, research by Child Soldiers International (CSI) and Justice for Peace Foundation (JFD) in 2010 also demonstrated a pattern of unlawful recruitment and use of children by Chor Ror Bor, one of the village defence militias established in the south by the Ministry of Interior.133

b. Root Causes of Exploitation

Social Causes

Focusing on social factors, during the latter part of the 20th century, Thailand saw the creation of rural-based poverty, mainly resulting from export-led policies for industrial growth. Poverty frequently correlates with illiteracy, limited employment opportunities, poor qualification and bleak financial circumstances. Thus, poverty-stricken families can become desperate for money, and children may become at risk to procurement agents for the child sex industry.134 The increase of materialism and consumerism among some Thai families, caused by globalization of the economy, media and the influx of consumer goods, may have led some parents to view their daughters as a quick and convenient method of making money to buy consumer goods. Due to the free movement of people, goods and services across international borders, globalization has resulted in the increase of trafficked children for the purpose of commercial sexual exploitation.135

Economic Causes

According to the organisation End Child Prostitution Pornography and Trafficking UK, there are 800,000 to 900,000 hill tribe people living in the border region of northern Thailand, who live in extreme poverty and who do not have citizenship cards.136 Because of lack of citizenship, they do not have access to government services such as education and health care. Hence, they are extremely vulnerable to exploitation and trafficking both within and outside the country. In addition, individuals from neighbouring countries, as well as from further away such as Uzbekistan and Fiji, migrate to Thailand for reasons including fleeing poverty.137 For Thai families, some poor families themselves prostitute their own children or sell their children into the sex trade.

Cultural Causes

Cultural factors also play an important role in exploiting women and children for sexual purpose in Thailand. There are regional and ethnic aspects contributing to the occurrence of child prostitution. In some ethnic minorities, prostitution is deemed acceptable through the concept of karma and merit making in Theravada Buddhist society. With this belief, a girl can show gratitude and gain merit by raising money to support her family, and with the rising demand for females in the growing sex industry, daughter can fulfil this cultural mandate by working as prostitutes.138

In addition, in many cases, child prostitution may also exist as a family trade where children live with their parents and sell sex as part of the household economy. In this sense, prostitution may be the best choice available for individual children who believe it to be morally acceptable.139 Thus, gender discrimination also works in tandem with poverty in cultural norm.

Political Causes

Government undertaking and policies, in particular, educational policies, can put children at risk of prostitution, for instance, women have less educational and work opportunities than men. In addition, for survival, children from impoverished families are forced to drop out of school in order to help their parents earn a living. Consequently, they must find means of earning a living. Due to lack of


135 Ibid.


137 Ibid.


education and low salaries, educational policies may leave some children with little or no other alternative, but to enter prostitution to earn money. When children enter the 'labour pool' early in life, their fate is sealed and they are likely to remain in the cycle of poverty and illiteracy. This leads to an ever-ready supply of child labour, a situation that fuels the child sex trade. The growing demand for child sex tourism is another contributing factor. Importantly, many children along Thai borders do not have, or have lost, their birth certificates (and/or family documents), which are necessary for initial school enrolment and to obtain legal employment.140

**c. Impact of Exploitation**

Exploitation of women and children violate fundamental rights of women and children. The Report of the Gender Equality and Empowerment Section, UNESCAP, shows that exploitation affects health and social dimensions.141

**Health Impacts**

Statistics show that sexual exploitation increases the risk of contracting diseases from sexual activities such as tuberculosis and, in particular, transmission of HIV/AIDS, besides being in danger of becoming pregnant and seeking backstreet abortion.142 Statistically, in 2007, 12,000 to 17,000 children (aged 0-14) and 400,000 to 860,000 adults aged 15 and older are living with HIV.143 This represents an increase from the 2001 estimate of 7,500 to 14,000 Thai children living with HIV.144

According to experts of the Thai Working Group and the 2005-2025 Asian Epidemic Model Project for HIV in Thailand, unprotected sex is a major cause of HIV/AIDS infection. Statistics show that in 2010, Thailand had 1,148,117 persons living with HIV/AIDS (PLHA).145 Majority of AIDS patients (93.95%) are in productive age (15-59 years old) with the ratio of female PLHA and male equivalent to 2:1.146 Importantly, most of PLHA acquired the virus through unprotected sex (84.17%).147

In addition, a study on child prostitution in Thailand shows that because of poor living conditions, child prostitutes are also at high risk of mental illness, substance abuse, and violence--including injuries, rape and death.148

**Social Impacts**

Exploitation prevents women and children from full social, economic and politic participation. In fact, due to poverty, many children as young as 13 years old abandon school before having completed compulsory junior secondary education to be employed in informal labour. The majority of them belong to vulnerable groups. They usually work as countrymen, bricklayers or industrial workers.149 Furthermore, because child prostitutes can be obtained cheaply and easily, sexually active children are also at a high risk of complicated pregnancies. Such pregnancies could lead to backstreet abortions. When the pregnancy is not terminated, there is a risk of the 'chain effect' where mothers tend to be at risk of perpetuating the behavioural cycle of physical, emotional or sexual abuse with their children.150 Moreover, HIV positive children are stigmatized and find it difficult to attend schools in the community they belong. The government does not monitor this situation; neither does it set up effective mechanisms to reduce stigmatism in the community and in schools.

2. De Jure State Responses

a. Bases of State Responsibility

**International Level**

In line with the UDHR, the principles of equality, non-

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145 Thai Network et al., Civil Society Report on Thailand – Rights situation and HIV/AIDS.
146 Ibid.
147 Ibid.
149 IIMA and VIDES, “Joint Statement on The Situation on the Rights of the Child in Thailand.”
150 Lau, “Child Prostitution in Thailand,” 150
discrimination, and equal protection of the law are bind Thailand (B.2.a). Thailand ratified the CEDAW and OP-CEDAW. Article 6 of the CEDAW obligates the State party to suppress of exploitation of women as follows:

State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Regarding exploitation of children, Thailand ratified the CRC, OP-CRC-SC and OP-CRC-AC. Article 19 of the CRC provides that all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse shall be protected against. In addition, Article 34 of the CRC stipulates the obligations to protect children from exploitation that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

The OP-CRC-SC provides the definitions of sale of children, child prostitution and child pornography. Article 2 states that:

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.’

In addition, according to Article 3 of the OP-CRC-SC, Thailand has to ensure that sale of children, child prostitution are fully covered under its criminal laws.

Aside from the OP-CRC-SC, Thailand also ratified the OP-CRC-AC. According to the obligations under this Protocol, Thailand has to take all measures to ensure that no children under the age of 18 is recruited by the Thai armed forces and could be used in armed conflict and no children take direct part in hostilities in accordance with obligations stated in the Protocol as:

Article 1
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.’

Article 2
States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.’

Thailand is also obligated to ensure decent work in accordance with international labour standards as it has agreed to the Declaration on Fundamental Principles and Rights at Work set by the ILO in 1988, as well as ratified the labour conventions issued by ILO.

Among 14 ILO Conventions, Convention No. 182 spotlights on the urgency of action to eliminate as a priority the worst forms of child labour, without losing the long-term goal of the effective elimination of all child labour. According to this Convention, Thailand shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. In addition, Article 3 the Convention defines the term of ‘worst form of child labour’ as:

For the purposes of this Convention, the term the worst forms of child labour comprises:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt
bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.'

In addition, Convention No. 138 ensures that children do not start working too young by setting the age at which children can legally be employed.

Furthermore, the ILO's mandate on gender equality is to promote equality between all women and men in the world of work. This mandate is grounded on ILO Conventions of particular relevance to gender equality – the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183). Among these ILO Conventions, Thailand ratified ILO Convention No. 100; therefore, the country has the obligation to promote equal remuneration for all male and female workers.

Regional and Bilateral Level

The problem of human trafficking is not only one of significance in Thailand, but also manifests as a major problem challenging all countries in the Greater Mekong Sub-region (GMS). Thailand is serious about strengthening cooperation against human trafficking through bilateral and multilateral agreements among countries in the Mekong Sub-region, which is susceptible to human trafficking.151 The following four bilateral and multilateral MOUs have been signed:

(1) MOU between Thailand and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victim of Trafficking in 2003. This MOU leads to formulating the cooperation projects in 3 areas; 1) return and reintegration, 2) prosecution process guidelines and 3) information sharing.


(4) MOU on Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) signed in 2004. 152

(5) MOU between the MSDHS and the International Organization for Migration on Cooperation to Prevent Trafficking in Persons and to Assist Vulnerable Persons in Risk of being Trafficked in 2007.

(6) MOU between Myanmar and Thailand on Cooperation to Combat Trafficking in Persons, especially Women and Children in 2009.

In addition, Thailand is in the process of initiating similar bilateral MOUs with China and Japan. In 2006, a Joint Task Force on Counter Trafficking in Persons between Thailand and Japan was established and the two countries are reviewing the draft Standard of Procedures on Protection, Assistance, Repatriation and Reintegration of Victim of Trafficking in Persons.


152 Jayanguta, “The Thai Government's Repatriation and Reintegration Programmes,” 236
b. State Policies Against Exploitation

Legal Measures

The Constitution addresses issues regarding exploitation of women and children in a number of sections. Section 4 guarantees the protection of human dignity and rights and liberties, Section 30 enshrines the equality and the protection of the rights of children and youth from unfair treatment under Section 52 as stated above (see B.2.b).

Apart from the Constitution, Thailand also has a number of domestic laws regarding the issue of exploitation of women and children. In 1997, the Penal Code Amendment Act (No.14) B.E. 2540 (1997) amended a number of Sections of the Penal Code to criminalise human trafficking for sexual purpose. Section 282 of the Penal code defines sexual offences to include the procurement or trafficking of boys or girls under 18 years old for the purpose of sexual gratification regardless of consent that:

Whoever, for sexual gratification of another person, procures, lures, or traffics a man or woman for an indecent sexual purpose, even with his or her consent, shall be punished with imprisonment of one to ten years, and a fine of two thousand to twenty thousand baht.

