

No Choice in the Matter:

Migrants' experiences of arrest, detention and deportation



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Mekong Migration Network, 2013
With the support of Open Society Foundations



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Mekong Migration Network (MMN)

Mekong Migration Network (MMN) is a sub-regional network of civil society organisations, migrants' grassroots organisations, mass organisations and research institutes who are working together to protect and promote rights of all migrants in the Greater Mekong Sub-region.

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- Foundation for AIDS Rights
- Foundation for Education and Development
- Friends of Women Foundation
- Legal Support for Children and Women
- MAP Foundation
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Preface

In response to the rapidly changing issues relating to migration in the Greater Mekong Sub-region (GMS), the Mekong Migration Network (MMN) has published a series of resource books on migration in the region. This current report provides a situational update on the arrest, detention and deportation of migrants in Thailand, building on the 2008 resource book: *Migration in the Greater Mekong Sub-region: In-depth Study: Arrest Detention and Deportation*.

The report aims to provide an in-depth and systematic analysis of arrest, detention and deportation as experienced on the ground by migrants. Based on interviews with migrants, key officials and extensive secondary research, the report looks at the policies and procedures in place to govern arrest, detention and deportation of migrants in Thailand and how implementation reflects those policies. Interviews showed that cases of arrest, detention and deportation are common and migrants' experiences show that abuse, corruption and disregard for human dignity continue unabated. Despite recent efforts to regularise migrants and to introduce formalised guidelines regulating arrest, detention and deportation, the process remains ad hoc and frequently runs counter to human rights standards.

Migrants were asked to share their experiences of immigration related arrest, detention and deportation since January 2011. Migrants related experiences which were often very painful and humiliating for them to share, and MMN is grateful for their bravery in coming forward.

An initial version of this report was published in June 2013. The report was submitted to government representatives in Burma and Cambodia, and a policy dialogue was held on 28 June 2013 with the Immigration Bureau in Thailand to discuss the recommendations. Details of this policy dialogue are published in this updated version of the report.

The MMN hopes that this research will contribute to a growing pressure to end the human rights abuses that take place in the context of arrest, detention and deportation of migrant workers. While the expanding scope for regularisation of migrant workers in Thailand is promising, the gulf between policy and practice continues to leave migrant workers subject to arrest, detention and deportation regardless of their registration status. This counterproductive behaviour erodes the rule of law in Thailand and migrants' trust and willingness to participate in the regularisation process.

Mekong Migration Network
2013



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Executive Summary

A key area of the Mekong Migration Network (MMN)'s work over the past decade has been to monitor and advocate for reform of the law, policy and procedures governing the arrest, detention, and deportation of migrants. The use and misuse of these immigration powers continues to be a matter of serious concern as they negatively impact the daily lives of migrants and are at the root of various human rights violations. For example, in recent years there have been several incidents in which migrants have lost their lives during immigration enforcement action carried out by the Thai authorities. The current study aims to build on MMN's previous research on these issues and provides a situational update on law, policy and practice governing the arrest, detention and deportation of migrants in Thailand. The report further aims to provide an in-depth and systematic analysis of arrest, detention and deportation as experienced on the ground by migrants.

Based on interviews with more than 200 migrants, as well as officials, and extensive secondary research conducted by the MMN research team, the study examines the policies and procedures in place to govern arrest, detention and deportation of migrants in Thailand and how implementation reflects those policies.

Research findings

Arrest

Fear of arrest takes a great psychological toll on migrants as they go about their daily lives. They can be arrested anywhere at anytime and there is little they can do to protect themselves. Night time and dawn raids are not uncommon. This means a migrant's life is never completely free of fear and anxiety. Of the respondents who reported being placed under arrest, 31 per cent were arrested at their place of work, with a further 22 per cent arrested while at home. One migrant worker recounted:

"I was half naked at the time the police did the raid. I was not allowed to get even a shirt to wear after I was arrested. When the authorities did the raid, they came with many police officers in order to arrest more migrants".

Cambodian fishery worker, Rayong province

Many migrants are arrested despite having work permits or other documentation with them. The lack of any standard practice causes migrants to lose confidence in the authorities. Migrants also expressed doubt that the expensive and time consuming registration programmes serve as protection as they continue to be subject to arbitrary immigration enforcement action. One migrant worker interviewed for this study reported that:

"The local police stopped me when I came back from [the] weekend market. Even though I showed my work permit and I explained about my legal status, I was slapped on my face for talking against them ..."