If the commission of the offence in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age, the offender shall be punished with imprisonment of three to fifteen years, and a fine of six thousand to thirty thousand baht.

If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand baht…

Further, the procurement, lure, traffic, or bringing of a man or woman for an indecent sexual purpose committed by using deceitful means, threats, physical assault, immoral influence, or mental coercion by any means and by the offender is punished according to Section 283 and Section 284 of the Penal Code.153

In addition, the Penal Code Amendment Act (No.14) also added two more Sections of 283 bis and 312 ter, which provide that:

Section 283 bis Whoever brings a person over fifteen years but not yet over eighteen years of age for an indecent sexual purpose, even with the consent of that person, shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both.

If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment not exceeding seven years, or a fine not exceeding fourteen thousand baht, or both…

Section 312 ter. Whoever, for gaining illegal benefit, receives, sells, procures, lures, or traffics a person over fifteen years but not yet over eighteen years of age, even with the consent of that person, shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both.

Further, the procurement, lure, traffic, or bringing of a man or woman for an indecent sexual purpose committed by using deceitful means, threats, physical assault, immoral influence, or mental coercion by any means, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand baht.

• If the commission of the offence in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age, the offender shall be punished with imprisonment of seven to twenty years, and a fine of fourteen thousand to forty thousand baht, or life imprisonment.

• If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of ten to twenty years, and a fine of twenty thousand to forty thousand baht, or life imprisonment, or death penalty.

• Whoever, for sexual gratification of another person, receives the person who was procured, lured, or trafficked as provided in the first, second, or third paragraph, or aids or abets in the commission of such offence, shall be punished with the punishment accordingly provided in the first, second, or third paragraph as the case may be.

Section 284 provides that:

• Whoever brings another person for an indecent sexual purpose, by using a deceitful mean, threat, physical assault, immoral influence, or mental coercion by any mean, shall be punished with imprisonment of one to ten years, and a fine of two thousand to twenty thousand baht.

• Whoever conceals the person who was brought away as provided in the first paragraph shall be punished with the same punishment as the offender who brought that person away.

• The offence in this Section is the compoundable offence.

153 Penal Code, Section 283 provides:

• Whoever, for sexual gratification of another person, procures, lures, or traffics a man or woman for an indecent sexual purpose, by using
Laws on Human Trafficking

In 2008, the Prevention and Suppression of Human Trafficking B.E. 2551 (2008) was promulgated. The Act provides a comprehensive approach in addressing the issue of human trafficking and makes punishment of traffickers more severe and protection of victims, including regular and irregular migrants, more effective. In addition, the Act is targeted at preventing, circumventing, and suppressing a wider range of activities related to human trafficking, including the procurement or trafficking of persons into or out of Thailand for prostitution, sexual exploitation, production/distribution of pornography, slavery, forced labour or services, begging, organ amputation for commercial purposes, or any other forms of exploitation. A definition of exploitation in Section 4 of the Act, which is taken from the Optional Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, stipulates that:

Exploitation means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.

Victim protection under the Act covers all persons, regardless of their gender or nationality. Victims can claim compensation from offenders for damage caused by human trafficking and will be provided with shelter and other necessities including physical, psycho-social, legal, educational and healthcare assistance. The Act also ensures that all trafficked survivors are considered and treated as victims, not criminals.154

Apart from the Anti-Trafficking in Persons Act, Thailand has a number of domestic laws dealing with human trafficking issue, for instance, the Child Protection Act, B.E. 2546 (2003) provides for protection of children from all forms of abuses, exploitation, violence and gross negligence. It is clearly stipulated that any child below the age of 18 is protected by the State. A person is forbidden to force, threaten, induce, encourage, consent to, or act in any other way that results in the exploitation of a child or constitutes an act of torture, physically or mentally, against the child.

The Witness Protection Act, B.E. 2546 (2003), encourages women, child and adolescent victims (survivors) to be a witness or an informant in tackling trafficking ring or organized crime. Any victim who becomes a witness will be guaranteed the right to protection, proper treatment, and necessary and appropriate remuneration from the State as provided by law. The Protection of Victims of Violence in Family Act B.E. 2550 (2007) protects everyone in the family, especially children and women, from all forms of abuse and exploitation. The Promotion of Child and Youth Development Act B.E. 2550 (2007), contributes directly to the promotion of programmes and activities for children and youth at all levels. The Act helps empower and prevent them from becoming victims of all forms of exploitation. Additionally, the Employment of Aliens Act B.E. 2551 (2008) ensures that migrant workers who are issued a work permit will then receive various welfare and labour law protection entitlements in accordance with the Labour Protection Act, B.E. 2541 (1998). The Act also imposes heavier penalties on employers who engaged in human trafficking and forced labour.

Laws Relating to Child Labour

Labour rights are mainly protected by the Labour Protection Act B.E. 2541 (1998). There are relevant provisions dealing with specific labour issues such as working hours, remuneration, child labour, female labour, sick and maternity leave, dismissal as well as termination of employees and welfare and social security of employees. Regarding child labour, the Act prohibits the employment of a child under 15 years old (Section 44). To employ a child below the age of 18 years, an employer has to notify the labour inspector (Section 45) and an employer is required to give a child labour a rest period of one hour for every four hours he has worked (Section 46).

Also, an employer should not ask a child employee below 18 years to work overtime or on holidays (Section 48). Additionally, child labour below 18 years are not allowed

154 Prevention and Suppression of Human Trafficking B.E. 2551 (2008), Section 7.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

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to perform dangerous works such as rolling as well as stamping metal and works dealing with unsafe chemicals and poisonous microorganisms (Section 49). Moreover, child labour below the age of 18 years is also strictly prohibited from certain establishments such as gambling centres, slaughterhouses, dance clubs, and centre where liquors and other related beverages are served (Section 50). Above all, an employer is required to pay the remuneration or benefits of child employees only to child employees and not to any other persons other than the employees (Section 51).

In addition, a number of laws prevent child labour, such as the National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children B.E. 2539 (1996); the Ministerial Regulation concerning Wage Rate for Employment B.E. 2547 (2004); the Ministerial Regulation concerning Labour Protection in the Agriculture B.E. 2548 (2005); the Child Protection Act B.E. 2546 (2003); and the Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008).

Laws Concerning Prostitution and Sex Tourism

Regarding prostitution, especially child prostitution, the Penal Code Amendment Act (No.14) B.E. 2540 (1997) imposes heavier penalties to whoever commits a sexual offence against children, as stated earlier. Specifically, the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) is the central legal framework prohibiting prostitution. Section 4 of the Act defines the prostitution as:

[s]exual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not imposes heavier penalties to whoever procures, lures, compels, threatens children for the purpose of prostitution.

In addition, the prohibition of child prostitution is stipulated by Section 8 of the Act that:

Any person who, in order to bring about prostitution, admits a person known to him or her as having been procured, seduced or taken away under paragraph one, two, three or four, or supports the commission of such offence shall be liable to imprisonment for a term of one to ten years and to a fine of twenty thousand to two hundred thousand baht.

If the offence under paragraph one is committed against a person over fifteen but not over eighteen years of age, the offender shall be liable to imprisonment for a term of five to fifteen years and to a fine of one hundred thousand to three hundred thousand baht.

Any person who, in order to bring about prostitution, admits a person known to him or her as having been procured, seduced or taken away under paragraph one, two, three or four, or supports the commission of such offence shall be liable to the penalty provided in paragraph one, two, three or four, as the case may be.
Furthermore, there are a number of domestic laws that provide protection to women and children from sexual exploitation. For instance, the Labour Protection Act, B.E. 2541 (1998) protects female and child employees from sexual exploitation. The Immigration Act, B.E. 2522 (1997) prevents any alien whose behaviour is believed to have connection with commercial sexual exploitation from entering the country and the Money Laundering Control Act, B.E. 2542 (1999) prohibits transaction of money obtained from the commission of an act of sexual exploitation.

**Administrative Measures**

Thailand has been using various administrative measures to assist, protect and rehabilitate victims both physically and mentally, including proactive coordination with overseas agencies and creating networks for the assistance and protection of children and women with relevant government agencies, private sectors, international organisations, and volunteers.155

A Cabinet Resolution on June 14, 2005 approved the establishment of the Operation Centre on Human Trafficking at three levels – provincial, national and international. The main functions of this centre are to coordinate the concerned organisations among the public sector, the private sector and communities, to protect and assist victims of trafficking and to develop the policy, campaign and information in this matter. The members of the centre committee include experts and representatives from relevant government, non-government organisations and international organisations. The government established 75 Provincial Operational Centres on Prevention and Suppression of Human Trafficking (POCHT) throughout the country to work collaboratively with relevant governmental agencies, NGOs and communities at provincial, national and international levels.156 Moreover, in the 2010 fiscal year, the government allocated a budget of more than THB 30 million for these centres to implement preventive measures against human trafficking.157 In 2009–2010, the government arranged 18 trainings for 975 competent officials. These programs are aimed at enhancing knowledge and skills of these officials in order to effectively implement duties according to the Anti-Trafficking in Persons Act.158

On May 11, 2010, the Second National Policy, Strategy and Measures on Prevention and Suppression of Trafficking in Persons (2011-2016) were approved by the Cabinet. It serves as guideline for both government and non-government agencies to cooperate in combating human trafficking. This National Policy also supports prevention, suppression, assistance and protection, recovery and reintegration mechanisms at all levels: communities, provincial, national and international.159

Correspondingly, in 2011, the Department of Labour Protection and Welfare of Ministry of Labour introduced the National Plan and Policy for the Elimination of the Worst Forms of Child Labour (2009-2014) as a master plan to protect child labour in accordance with non-discrimination and human right standards pursuant to the ILO Convention No. 182.160

Additionally, from 2003–2008, Thailand initiated 11 domestic MOUs related to human trafficking to ensure effective coordination and implementation in accordance with relevant legislations and policies. The MOUs provide a set of clear guidelines on operational coordination and action among agencies responsible for assisting both Thai and foreign victims, from fact-finding, prosecution, rehabilitation to repatriation and reintegration. The domestic MOUs are as follows:


2. MOU on the Procedural Cooperation between Government and Non-Government Agencies Working with Cases of Trafficking in Women and Children B.E. 2546 (2003),

3. MOU on the Operational Guidelines of Non-Governmental Agencies Concerned with Cases of Trafficking in Women and Children B.E. 2546 (2003),

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155 Akapin, “Human Trafficking in Southeast Asia”.