Burmese construction worker, Phang Nga Province

Under international and Thai law, anyone who is arrested has the right to be informed of the reasons for their arrest and the charges against them. The study found that less than half of the migrants who were arrested were informed of the reasons for their arrest and what would happen next. Where they were informed this was frequently in a language they could not fully understand.

Detention

This research found that while in detention, migrants are subject to a range of different procedures, held in different types of detention centres and for varying periods of time. Cases of physical and sexual abuse were also reported. One female migrant worker reported that:

“The authorities used truncheons to touch migrant women, including me, to do body searches. The police did body searches, but there were no female officials there”.

Female Burmese agricultural worker, Mae Sot, Tak province

The proper screening of migrants before they are placed into detention is important to prevent miscarriages of justice and to ensure the most vulnerable are protected. In practice, authorities often fail to screen migrants on arrest, itself a violation of human rights, but also putting vulnerable groups in extreme danger. Among the migrants that participated in this study, only three per cent reported that the authorities asked them questions to screen them as labour abuse victims, trafficked persons or refugees.

A large number of people also reported that they were deported immediately on transfer to the detention centre. They had no trial, no time to appeal their case and there was no time to adequately assess their status. Further highlighting the lack of access to justice, the majority of migrants reported that they were asked to sign a confession of guilt, which was written in Thai and which as a result they could not understand. One Burmese migrant worker recounted that:

“I was told by the policeman who took me to the court to confess to all charges, and I followed his advice”.

Burmese construction worker, Chiang Mai province

Many migrants interviewed for this study reported that the conditions in which they were detained were overcrowded with no proper sanitation. This is commonly a problem where migrants are kept in police cells unsuitable for long-term detention and on vehicles used to deport detainees or transport them between places of detention. The study observed that overcrowding in detention is frequently caused because those on remand or who are unable to pay fines continue to be held alongside new detainees. Respondents have also complained about the poor or inadequate provision of food, clean drinking water and the inflated prices charged for basic items such as instant noodles and toilet tissue. Other issues of concern relate to limited access to medical care, the lack of gender segregation among detainees and a failure to employ sufficient numbers of female officers. The following comments from respondents reflect the variable conditions found in detention facilities across Thailand:

“I had to use the toilet water tap to take showers; we had to buy drinking water and food by ourselves”.

Burmese fishery worker, Phang Nga province

“Inside the room, there were three meter high walls that divided the room into a bathroom and a toilet. But there’s no door separating the rooms and no air passage to let the air filter, so when someone pees, the whole room stinks”.

Burmese construction worker, Chiang Mai province

“At Mukdahan police station, officials provided food for detainees who did not have relatives visiting. But if the detainees’ families visited, they would be asked to buy food for the police as well. In the meantime, the officials threaten our families unless they buy food and coffee for the officials, they will not be allowed to visit us”.

Laotian factory worker in Bangkok, Mukdahan province

Deportation

During deportation migrants reported being crammed into old vehicles, dangerous driving and being denied sufficient food, water and toilet stops.

“While I was in the deportation vehicle, I felt so panicked because the driver drove very fast. I was hungry and thirsty, but I was scared that the official would be angry and shout at me if I said anything”.

Cambodian unemployed worker, Rayong province

“While we were being deported, the official didn’t feed us, didn’t provide drinking water and gave no toilet break”.

Burmese construction worker, Mae Sot, Tak province

Recommendations

The MMN argues that in line with international standards, the Royal Thai Government adopts genuine alternatives to arrest, detention and deportation in managing its irregular migrant population and make arrest, detention and deportation a method of last resort. In the limited number of cases when arrest, detention and deportation is necessary, reform is needed to ensure a humane, transparent process in line with international human rights standards that is subject to independent legal oversight. We also urge governments to enhance and strengthen efforts to facilitate regular migration and promote decent working and living conditions in order to prevent situations where immigration enforcement action becomes necessary. Based on this research, MMN believe that there is an urgent need for reform. Among our recommendations, we urge:

1. That a clear policy and strong public stance is taken to protect migrants against arbitrary or unreasonable arrest, detention and deportation;
2. That governments stop the practice of mass arrests or deportations;
3. That in the case of unlawful detention, migrants be immediately released and receive compensation;
4. That all GMS governments prosecute with the full force of the law those who physically or sexually abuse migrants during the arrest, detention and deportation process;
5. That all guilty parties cease the extortion and blackmailing of migrants during the processes of arrest, detention and deportation. We recommend that the authorities make codes of practice publicly available and provide greater oversight into enforcing them among officials.