158 Ibid.

159 Ibid


Apart from provincial cooperation domestically, Thailand and Lao PDR have reached a provincial-level agreement, between Ubon Ratchathani of Thailand and Saravan of Laos, to jointly combat cross border crime, ranging from drug trafficking and the hiring of illegal immigrants to the flesh trade.

c. Assessment of State Policies

Human Trafficking

According to the TIP Report of the US State Department, despite the implementation of policies and programmes designed to respond to trafficking in persons, the situation of trafficked persons in Thailand did not improve enough and the government does not fully comply with the minimum standards for the elimination of trafficking. The government continued implementation of its human trafficking law and conducted awareness-raising activities on human trafficking. The government continued to work on its implementation of regulations that will allow trafficked victims to temporarily live and work within Thailand, though victims generally continue to be detained in government shelters. The Thai government reported increase in trafficking prosecutions and convictions, but as of May 2011, there was insufficient data available to determine whether each of these could be categorized as human trafficking convictions.

The Thai prime minister chaired meetings with labour and civil society organisations to coordinate anti-trafficking efforts, which led to the development of the Thai government’s second six-year National Policy Strategy on human trafficking for 2011-2016.

Despite these significant efforts, the government has not shown sufficient evidence of increasing efforts to address human trafficking over the previous year, particularly in the areas of prosecuting and convicting both sex and labour trafficking offenders, combating trafficking complicity of public officials, and victim protection. The 2011 Trafficking in Persons (TIP) Report released by the US State Department, listed Thailand under the ‘Tier 2 Watch List,’ whereas it had previously been listed as ‘Tier 2’ nation. As a Tier 2 Watch List nation, it means that the country was making significant efforts to address the problem of trafficking but had not yet fully complied with the minimum standard for the elimination on trafficking. In addition, the TIP Report especially noted that the Thai government’s failure to prosecute cases of human trafficking by law enforcement officials. Authorities reported investigating two cases of complicity involving four officials, including at the police colonel level, though there were no convictions or sentences of complicit officials during the year.

162 Ibid.
163 Ibid.
It is noted that the government’s ‘Nationality Verification and Granting an Amnesty to Remain in the Kingdom of Thailand to Alien Workers Programme’ offered inadequate legal rights to Burmese and other migrant workers and bound their immigration status to Thai employers, effectively leaving workers without legal recourse or protection from forced labour.

**Child Soldiers**

Thailand is a Party to the OP-CRC-AC and according to the Military Service Act B.E.2497 (1954), every Thai male is required to enlist in the military reserve force at the age of 18. At the age of 21, they are screened for physical disabilities and recruited for two years of military service as private soldiers. However, neither the Penal Code nor the Child Protection Act explicitly criminalises the recruitment of children under the age of 18. To complete the obligation under the OP-CRC-AC, the NGO Group for the CRC pointed out that Thailand needs to take measures to implement Article 4 of the OP-CRC-AC, especially in relation to recruitment of children for taking part in hostilities by NSAGs.164

3. Implementation, Monitoring and Enforcement

   a. Monitoring Mechanisms

According to aforementioned policies against exploitation of women and children, a number of special organs have been designed to respond to the implementation and monitoring of the policies. The Department of Social Development and Welfare, the Ministry of Social Development and Human Security is responsible for providing shelters, medical, rehabilitation, protection, informal education, occupational training and assistance to young girls working in commercial sex and difficult circumstance through its Occupation Assistance Programme.

The Women, Child and Youth Development Division and Department of Community Development have been transferred from the Ministry of Interior to the Ministry of Social Development and Human Security. This new structure is designed to help broaden the government’s efforts to build the capacities of women’s groups and women’s development committees at both the village and district level. This structure also provides for the operation of early childhood development centres.

In addition, pursuant to the Anti-Human Trafficking Act, the Coordinating and Monitoring of Anti-Human Trafficking Performance Committee was set up to prepare and monitor the performance of the implementation and coordination plans of the agencies concerned.

Moreover, the National Human Rights Commission (NHRC) is an independent body that promotes and protects human rights in the country. The NHRC is also supposed to be implementing measures to monitor and address trafficking of women and children in cooperation with other National Human Rights Institutes in the Southeast Asia region, in accordance with the MOU of the Southeast Asia National Human Rights Institutes.165 Furthermore, under the Commission, the Sub-Committee on Child, Youth and Family was appointed to be responsible for the implementation of the CRC and its optional protocols. The Sub-Committee has been holding periodical meetings with relevant agencies to keep abreast of the progress and constraints in the implementation of the CRC and its optional protocols. It also conducts visits, receives complaints and conducts investigations and commissions researches and studies in order to make recommendations on policies and practices on child rights.

   b. Complaints Process

The Penal Code states that police must take records of complaints, investigate and send a complete report to prosecutors. Alternatively, complaints about violations of children’s rights can be sent to the NHRC. It is the Commission’s duty to examine and propose remedial measures for acts which violate human rights and which are not being litigated in the court or upon which the court has already passed a final order or judgment. The complaints could either be submitted in person or by registered mail to the Office of the National Human Rights Commission, or to any of its members, or via a private organisation.

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Upon receiving the complaint, the Office of the National Human Rights Commission shall, without delay, notify the petitioner or the representative. The notification shall be made no later than three days after the date the complaint is received.

c. Protection and Rehabilitation

The government demonstrated mixed efforts to protect foreign and Thai victims of trafficking. The Thai law protects identified victims from being prosecuted for acts committed as a result of being trafficked. However, adult trafficking victims identified by authorities were sometimes detained in government shelters for several years. Foreign victims could not opt to reside outside the shelters or leave before Thai authorities were prepared to repatriate them. The Thai government opened three additional trafficking shelters for men, who were recognised under the Anti-Trafficking Act in 2008 as potential victims. The government refers victims of trafficking to one of nine long-stay regional shelters run by the Ministry of Social Development and Human Security, where they receive psychological counselling, food, board, medical care, and legal assistance.

Foreign adult victims of trafficking identified by authorities continued to be detained in government shelters and typically cannot opt to reside outside a shelter or leave before Thai authorities are prepared to repatriate them. The trafficking law contains a provision for granting foreign victims the right to seek employment while awaiting conclusion of legal processes, and the Thai government passed a new regulation in May 2011 to implement this provision.

The government passed new regulations that will allow foreign victims to temporarily live and work within Thailand. Because of this detention practice, foreign victims of trafficking are not afforded the same opportunities as other foreign nationals who seek and receive permission to work in Thailand. There were regular reports of foreign trafficking victims who fled shelters, likely due to slow legal and repatriation processes, the inability to earn income during trial proceedings, language barriers, and distrust of government officials. There were reported instances in which victims opted not to seek designation as trafficking victims due to systemic disincentives, such as long stays in shelters during lengthy repatriation and court processes. NGOs reported that some individuals were trained by labour brokers on how to lie to government officials to prevent being identified as victims. While Thai law protects victims from being prosecuted, some victims were likely punished due to the lack of effective victim identification procedures and authorities’ efforts to arrest and deport immigration violators.

Foreign trafficking victims are not offered legal alternatives to their removal to countries where they may face hardship or retribution. Though the Anti-Trafficking Act contains a provision for granting foreign victims the right to seek employment while awaiting conclusion of legal processes, the Thai government does not appear to have provided victims with this right. During the year, the government revised and redistributed systematic trafficking victim screening procedures to guide law enforcement and other front line responders in the process of victim identification.

d. Prevention Measures

Thailand places great importance on preventative measures, recognising that deprivations of education and occupation opportunities as well as the incidence of poverty are key factors that cause women and children to fall victim to trafficking. Currently, the Thai Government is employing several strategies to prevent sexual exploitation of women and children such as poverty reduction, policies on promoting economic empowerment of women, especially those in the rural areas. It has education policies to ensure the right of all children born in Thailand to free basic education of at least 12 years according to the National Education Act B.E. 2542 (1999), and to require all children born in Thailand to attend nine-year compulsory education pursuant to the Compulsory Education Act B.E. 2545 (2002).

167 Ibid.
168 Ibid.
169 Ibid.
To prevent sex tourism, the Tourism Authority of Thailand (TAT) and the Ministry of Tourism and Sports have joined efforts by taking strict measures against travel and transportation agencies involved in sex tourism. Additionally, police officers under the Police Command for Elimination of Wrongdoing against Children, Youth, and Women, have been designated to carry out surveillance and investigation, and to notify the Tourist Police of any suspected cases of child-sex tourism.171

In addition, the Ministry of Labour to prevent exploitation of children in the labour market, has a preparedness programme prior to entry into the labour market; public education on the prevention of child labour; and remedial measures, targeting employers, employees, child workers and students. These aim to raise awareness on exploitation of child labour, legal punishment and responsibilities.

Additionally, the government made notable efforts to prevent human trafficking through collaboration with international organisations and NGOs. Some prevention efforts include the involvement of the Prime Minister and Members of the Cabinet. While some activities aimed to raise awareness on trafficking within Thai society as a whole, others attempted to raise awareness among targeted high-risk industries. Throughout 2010 and early 2011, it reached more than 3,000 people from high-risk groups, as well as approximately 2,000. NGOs noted that awareness of human trafficking and labour rights grew, both among high-risk populations and among government officials. The government made increased efforts to educate migrant workers on their rights and their employers’ obligations to them.

In 2010, the government announced plans to collect additional funds from migrant workers undergoing nationality verification in order to underwrite the cost of deporting undocumented migrants. This could further increase workers’ debt.172 The government reportedly distributed USD 200,000 from its fund to assist trafficking victims and finance anti-trafficking activities - only a small portion of the government’s overall fund to assist trafficking victims.

In April 2010, the Thai government published its own report on the trafficking situation, its efforts to address it, trafficking statistical data, and recommendations on how to improve its operations. The government reported that random interviews with Thai migrants at overland border-crossing checkpoints prevented 171 potential victims of trafficking or other exploitation from traveling. Authorities also reported ‘labour checkpoints’ at international airports, though the government did not report identifying any potential or confirmed trafficking cases through these efforts.

Accordingly, the MSDHS has been conducting an extensive campaign through all forms of media about the new law and its severe penalties. Trainings and seminars on the new law have been organized continuously. The Thai Government also declared June 5 of every year a National Anti–Human Trafficking Day to raise awareness of trafficking and sexual exploitation nation-wide.

The government conducted awareness-raising campaigns targeting tourists’ demand for child sex tourism, but did not make any other efforts to reduce the demand for commercial sexual acts or forced labour. Thailand is not a party to the 2000 UN TIP Protocol.

4. Role of Non-State Actors

a. Assistance to Victims

At present, assistance to victims of commercial sexual exploitation and trafficking follows five steps,173 NGOs play a great role in every step, namely: rescue, orientation, court procedure and victim Protection, recovery and reintegration. One of the NGOs that play a major role to assist the survivors of human trafficking is the Paveena Foundation for children and women. The Foundation aims to help children and women who are victims of crime or have experienced cruelty of different types, and to provide rehabilitation programmes both physically and spiritually; to help children and women who have no shelter and protection to be able to stay by themselves; to develop professional skills among poor and underprivileged children; and to promote

171 Ibid.
Thai traditional activities. Thousands of people in trouble have contacted the foundation for help regarding cheating, being deceived into prostitution, rape, brutality, etc.

The Association for the Promotion of the Status of Women under the Royal Patronage of HRH Princess Soam Sawali has been the largest NGO providing emergency homes for women and children for more than 20 years. It has reached out to more than 40,000 people suffering from violence, HIV infection, AIDS and unwanted pregnancy. In addition to food, shelter and the necessities of survival, the Association provides consultation and vocational training, as well as courses for youths and nurseries for preschool children. The Foundation for Women (FFW) provides information, support, referral and emergency assistance to individual women affected by gender-based violence, particularly domestic and sexual violence. It cooperates with organisations in countries of destination in assisting women and children and preventing human trafficking. It also provides social and legal assistance to Thai and non-Thai women and children who are victims of national and cross border trafficking. FFW advocates for the rights of trafficked women and children, and cooperates with other organisations to defend their rights such as the right to compensation and civil remedies.

b. Prevention Programs

A number of campaigns in cooperation with NGOs to prevent exploitation of women and children have been promoted. A regional campaign to fight child trafficking in Southeast Asia, known as Asia against Child Trafficking (ACTs), was launched in 2001. The campaign is aimed at raising awareness and empowering communities to protect children from trafficking. In addition, the local NGOs from the region, including a number of local Thai organisations also participate in this on-going campaign.  

The UNICEF has forged co-operation at the national and international levels for capacity building and establishment of child protection systems in 25 provinces of Thailand to reduce poverty and vulnerability of children. In 2007, the child protection system was piloted in six provinces affected by the Southeast Asian Tsunami. The objective is to protect children from abuse, neglect and all forms of exploitation, focusing on close cooperation between the public and private sectors.

174 Ministry of Foreign Affairs, “Answer to questionnaire on the protection of children from sexual exploitation.”


The Ministry of Labour in cooperation with the ILO organised activities to prevent and find solutions to the trafficking problem, which include the Mekong Project to Combat Trafficking in Children and Women (TICW). TICW focuses on the improvement of working standards and protection of labour among 6 countries of the Mekong region. Further, the Sub-regional Advisory Committee focuses on awareness raising, training and handicraft skills development, and capacity building for management of labour migration and prevention of trafficking in children and women for labour exploitation.

Several international NGOs, UN agencies and foreign countries have provided support financially and technically to the local projects related to the elimination of sexual exploitation in Thailand. There are a number of campaigns run by NGOs to prevent and protect vulnerable groups in Thailand namely275 The Hotline Center Foundation is an anonymous telephone consultation service that can provide good suggestions to reduce emotional stress and helpful information. The Foundation organises training courses by consultants from various organisations on the HIV/AIDS issue. It runs campaigns on various issues via newspaper, magazine, radio and television. The president of the foundation estimates that the Center provides services to at least 30,000 cases annually. Approximately 65% of its clients were women. The Women’s Friend Foundation has been working hard to promote awareness of the unfair treatment of women by collaborating with many agencies to improve the social conditions of women, provide legal consultation for women in cases such as rape, harassment, unwanted pregnancy and discrimination. It offers training courses to sensitize those who are on duty related to violence (such as female police) to the presence of gender inequality.

The Education Means Protection of Women Engaged in Recreation or EMPOWER is an organisation that works with women in the entertainment sector. Their staff teaches them to know and protect their basic rights, to have other vocational skills and to attend academic classes. The main objectives are to train commercial sex workers to protect themselves, to be self-reliant, and to have more inner strength in order to be able to make their own decisions in solving various problems. EMPOWER also works on prevention of HIV/AIDS and distributes condoms, free of charge, to its members. It offers mobile classes at night on Thai and foreign language, and other professional skills.

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c. Monitoring and Cooperation

Thai NGOs are actively campaigning to solve major social problems of health, society, culture, politics and human rights. Most of their actions are challenging and gathering new ideas to solve these problems, and questioning existing systems and structures not functioning well for people's rights and welfare. NGOs have important roles in stirring up wide public interest in specific problems and initiate many activities, which have an impact on policies and social development.

In 2005, in Thailand, there were 580 organisations, 229 of which were governmental, while 331 were private organisations involved in helping children in trouble. NGOs' focus on protection of children's rights according to the Children's Rights Act, including promotion of community organisations and support for family development, increased participation by children and networking. The functions include: keeping track of the situation and finding facts on children's conditions; investigating and reporting the violation of children's rights; helping children whose rights are violated; publicizing and distributing knowledge on children's rights and the works of international organisations; assembling all people concerned with children's rights and promoting proper policies; and recommending and extending help to children to claim their rights.176

5. Progress Indicators and Challenges

Child Soldiers

Regarding child soldiers, even though there were no reports concerning child soldier in Thailand; nevertheless, the situation in southern Thailand evidences that children and women were affected by NSAGs, including direct participation in hostilities. Moreover, Thailand currently host more than 15,000 refugees and asylum seekers from Myanmar, with numbers increasing each year as people flee armed conflict. These populations include children escaping from recruitment into the Myanmar state armed forces or NSAGs, who are at risk of refoulement due to inadequate protection by the Thai authorities. In addition, several Myanmar NSAGs have reportedly recruited and used child soldiers in Thailand.177

Sex Tourism

In this digital age, the Internet has facilitated the recent rise of child sex tourism by providing a convenient marketing channel. Websites provide potential child sex tourists with pornographic accounts and information on how to procure child prostitutes. The easy availability of information on the Internet strongly favours child pornography online and facilitates child abuse.178

Human Shields

The use of women and children as human shields to prevent authorities entering their villages has repeatedly occurred in the conflict in southern Thailand. In 2007, the Asia Report of International Crisis Group shows that villagers refuse to help police and they sometimes guard hostages or prevent officials from entering their villages by forming human shields of women and children.179 Furthermore, the Guardian on May 17, 2010, reported of 'Thai protesters using children as shields' during the political conflict in Bangkok.

6. Recommendations for Further Study

Child Labour

One main problem on exploitation of children in Thailand is child labour. As stated earlier, the manifestation of all four worst forms of child labour pursuant to the ILO Convention No. 182 are present in Thai labour industry. Furthermore, according to a study on the extreme forms of child labour in Thailand of the Institute for Population and Social Research, Mahidol University in 2010, the number of child labourers in worst forms of slavery or practices similar to slavery and work, which causes harm to health, safety or morals of children, has decreased steeply. As for child prostitution and the use of child for illicit activities, while the government concluded that the situation has improved, NGOs pointed out that the problems remain steady.180 Thus, for further study, focusing on the worst forms of child labour is necessary.

176 Ibid.
178 IIMA and VIDES, "Joint Statement on The Situation on the Rights of the Child in Thailand."
Another emerging challenge is the luring for sexual exploitation via chat rooms in the Internet. According to a study conducted by an academic institution, two% of Internet users in Thailand aged between 15-24 years used chat room to meet unknown persons. Thirteen% of them then engaged in sexual activities with such individuals, ignoring the risk of falling prey to sexual exploiters and ending up eventually on child pornography websites. This kind of problem requires involvement and cooperation from the family, school and to relevant national agencies. To address it properly would require many pieces of legislation, including the Internet and Computer Act.\textsuperscript{181} Hence, this is a challenging issue for further study on the sexual exploitation of women and children.