Addressed at countries of origin:

1. That the authorities of migrants' countries of origin provide consular assistance and other appropriate support when it is requested by its nationals, including by those who are in detention;
2. That governments of countries of origin negotiate with the Royal Thai Government to bring an end to mass deportations;
3. That governments of countries of origin collaborate with the Royal Thai Government on behalf of migrants to ensure humane conditions during the arrest, detention and deportation process, and to ensure that deportations are carried out in a humane and safe manner.

Addressed at the Royal Thai Government:

Arrest

1. That law enforcement officials receive initial and on-going training on the provisions of national legislation in accordance with basic international human rights standards applicable to law enforcement officials;
2. That law enforcement officials make existing laws, policies and guidelines governing arrest, detention and deportation procedures public and transparent;
3. That practices of arrest, detention and deportation of migrant workers be reviewed by police, immigration, and border control officers in collaboration with migrant groups and civil society and standardise them to make the procedures more humane;
4. That arrested migrants be informed of their rights to, and be given access to appropriate legal aid and support services, including services provided by NGOs and consulate staff;
5. That professional interpreter be employed in police stations in areas where there are large numbers of migrants. In other areas, officials in police stations must fulfil their duty to ensure access to translation or interpretation services and establish links with NGOs or embassies for that purpose;
6. That the practice of night time arrests and dawn raids is immediately ceased. In cases where such actions are deemed necessary and appropriate they must be subject to rigorous legal oversight;
7. That arresting authorities ensure that necessary interviews take place with migrants to identify vulnerable groups who will need special assistance or should be referred to agencies specialised in screening and providing appropriate assistance;

Detention

8. That Thailand adopt alternatives to detention for managing its irregular migrant population;
9. That the authorities ensure immigration detention is used only as a last resort;
10. That authorities do not detain vulnerable migrants, including: children, asylum seekers, pregnant women, the elderly, people with disabilities, people with special medical needs, or victims of trafficking;
11. That the authorities ensure that all detainees are treated humanely in accordance with international principles and standards governing the use of administrative detention; including:
 - a. provision of health care, information about the reasons for detention in a language the person understands, legal assistance, recreation, and adequate food and water;
 - b. freedom from ill-treatment, including physical and psychological abuse;

- c. separation of immigration detainees from criminal prisoners;
 - d. the ability to challenge detention in an appropriate legal setting;
 - e. maintenance of contact with outside world, including family members and consular representatives.
12. That the authorities provide separate quarters for male and female migrants held in detention, and in addition make appropriate arrangements for families;
 13. That the authorities assign appropriate numbers of female immigration and police officers to police stations and IDCs;
 14. That the authorities screen migrants for possible abuses of their human rights, including forced labour or potential refugee status and immediately refer migrants to relevant agencies such as the UNHCR;

Deportation

15. That officials of the Royal Thai government never deport migrants if they cannot guarantee the deportees' safety and security in their countries of origin;
16. That law enforcement officers treat deportees humanely and with dignity; and
17. That safety and health standards regarding vehicle, driver and passenger safety are strictly enforced regarding transportation of migrants for deportation.

Methodology

This project collected cases concerning the arrest, detention and deportation (ADD) of migrants in Thailand, with the aim to build upon the knowledge gained through MMN's previous research.

1. Research questions

Through primary and secondary research, this project has sought to respond to the following questions:

General question:

What are the current trends and issues concerning ADD in Thailand?

Specific questions:

- i) What policies and procedures are officially in place concerning ADD?
- ii) What are the actual practices on the ground concerning ADD?
- iii) What (if any) rights violations are experienced by migrants during the ADD process?
- iv) What rights and access to information and justice are migrants able to exercise when subject to ADD?
- v) How do ADD policies comply with regional and international human rights standards?
- vi) How (if at all) do practices on the ground reflect official government policies and standard procedures?
- vii) How (if at all) do ADD practices carried out by the authorities comply with regional and international human rights standards?
- viii) What changes can be made to improve the ADD process?