D. ABUSE AND DISCRIMINATION IN MIGRATION

As a middle-income country, Thailand is not only an origin and destination of large numbers of international migrants, but also a country of transit for asylum-seekers, victims of trafficking and irregular migrants.\textsuperscript{182} For the last two decades, the Thai migration policies allowed for yearly registration of migrants who illegally entered the country to temporary live and work in the country while awaiting repatriation.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{Category} & \textbf{Stay} & \textbf{Stay and work} \\
\hline
Professional skilled and semi-skilled worker & & \\
Foreigners with work permits & 100,338 & \\
Diplomats and officials & 6,148 & \\
\textit{Subtotal} & & 106,486 \\
Other temporary stay & & \\
Stay with Thais & 14,946 & \\
Stay with Thai wife & 11,381 & \\
Stay with resident families & 1,098 & \\
Retirement & 28,509 & \\
Others (including medical treatment and study) & 65,175 & \\
\textit{Subtotal} & & 121,109 \\
Tourist and transit visa extension and visa changes & 92,014 & \\
\textit{Subtotal} & & 92,014 \\
Students & & \\
Higher education (2010) & 19,052 & \\
\textit{Subtotal} & & 19,052 \\
Other regular & & \\
Residents awaiting nationality & 233,811 & \\
\hline
\end{tabular}
\caption{Estimate foreign population residing and working in Thailand, approximately end of 2009}
\end{table}

\textsuperscript{181} Ministry of Foreign Affairs, “Answer to questionnaire on the protection of children from sexual exploitation.”

\textsuperscript{182} ‘Irregular migrant’ refers to foreigners whose immigration or work status is not authorized. There are a number of ways that migrant workers can enter an irregular status:

- they may enter the country clandestinely or without approval;
- they may enter the country with a valid document, such as a visa or day-pass, but stay longer than permitted;
- they may be in the country legally but working without permission;
- they may have been working with permission but their status has changed, as when the work permit expires or the migrant changes employers.

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Migration policies were largely developed through the MOUs signed with Lao PDR, Cambodia and Myanmar during 2002–2003. The aim is to enhance cooperation in importing labour legally into Thailand and verifying nationality for migrants who originally entered the country illegally. The number of migrants in Thailand has increased annually. Most estimates suggest that there are between two and three million migrants from Myanmar, Cambodia and Lao PDR working in Thailand.183

Among the 1.3 million migrants from three neighbouring countries who held work permits for low-skilled employment at the end of 2009, 82% of them were from Myanmar. 45% of those migrant workers were women, including a majority from the Lao PDR. Migrants work in a range of low-paying and difficult jobs. Fifteen% of them work on fishing boats or in seafood processing, 17% work in agriculture, 17% in construction, 8% in domestic employment and 43% in a range of other businesses.184

Migration is seen as an adult activity that concerns men and women; children generally have been included in this concern only as particular aspects of the problems of adult migration, whether as victims of trafficking and exploitation or as being affected by the movement of their parents.185 It was shown in a 2009 report that the number of children in Thailand has increased annually. Most estimates suggest that there are between two and three million migrants from Myanmar, Cambodia and Lao PDR working in Thailand.183

<table>
<thead>
<tr>
<th>Category</th>
<th>Stay</th>
<th>Stay and work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Born in Thai to non-national parents</td>
<td>69,799</td>
<td></td>
</tr>
<tr>
<td>Previously undocumented persons</td>
<td>210,182</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>513,792</td>
<td></td>
</tr>
<tr>
<td>Undocumented expatriates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Person overstaying visas, 2007</td>
<td>65,558</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>65,558</td>
<td></td>
</tr>
<tr>
<td>Refugees and asylum-seekers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regular new entrants under MOU (end 2010)</td>
<td>95,330</td>
<td></td>
</tr>
<tr>
<td>Unregistered and other categories</td>
<td>45,746</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>141,076</td>
<td></td>
</tr>
<tr>
<td>Migrants from Cambodia, Lao PDR and Myanmar</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regular new entrants under MOU (end 2010)</td>
<td>78,686</td>
<td></td>
</tr>
<tr>
<td>Entered or completed NV process (end 2010)</td>
<td>932,255</td>
<td></td>
</tr>
<tr>
<td>Unregistered and family members</td>
<td>1,444,803</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>2,455,744</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>373,251</td>
<td>3,141,580</td>
</tr>
<tr>
<td>Overall total</td>
<td>3,514,831</td>
<td></td>
</tr>
</tbody>
</table>


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<table>
<thead>
<tr>
<th>Table 6: Registered migrant workers in Thailand from Cambodia, Lao PDR, Myanmar, by type of work and nationality, December 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of work</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Fishing</td>
</tr>
<tr>
<td>Seafood process</td>
</tr>
<tr>
<td>Agriculture</td>
</tr>
<tr>
<td>Construction</td>
</tr>
<tr>
<td>Agricultural process</td>
</tr>
<tr>
<td>Meat processing</td>
</tr>
<tr>
<td>Recycling</td>
</tr>
<tr>
<td>Mining, quarrying</td>
</tr>
<tr>
<td>Metal sales</td>
</tr>
<tr>
<td>Food sales</td>
</tr>
<tr>
<td>Soil business</td>
</tr>
<tr>
<td>Construction materials</td>
</tr>
<tr>
<td>Stone processing</td>
</tr>
<tr>
<td>Garment business</td>
</tr>
<tr>
<td>Plastic business</td>
</tr>
<tr>
<td>Paper business</td>
</tr>
<tr>
<td>Electrics</td>
</tr>
<tr>
<td>Transport</td>
</tr>
<tr>
<td>Trade</td>
</tr>
<tr>
<td>Car repair and services</td>
</tr>
<tr>
<td>Fuel and gas</td>
</tr>
<tr>
<td>Education, foundation, association</td>
</tr>
<tr>
<td>Household</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

Source: Office of Foreign Workers Administration, Department of Employment, Ministry of Labour, Statistics on Foreigners Obtaining Work Permit during 2009 (Bangkok, Ministry of Labour, 2010)


184 Huguet, Chamratrithirong and Richter, “Thailand Migration Profile,” 11.

185 Children on the Move in South-East Asia: Why child protection systems are needed (London: Grasshopper Design Company, 2008), 1.
age, with another 200,000 children of migrant workers aged below 15 years born in Thailand and registered with the Committee of the Alien Workers Management under the Ministry of Labour. Thailand is also seen as the primary destination in the GMS for trafficking, with most survivors (and migrants) being from Myanmar, Lao PDR and Cambodia. Similarly, according to a survey of the Social Environment Research Consultant, conducted by interviewing 538 migrants in 76 communities in six provinces of Thailand, 41% of migrants from Laos, Myanmar and Cambodia were under 18 at the time of first migration, and the average age was just under 15 (an age vulnerable to exploitation).

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

A number of field surveys and the available research concerning migrant labour show that migrant children are being hired to work in various types of jobs such as in agricultural work and on fishing boats; migrant girls and young women are being hired as domestic workers. Besides migrant children who come to sell their labour, there are some children engaged in the sex trade because they were lured or forced to come to work in Thailand. In addition, there is another group of migrant children who come in to be beggars or to sell small items in the street. Moreover, there are some children engaged in the sex trade because they were lured or forced to come to work in Thailand. In addition, there is another group of migrant children who come in to be beggars or to sell small items in the street. In migration, and the average age was just under 15 (an age vulnerable to exploitation).

Abuse Against Migrant Workers

A significant number of regular and irregular migrant workers in Thailand are often forced to do heavy and difficult work for low wages, and are placed in unsafe or unsanitary work environments. Most migrants are unable to access proper health care and generally are not protected by Thai labour laws. Importantly, migrants frequently become victims of systematic violence (including torture and killings), extortion, unlawful arrest, detention and other kinds of exploitation in their everyday lives. Women migrants are more likely to encounter abusive practices than their male counterparts. There have been a considerable number of well-documented reports of physical violence against children and women, but very few arrests have been made in any of these cases.

The vulnerability of women migrants partly stems from the physical and social isolation of their employment. While male migrants usually live and work with other migrants, women migrants often work in jobs in the domestic and service sectors, in which they may have no contact with other migrant women. Female migrants are likely to be trapped by the human trafficking trade and/or physically and sexually abused.

Sexual Harassment and Rape of Migrant Women

Apart from the violation of labour rights, woman and child migrant workers frequently become victims of sexual abuse, both by their employers as well as officials. Police and other officials are known to sexually abuse or violate migrant women by conducting excessive body searches that include groping, demands to disrobe, and even unnecessary and invasive cavity checks. While in detention, migrant women have suffered rape and harassment by officials. The Bangkok Post on March 2, 2011 reported that a Bangkok policeman was jailed for six years for forcing a migrant woman to perform a sexual act.

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Burmese woman whom he had taken into custody to have sex with him in exchange for being freed without charge.\(^{193}\)

Police and immigration officials are reported to cut women's hair as a way of marking migrant women who have been deported, which for women from Myanmar is a denigration of their culture and is personally humiliating.\(^{194}\)

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

**Child Labour and Child Beggars**

Although a number of studies report a decline in child labour in Thailand, child labour (particularly of migrant children) remains a major concern. Even though there are no clear data that indicate the number of children of migrants engaged in work activities in Thailand, it is widely believed that a good portion of children of migrants and migrant children are working in some capacity.\(^{195}\)

As of September 15, 2008, a total of 12,900 migrants from Cambodia, the Lao People's Democratic Republic and Myanmar aged 15-18 years were holding Thai work permits. Because they have official documents, these children are generally perceived to be working under better conditions than migrant children working without proper documents. Based on various studies on the subject, an estimated 100,000 foreign children are engaged in child labour in 43 provinces that have been granted permission to hire migrant workers. Work conditions are poor. A report on the Worst Form of Child Labour in 6 provinces (Chiangrai, Tak, Udon Thani, Samutsakhon, Songkhla, and Pattani) conducted jointly between the Government and ILO in 2006, found that 35% were children aged below 15 years and 63% worked more than 8 hours per day. Migrant workers were not able to gain access to health care and education services.\(^{196}\)

In addition, a study on migrants under the age of 26 years, who were working in fishing and fish processing industries, found that 15% of them were younger than 15 years old.\(^{197}\)

Working migrant children are vulnerable to exploitation, overwork, and less pay. Figures from NGOs in border and migrant-concentrated areas confirm cases in which migrant children are mistreated, including being exploited at work, forced to work under hazardous conditions, sexually abused and forced to do sexual work.\(^{198}\)

Migrant children who beg or wander the streets selling small items are of particular concern. A UNICEF report estimates that half of the street people in Thailand are migrants, including child migrants. Cambodian children account for a high percentage of the child beggars. Due to their working and living conditions, these children are vulnerable to infectious diseases and face a high risk of accidents. As street children, they are at a significant risk of contracting diseases because of their squalid living and working conditions, lack of nutritious food and limited sleep. In addition, the children are at high risk of being physically and sexually abused, addicted to drugs and forced or lured into inappropriate jobs with limited access to health services.\(^{199}\)

b. **Root Causes of Abuse and Discrimination in Migration**

**Legal Aspect**

As legal factors, the lack of knowledge about legal protection, assistance and their own rights are the root cause of problems. Their illegal entry into Thailand prevents them from access to legal protection and social assistance because they are afraid to call for help or see the police when they have problems. Their low level of education and working skills do not allow them any choice,


\(^{196}\) CRC Committee, “Consideration of the reports submitted by State parties under article 44 of the Convention.”


\(^{198}\) Ibid.

\(^{199}\) Ibid.
so they are not in a position to negotiate for appropriate job and wage conditions according to the Labour Protection Act. Moreover, migrant women do not know that they are equally protected by the law as Thai people. This allows employers to easily take advantage of them and put them in risky situations, or to be physically and mentally abused and exploited.200

Social Aspect

The negative impact of capitalism is also considered as a root cause of abuse and discrimination against woman and child migrant workers. Migrant workers receive help from agents to illegally enter Thailand; in turn, the agent will receive financial or other benefits from the migrants. Internet network, mobile phone and cross border trade have been freely exploited for people smuggling. Moreover, many government programmes have financial gain as a primary goal, without considering impact on the well-being of people.

Cultural Aspect

Regarding cultural factors, gender issues in this region influence the exploitation of women and child migrant. Male domination has long prevailed and women and daughters are viewed as assets of a man or father. The daughter has an obligation to pay gratitude to her family. Nowadays, when poverty is a major problem of Thailand’s neighbouring countries, it is inevitable that some women of these countries have to help their family earn money. As a result, many girls and women are sold to work in Thailand in sexual and labour enterprises. 201

c. Impact of Abuse and Discrimination in Migration

Abuse and discrimination against migrant women and children affect the rights of migrants in both health and social dimensions.

Health Dimension

Abuse against migrant women and children particularly affects their fundamental right to health and well-being. Most low-skilled migrants are unable to access proper health care and generally are not protected by Thai labour laws.202 In addition, sexual abuse against migrant women and children affect their physical and sexual health, and may cause of HIV infections.

Furthermore, in the case of migrant street children, they are at high risk of contracting diseases due to their poor living conditions and the dangerous environment in which they stay. They are also at high risk of being involved in accidents.203 There have been many reports of migrants falling victim to systematic violence (including torture and killings). Extortion, unlawful arrest, detention and other kinds of exploitation in their everyday lives are widespread.204

Social Dimension

The quality of life of migrants is being affected in many social aspects, namely: the right to education, the right to obtain nationality and labour rights, for instance.

Abuse and discrimination affects their fundamental rights, especially the right to education. Thailand is implementing an education for all policy. All children must receive 9 years compulsory education and are entitled to receive 12 years basic education under the Constitution. This is reinforced by the 15-year free education programme, from kindergarten to high school, regardless of nationality.205 Non-Thais and persons without a clear legal status, including those belonging to ethnic groups, children of migrant workers, as well as children who unlawfully entered the country are also entitled to 15 years of free education. The education cost per head for these children is allocated at an equal amount to Thai children. Few migrant children, however, have the opportunity to receive higher than a primary school education. Some of them receive a primary-level education but most of them do not receive any formal education at all. Even the children who


201 Ibid.


203 Vungsiriphisal, Auasalung and Chantavanich, Migrant Children in Especially Difficult Circumstances in Thailand.


were born in Thailand of families that have been living in Thailand for a long time had little opportunity to receive education due to their status as illegal migrants.\footnote{Ibid.}

Despite being entitled to free compulsory education, many migrant children do not go to school.\footnote{West, Children on the Move in South-East Asia: Why child protection systems are needed.; 9.} According to the report on accessibility to rights to education of unprivileged children in Thailand, a number of schools still refuse enrolment of migrant children and undocumented children due to various reasons \textit{i.e.} lack of knowledge and understanding about adopted regulations, budget constraints, and lack of facility and resources to deal with multi-cultural and bilingual classes.\footnote{Thai Education Watch Network with collaboration of Action Aid Thailand and NHRC, “Report of Accessibility to Rights to Education of Underprivileged Children in Thailand September 2007-October 2008.”}

Regarding the right to obtain nationality, it is difficult for the children of migrants who are born in Thailand to obtain a birth certificate and Thai nationality. The current Nationality Act B.E. 2551 (2008) affirms \textit{jus sanguinis} and denies \textit{jus solis} principles; thus, children born in Thailand to illegal migrants have illegal status. Hence, one of the main problems facing many migrant children is statelessness. This lack of identity and citizenship entitlements has serious implications as they limit future education and work opportunities for these, and exposes them to exploitation.\footnote{West, Children on the Move in South-East Asia: Why child protection systems are needed.; 10.}

Concerning the Protection of Labour Rights, according to the Labour Protection Act B.E. 2541 (1998), both regular and irregular migrant workers are entitled to the same labour protection standards. However, in fact, migrants often receive less than the legally mandated minimum wage for excessively long hours of work and face routine deductions from their salaries.\footnote{Archavanitkul and Hall, “Migrant Workers and Human Rights in a Thai Context,” 68.} In many cases, employers refuse to pay workers and then tell the police to arrest them, which then often result in the migrants being deported.\footnote{Ibid.} Moreover, many migrant workers fall into semi-forced employment as they are prohibited from leaving their workplace due to the strictness of their employers or debt bondage related to the high costs of unregulated registration/regularization processes often paid by their employers first and then deducted from their salaries over many years.\footnote{Ibid.}

\section{2. De Jure State Responses}
\subsection{a. Bases of State Responsibility}

\textit{International Level}

As a signatory to a number of major international human rights treaties, Thailand has international obligations to respect human rights of all persons and provide them with basic social services (see 2.B.a). Thailand is also obligated to ensure decent work in accordance with international labour standards as it has agreed to the Declaration on Fundamental Principles and Rights at Work set by the ILO in 1988. Thailand also ratified 14 following labour conventions issued by ILO, namely: ILC Convention Nos.14, 19, 80, 29, 88, 100, 104, 105, 116, 122, 127, 138, 159 and 182 (see 3.B.a).

Even though Thailand has not yet acceded to some of the core labour conventions,\footnote{For example, the Migration for Employment Convention (Revised), 1949 (No.97) (and the Vocational Training (Adults) Recommendation, (No.86)); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) (and the Migrant Workers Recommendation, 1975 (No.151)); the Indigenous and Tribal Peoples Convention, 1989 (No.169); the Private Employment Agencies Convention, 1997 (No.181) (and related document: the Private Employment Agencies Recommendation, 1997 (No.188)).} nevertheless, the spirit of those Conventions is found in Thai laws and practices. For instance, the right to associate/assemble is found in the Constitution as well as in the Labour Protection Act, 1998 (2008 Amendment).\footnote{See Vitt Muntarbhorn, The Mekong Challenge Employment and Protection of Migrant Workers in Thailand: National Laws/Practices versus International Labour Standards? (Bangkok: ILO, 2005), 20 – 22.}

Regional and Bilateral Level

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was also jointly signed with all other ASEAN members, including Thailand, in 2007. Under the agreement, Thailand has obligations to promote decent, humane, productive, dignified and remunerative employment for migrant workers, as well as to establish and implement resource development and reintegration programs for migrant workers in their countries of origin. Hence, although the government of Thailand has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, nor the three specific migrant worker standards of ILO i.e., ILO Conventions No. 66 on Migration for Employment Convention, 1939; No. 97 on Migration for Employment Convention (Revised), 1949; and No. 143 on Migrant Workers (Supplementary Provisions) Convention, 1975, the standards contained in these instruments generally overlap with the main rights conventions that already bind the country.

In addition, Thailand has signed bilateral MOUs with the countries of Cambodia, Lao PDR and Myanmar on the ‘Cooperation in the Employment of Workers’ as a plan to regularise cross-border migrant workers in Thailand. Terms of the MOU reaffirm that the right of migrant workers who have entered the country under the MOU are to be protected equally with Thai nationals.

b. National Policies Against Abuse and Discrimination in Migration

Legal Measures

The Constitution (Section 4) stipulates that ‘[t]he human dignity, rights and liberty of the people shall be protected’. This means that the government cannot discriminate against migrants because of their being non-Thai, stateless, or undocumented persons. In addition, Section 30 states that ‘[a]ll persons are equal before the law and shall enjoy equal protection under the law’.