2. Methodology

This study has employed both primary and secondary research methods. Primary research included: 1) case collection through interviews with migrants using a standard reporting format; and 2) key informant/stakeholders interviews (ministries, embassies, legal representatives/practitioners specialised in ADD cases, health care professionals, etc.).

Secondary research involved: 1) news monitoring; 2) requesting official statistics from relevant government departments and ministries; 3) requesting official documents concerning official ADD procedures; 4) desk study on relevant policies already in the public domain in Thai and English; and 5) reports, conclusions, statements about Thailand issued by all the relevant UN mechanisms, such as the Working Group on Arbitrary Detention, the Special Rapporteur on the Human Rights of Migrants, etc.

3. Scope of data collection

- a) When collecting cases, the project sought to cover all forms of ADD experienced by migrants, including formal/semi-formal/informal proceedings.
- b) The cases collected included cases involving the ADD of both men and women.

- c) This research has primarily focused on the ADD of migrants (registered and unregistered) from Burma, Laos, and Cambodia, where enforcement action is being taken for the purpose of immigration control. While MMN is conscious that the detention of asylum seekers from countries other than these three is of issue in Thailand, this was outside the scope of our data collection.
- d) Cases collected for the purpose of this project are restricted to incidents of ADD experienced on or after 1 January 2011 and before August 2012.

4. Data collection methodology

4-1. Primary case collection

- a) Research ethics and the development of a standard reporting format
In order to ensure that information collection concerning individual cases of ADD do not jeopardise the safety and confidentiality of the affected persons, as well as to ensure that information collected is relevant and useful for advocacy, a standard ADD reporting format for the purpose of data collection was developed through discussion among project partners.
- b) Translation
ADD reporting formats were translated into Thai, Burmese, Shan and Khmer, to facilitate the case collection, which was conducted in the respective migrant languages.
- c) Project members involved in primary data collection
To ensure that the organisations and people involved in the data collection/interviews understand the ethics, principles and procedures that are to be implemented for the purpose of this project, the primary case collection was carried out primarily by the following project members listed in the table below who have committed to the data collection throughout the process.
- d) Priority locations for primary data collection
The following geographic locations for primary data collection were selected based on: 1) The number of migrants in the area; 2) the existence of project partners who have well-established local knowledge and relationships with affected migrant communities; 3) to provide regional balance (North, Central, East and South of Thailand); and 4) to balance out the areas where Burmese, Cambodian or Lao migrants are largely employed.

Priority area (s)	Project partners
Chiang Mai and Mae Sai	MAP Foundation Empower Foundation
Mae Sod	Yaung Chii Oo MAP Empower
Rayong	FAR CWCC (Poipet side)
Mukdahan	Friends of Women Empower Foundation
Pang Nga	FED
Ranong	FED

e) Database

In order to manage the information from a large number of collected ADD cases, MMN developed and maintained a database. Cases were first submitted to the MMN Secretariat, who would then go through each case, identify inconsistencies and seek clarification where necessary from the project partners. Once the information submitted was considered valid and consistent, the data was encoded into the database. In total, over 240 cases were submitted, 212 of which was used in the eventual data analysis.

4-2. Secondary source information

a) News monitoring

MMN Secretariat and project partners also monitored news and recorded the number of reported ADDs, locations, migrants' work sectors published in the news.

b) Policy research

Relevant international human rights frameworks, Thailand's laws, policies, guidelines concerning ADD were studied. When not publically available, MMN requested relevant authorities to provide policy documents.

4-3. Key informant interviews

a) The key informant interviews also played a key role in this research with two main objectives: firstly, to request information from the government which is necessary in understanding ADD procedures according to the laws and policies applicable in Thailand, e.g. authorities' guidelines on their ADD procedures; and secondly, to interview key informants to understand their response concerning ADD.

b) Key informant interviews were generally categorized to three groups: 1) policy makers and implementers in Thailand; 2) stakeholders from the migrants' countries of origin, including embassies, ministries, NGOs, government, and migrants' families; and 3) practitioners such as legal representatives, and health professionals.

c) MMN and project partners developed general interview guides for the above mentioned three groups and carried out a total of 17 key informant interviews following those interview guides.