Laws Relating to Right to Work

The Alien Working Act B.E. 2551 (2008) and the Immigration Act B.E. 2522 (1979) are two guidelines for immigration. The Immigration Act clearly indicates that when an immigrant enters the country illegally, that is, without a visa and/or acts in breach of the immigration law, he or she may be deported and/or penalised by other sanctions. The Alien Working Act requires an alien to have a work permit to work in Thailand and to work only in activities designated by law by the relevant authorities. Hence, only a small number of skilled workers could be permitted to work in Thailand. The Royal Decree Prescribing Works relating to Occupation and Profession in which an Alien is Prohibited to Engage, B.E. 2522 (1979), prohibits aliens from working in 39 activities.215 In spite of this, Section 12 of the Foreign Employment Act provides flexibility for the authorities to allow migrant workers to work temporarily in some sectors as provided by law and cabinet decisions.216

215 Namely: 1) Labour work except labour work in fishing boats under the next category below. The said work, which is forbidden to aliens, shall not apply to aliens who have entered into Thailand under an agreement on hire of labour concluded between the Government of Thailand and other nations, and also aliens whose status has been prescribed as legal immigrant and who possess a residence certificate under the law governing immigration; 2) Agriculture, animal husbandry, forestry or fishery, except work requiring specialized knowledge, farm supervision, or labour work in fishing boats, particularly marine fishery; 3) Bricklaying, carpentry, or other construction work; 4) Wood carving; 5) Driving motor vehicles or vehicles which do not use machinery or mechanical devices, except piloting aircraft internationally; 6) Front shop sales and auction sale work; 7) Auction; 8) Supervising, auditing, or giving service in accountancy, except occasional internal auditing; 9) Cutting or polishing precious or semi-precious stones; 10) Haircutting, hairdressing, or beautification; 11) Cloth weaving by hand; 12) Mat weaving or making utensils from reed, rattan, jute, hay, or bamboo; 13) Making rice paper by hand; 14) Lacquer work; 15) Making Thai musical instruments; 16) Niello work; 17) Goldsmith, silversmith, or gold/copper alloy smith work; 18) Stone work; 19) Making Thai dolls; 20) Making mattresses or quilts; 21) Making alms bowls; 22) Making silk products by hand; 23) Making Buddha images; 24) Knife making; 25) Making paper or cloth umbrellas; 26) Making shoes; 27) Making hats; 28) Brokerage or agency except in international trading; 29) Professional civil engineering concerning design and calculation, systemization, analysis, planning, testing, construction supervision, or consulting services, excluding work requiring specialized techniques; 30) Professional architectural work concerning design, drawing/making, cost estimation, or consulting services; 31) Dressmaking; 32) Pottery; 33) Cigarette rolling by hand; 34) Tour guiding or conducting; 35) Street Vending; 36) Hawking of goods & Thai devices, except piloting aircraft internationally; 37) Unwinding and twisting silk by hand; 38) Clerical or secretarial work; 39) Providing legal services, except arbitration work; and work relating to defense of cases at arbitration level, provided the law governing the dispute under consideration by the arbitrators is not Thai law, or it is a case where there is no need to apply for the enforcement of such arbitration award in Thailand.

Laws Concerning the Protection of Labour Rights

Apart from above laws, Thailand has also enacted a number of domestic laws regarding the issue of the right of workers to receive security and welfare. The Labour Protection Act B.E. 2541 (1998) is the main law specifying the rights and duties of both employers and employees, with provisions for minimum standards to which all employees must adhere regarding all aspects of employment, including working days, holidays, leave, wages, overtime, work safety and environment, welfare, as well as employment of women and children. Under the Act, all workers are protected regardless of race, nationality or any other status. Hence, all employees working in Thailand are able to enjoy protection under the Labour Protection Act, including migrant workers. If the migrant workers are not registered with the Department of Labour Protection and Welfare, the Department will coordinate with relevant agencies, especially the Department of Employment, the Immigration Office, or the Royal Thai Police to provide assistance as appropriate.

The Labour Protection Act provides protection to all employees, including migrant workers. However, the Act excludes the protection to the agricultural work, marine fishing, the loading or unloading of goods on and from maritime vessels, work to be performed at home and transportation (Section 22). The rights of domestic workers and agricultural workers are protected under the Ministerial Regulation on the Protection of Home Workers B.E. 2547 (2004) and the Ministerial Regulation on the Protection of Agricultural Workers B.E. 2548 (2005). However, these are not effective enough since there is no enforcement mechanism. There is no job security and no fair wage. Some jobs are risky and hazardous, with longer work hours than the labour standard. In addition, the worker could not access the Social Security Fund and other relevant public services.

Even domestic workers are unable to enjoy the protection under the Ministerial Regulation of 2004, however, after 2010, domestic workers are able to enjoy the protection under the Home Workers Protection Act B.E. 2553 (2010); this Act provides that wages should not go lower than the Labour Protection Act, as well as the responsibility of the hirer (employer) on health and safety of the work.

Thailand also has a number of domestic laws, which provide for the protection of women and children, including migrant women and children such as the Social Security Act B.E. 2553 (2010); the Child Protection B.E. 2546 (2003); and the Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008).

c. Administrative Measures

Policy on Regularization

The government has created and adopted a number of policies to ensure that everyone could access all basic rights; the State’s obligations are also in line with the rights-based approach. The approach includes respecting human rights; prohibiting all forms of violation; and providing maximum available resources to support rights-bearer.

The Policy on Regularization of Migrant Workers provides leniency regarding employment of migrant workers, allowing migrant workers and accompanied persons aged over one year to be registered and granted temporary stay in Thailand. In addition, Thailand entered into MOUs with Lao PDR, Myanmar and Cambodia concerning the employment and legal entry of migrant workers. Furthermore, revisions were made to legislation concerning labour protection and migrant workers in 2008 to grant more leniency and enable migrants to engage in lawful employment and access social welfares. A fund was established to facilitate the return of migrants to their countries.

Policies on Education for Child Migrants

The Ministry of Education Regulation on Proof of

217 Thailand National UPR Report, 8.
Admission of Students into Educational Institutes (2004) and the Cabinet Resolution on Education for Unregistered Persons (2005) provides the right to education of all children in Thailand without legal status. These regulations set operational guidelines related to the management of education for children in Thailand. All educational institutions are duty bound to admit children of school age to study in their institutes, with or without evidence of civil registration, by using birth certificates or letters of certification of birth, or other proof issued by government authorities, or documents, which are accepted by the Ministry of Education. In the event the afore-mentioned evidence is missing, parents, caretakers, or non-governmental organizations can present personal history records of persons and children, or the educational institute concerned can conduct an interview to note down details related to the personal history of the child concerned.

### d. Assessment of State Policies

#### The Protection of Domestic Workers

Even though domestic workers are able to enjoy the protection under the Home Workers Protection Act B.E. 2553 (2010), which provides protection on wage, health, and safety of the work, the Civil Society and Human Rights Coalition of Thailand claims that the Act failed to address the promotional aspect as proposed by the informal sector networks. In addition, the definition of 'Home based work' is confined to the industrial sector; ignoring 'contract farming' in agriculture sector, which is actually another form of 'home-based work.' Those involved in contract farming, therefore, cannot be protected by this new Act.

#### The Protection of the Rights of Migrant Workers

Thailand’s migration policies are said to have been strongly shaped by national security ideologies. The policies target control rather than administration, and are intertwined with notions of sovereignty. Threats against the basic rights of migrants stem from the Thai state’s view of them as security threats. From a human rights perspective, this policy is centered on maintaining structures and rules that permit close and continuous control of migrants while effectively discouraging them from exercising their rights to freedom of assembly, association, expression and movement.

In 2010, the ILO’s Committee of Experts on the Application of Conventions and Recommendations strongly criticized the Thai government for its denial of work accident compensation from the Social Security Office’s (SSO) Workmen’s Compensation Fund (WCF) to migrants from Burma. The denial breaches its obligations as a signatory to ILO Convention 19. The ILO’s ruling supports a 2-year campaign by unions and human rights groups demanding revocation of this discriminatory policy. The ILO’s report concludes:

The Committee notes with deep concern the situation of some 2 million workers from Myanmar, many of whom are described by State Enterprise Workers’ Relations Confederation as being in 'a social zone of lawlessness' where they are not protected by the laws of Thailand or Myanmar. Taking into account the gravity of the situation, the Government should instruct the SSO to take positive and urgent measures lifting restrictive conditions and facilitating access of migrant workers to the WCF irrespective of their nationality.

In addition, even though the rights of migrant workers in Thailand have been guaranteed and are protected in several legal provisions, the International Trade Union Confederation (ITUC) states in its Report for the WTO General Council Review of the Trade Policies of Thailand (2011) that Thai law does not allow broad categories of employees the right to organize and collectively bargain. Employers make use of many anti-union practices including lockouts, dismissals, unfavourable work assignments, and reductions in work hours of union members in order to limit union membership and activities. Furthermore, Thailand has not ratified ILO Convention No. 111 (Concerning Discrimination in Respect of Employment and Occupation) and the law does not adequately protect women from gender discrimination. Many groups

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223 Human Rights Watch, “From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand.”

face discrimination in various aspects of employment, including in hiring and remuneration.225

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

A number of ministries and departments are responsible for the implementation and monitoring of migration policy, including the Ministry of Labour, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Public Health, the Ministry of Education, the Ministry of Social Development and Human Security, and the Immigration Bureau.

Focusing on the protection of labour rights, however, the Department of Labour Protection and Welfare of the Ministry of Labour is directly responsible for the promotion of labour protection. In addition, the National Human Rights Commission of Thailand (NHRC) also deals with the abuse or discrimination on migrants. The institution aims to promote the integration of migrants, prevent racism and xenophobia and to promote ratification of relevant international instruments and create the harmonisation of national legislation, through public campaigns and public education.

b. Complaints Process

Similar to Thai nationals, migrants are able to enjoy their right to access to justice as guaranteed by the Constitution. Migrants can either submit their complaints on abusive practices to the Department of Labour Protection and Welfare of the Ministry of Labour or within other rights systems, or file their cases before the courts. However, migrants’ lack of information or awareness of their human and labour rights, plus inability to speak Thai, are major obstacles. Hence, another channel for migrant workers to submit complaints, which is more accessible, may be through the NHRC. Notably in the past, the NHRC has accepted many complaints from migrant workers. However, more recently, such mechanisms have become less accessible.226

c. Protection and Rehabilitation

Since early 2006, NHRC has been co-organising systematic activities with the International Organisation for Migration (IOM) and the Ministry of Labour entitled ‘Awareness-Raising on Migrant Rights and Welfare for Government Officials, Employers, Migrants and Host Community Members in Thailand.’ This project aims to raise awareness and to promote the rights and obligations of Burmese migrants in Thailand in a proactive and sustainable manner at central, provincial and local levels. A number of migrant well-being awareness workshops were carried out for the target audiences, especially Thai host communities and authorities. Law enforcers have been familiarized with the role and situation of migrants, particularly the protection of their basic rights in accordance with Thai laws and international standards. Members of Sub-commission on Ethnic Issues and staff members of NHRC have been appointed to be members of Project Steering Committee and generally devote their capacity and potential as specialists and resource persons.

Annually, the NHRC, with the collaboration of the Department of Employment, also provides some training and orientation programs for Thai people who want to work abroad. The tailor-made activities have been designed in order to apply all practical knowledge and experiences with the human rights protection and promotion skills. Currently, the Participatory Action Research on ‘Thai Women Rights in case of Migration to Abroad’ is being conducted within two specific countries, Germany and Japan, by the collaboration between NHRC and some intellectual activists.

d. Prevention Measures

The NHRC periodically visits detention centres, as well as observing the deportation and expulsion of migrants. Some human rights training programs are provided to the patrol police, detention and correction officers as well as the relevant authorities.227

A number of Sub-commissions, within the line of this activity, have been appointed to promote and protect human rights of these specific issue e.g. Sub-commission on Prisoners and Detainees Rights. They often visit a number of country-wide prisons and detention centres


227 Pinkaew, “Good Practices to Protect Migrant Workers in Thailand.”
for conveying the ideas of anti-torture and degrading acts as well as good practices for detention and correction officers. A series of roundtable discussions were held with the Department of Correction and some relevant authorities to find ways to suspend, abolish and amend some relevant laws.

In 2006, NHRC proposed the operational guidelines for pregnant prisoners and detainees. Subsequently, the Cabinet adopted the Resolution on December 26, 2006, granting a detainee or prisoner who delivers a child temporary suspension of punishment for up to 3 years to look after her child. Ultimately, the relevant Criminal Procedure Code (Section 246) was amended in line with these guidelines. This amended provision could be a safeguard for all relevant detainees and prisoners, including some irregular migrants.228

4. Role of Non-State Actors

a. Assistance to Victims

Because of lack of information, legal knowledge as well as the inability to speak and understand Thai language, NGOs and lawyers' associations routinely provide legal assistance to migrants to help the victim voice their complaints through the legal system or stand up for their labour rights.

Many NGOs participate in this mission; for example, in the cases of children, NGOs, which have notification centres are the Center for the Protection of Children's Rights Foundation, Foundation for Child Development and the Child Protection Foundation. These organisations collaborate with the concerned agencies for further assistance.

b. Prevention Programs

Education is one factor in preventing future abusive and discriminating practices. Education for migrant children is provided by both the State and NGOs. Education is provided in various forms and settings. There are schools managed by the State in which ethnic and migrant children are integrated into mainstream classrooms, as well as privately-run schools predominantly targeting ethnic and migrant children. In addition to these, there are special schools and 50 Rajaprajanugroh schools229 under royal patronage in 42 provinces nationwide in which these children can be admitted. Education provided by NGOs in educational centres varies in form, methods and curricular.230

The Prevention of HIV/AIDS Among Migrant Workers in Thailand Project (PHAMIT), funded by the Global Fund to Fight AIDS, TB and Malaria (GFATM), is a collaborative project of eight NGOs: Raks Thai Foundation (the Principal Recipient), Center for AIDS Rights (CAR), World Vision Foundation of Thailand, PATH, Stella Maris Center, MAP Foundation, Empower (Chiang Mai), and Pattanarak Foundation. PHAMIT partners are working in over twenty provinces throughout Thailand in partnership with the Ministry of Public Health and local health providers, to prevent the transmission of HIV/AIDS and to improve the quality of life among migrant workers, their families and sex workers.231

c. Monitoring and Cooperation

The NGOs play a great role in monitoring and cooperating with the State's implementation of migrant policies. The Thailand Burma Border Consortium, or TBBC, is an example of an umbrella organisation that is composed of locally based INGOs dedicated to the Refugee situation. The TBBC is a consortium of 12 international organisations from 10 different countries which support adequate standard of living in camps by providing services and food, engaging in research to address root causes of the current situation, and implementing programs in the field through refugees, community-based organisations and local partnerships.

5. Progress Indicators and Challenges

Implementation of International Obligations

In practice, the government's existing mechanisms and systems are not effective in providing protection to migrant workers. No clear policy has been set at the ministerial level or departmental level that specifically targets protection

228 Ibid.

229 Rajaprajanugroh schools operates mainly in the highland, border areas, remote and problematic areas in which ethnic children and migrants from neighbouring countries are highly concentrated.

230 See CRC Committee, Consideration of the reports submitted by State parties under article 44 of the Convention – Combined third and fourth periodic reports of States parties due in 2009: Thailand, September 14, 2011.

for vulnerable migrants. Consequently, the legal service centres to assist migrants are inadequate, especially in cases when migrants fall victim to abusive practices, accidents, disabilities, or unemployment. One concern that continues to stand out is that registered migrants and their families are not entitled to work accident compensation from the MOL’s Workmen Compensation Fund (WCF). Their exclusion is a breach of ILO Convention 19, on equality of treatment (Accident Compensation) 1925, which Thailand ratified in 1968.

Migration and National Security

Thailand’s migration policies are centred on maintaining structures and rules that permit close and continuous control of migrants while effectively discouraging them from exercising their rights to freedom of assembly, association, expression and movement.232 Because of national security, the Alien Employment Act, 2008 regulates what work regular migrants can do and what work irregular migrants are allowed to do.

In addition, the abusive practices against migrants are systemically rooted in the lack of a rights-based approach to formally manage the flows of migration. Moreover, the failure to regulate irregular migration flows is widely seen as an important factor that contributes to the increasing vulnerabilities of irregular migrants, who are often exposed to discrimination, exploitative conditions and abuse.233 Therefore, this has led to more systematic corruption and networks of unregulated brokers, resulting in increasingly severe rights abuses in Thailand.

Migration and Education

Even though both State and NGOs provide education to migrant children, the following problems regarding the organisation of education for children of ethnic minorities and migrants remain: delay in the implementation of the regulations concerned; unclear coordinating mechanisms both at the local and national levels; lack of systematic database causing delays in the disbursement of subsidies; and unresponsiveness of the education provided to the reality of these children.234

Migration and Health

Irregular migrants and those accompanying regular migrant workers who do not have the right to obtain health insurance cards are able to access public healthcare services as long as they can pay for them.235 This challenges Thailand to provide all migrants accessibility to basic health services, with attention to the specific needs of female migrants. Means should be in place to reduce language and culture barriers to access the health service, including access to require vaccines and medicines should also be ensured.236

6. Recommendations for Further Study

Illegal Migrants

Thailand is not a party to the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. In fact, Thailand faced the problem of specific ethnic minorities being deported as ‘illegal economic migrants’, which could be considered as refoulement.237 In December 2009, a group of 4,000 ethnic Hmong from Lao P.D.R., of which 158 people had been officially recognized as refugees by the UNHCR, were forcibly repatriated as illegal economic migrants. In addition, Rohingya boat people have been denied recognition as refugees and the Thai military has reportedly pushed boatloads of men back to sea without engines, proper water, food or shelter. In January 2009, one group of 78 males, of which 12 were under age 18, were incarcerated as illegal migrants and languished in jail where two (one age 15 the other age 19) died of poor health.238 Their future remains unclear because the government does not have any concrete policy for this group. Because of their stateless status, their rights remain

232 HRW, “From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand.”
233 Archavanitkul and Hall, “Migrant Workers and Human Rights in a Thai Context.”
234 Vungsiriphisal, Auasalung and Chantavanich, Migrant Children in Especially Difficult Circumstances in Thailand.
238 Ibid.
grossly violated and the UNHCR has no access to them. The status of illegal economic migrants and the protection of those people are very challenging to a non-State party to the Refugee Convention and its protocol as Thailand.

De Jure Stateless Persons

According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is one who is not recognized as a national by any state under the operation of its law. In Thailand, a category of de jure stateless persons refers to people who have no personal legal status in a civil registration system of Thailand or of any other countries due to a lack of any proof or document to verify their nationality.239 There are approximately 2.5 million stateless persons residing in Thailand. Some of them have been examined and documented through civil registration, according to the Nationality Act (2008) and the Civil Registration Act (2008).240 Thailand has begun the process of categorizing stateless persons under the refugee group classification by providing them with birth certificates upon birth. However, there are groups that have yet to be examined, with no progress in the determination of their status. These groups are vulnerable to violations of numerous rights, including access to health-care, employment, higher education, ability to travel freely to any parts of the country, and land and property ownership. Hence, the rights and the protection of the rights of stateless persons in Thailand is a significant issue for further study.


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The Human Rights Resource Centre (HRRC) would like to thank these institutions for their tremendous support that made the study on Violence, Exploitation, and Abuses & Discrimination in Migration Affecting Women in Children: A Baseline Study possible:
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