5. Workshops/meetings with project partners

Several project consultation meetings were held in August 2011, February 2012, and October 2012. In between the project meetings, the MMN research officer regularly visited project partners to discuss methodologies and to carry out trouble shooting.

MMN also carried out a workshop entitled "Challenging Immigration Detention: from Asia to Europe", in collaboration with the Global Detention Project during the Asia Europe People's Forum, held in Vientiane, Lao PDR in October 2012. At this event, issues arising from this study were discussed and participants of the workshop jointly developed recommendations to address the issues of immigration detention, which are reflected in the final report of this study.

List of Acronyms

ACRA.....	Association of Cambodian Recruiting Agencies
ADD.....	Arrest, detention and deportation
AI	Amnesty International
AICHR	ASEAN Intergovernmental Commission on Human Rights
ANM	Action Network for Migrants
APRRN	Asia Pacific Refugee Rights Network
APWLD	Asia Pacific Women Law and Development
ASP	Anti-Smuggling Protocol, Supplementing the Convention against Transnational Organised Crime
ATP.....	2000 Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, supplementing the Convention against Transnational Organised Crime (Anti-Trafficking Protocol)
CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC.....	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO.....	Civil Society Organisation
CWCC.....	Cambodian Women Crisis Centre
FAR.....	Foundation for AIDS Right
FED	Foundation for Education & Development
FOW.....	Friends of Women
HRW	Human Rights Watch
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICERD.....	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR.....	International Covenant on Economic, Social and Cultural Rights
ICRMW.....	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers' Convention)
IDC.....	International Detention Coalition
ILO.....	International Labour Organisation
IOM.....	International Organisation for Migration
MAP.....	Migrant Assistance Program
MMN.....	Mekong Migration Network
MOU	Memorandum of Understanding
NHRCT	National Human Rights Commission of Thailand
NV	Nationality Verification
OHCHR.....	Office of the High Commissioner for Human Rights
SC.....	Steering Committee
SR.....	Special Rapporteur

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SWANShan Women Action Network

TBBCThailand Burma Border Consortium

UDHRUniversal Declaration of Human Rights

UNHCR.....United Nations High Commission for Refugees

UNICEFUnited Nations Children's Fund

WGADThe UN Working Group on Arbitrary Detention

YCOWA.....Yaung Chii Oo Workers Association

SECTION 1: LAWS AND POLICY ON MIGRATION IN THAILAND

Migration into Thailand

Migration into Thailand contributes to economic growth and fills key gaps in the labour market. Yet the practice of arrest, detention and deportation means that migrants are subject to precarious living conditions and violations of their human and labour rights.

Thailand is host to some 2.5 to 3 million documented and undocumented migrants from Burma/Myanmar, Cambodia and Lao PDR.ⁱ Over three quarters of registered migrants from these countries come from Burma/Myanmar, while just under ten per cent each come from Cambodia and Lao PDR.ⁱⁱ In addition, there are over 140,000 Burmese refugees living in official camps near the borderⁱⁱⁱ who are not allowed to work. Migrant workers are concentrated in low-skilled, low-wage sectors such as agriculture, construction, food processing, garment factories and domestic work.^{iv}

The number of migrants in Thailand was largely unaffected by the global economic and financial crisis that started in 2008, with most workers choosing to remain.^v The crisis nonetheless affected migrants' quality of life and their ability to find work and to save or remit money.^{vi} Job losses and downward pressure on wages, resulting from the drop in global demand, affected a number of labour intensive industries where migrants are concentrated. At the same time, rising prices for everyday goods put further strain on migrants, with women hardest hit overall.^{vii}

At present, three systems for the regularisation of Burmese, Laotian and Cambodian migrants are in place: 1) unilateral Thai registrations of undocumented migrants; 2) regularisation procedures of migrants already in Thailand, specifically nationality verification (NV), under the Memorandum of Understanding on Cooperation in the Employment of Workers (MOU) with the respective governments; and 3) newly recruited workers can migrate to Thailand through recruitment agencies under the MOU. The number of migrants recruited through this process is still relatively small but it is growing.

Thus, despite a growing framework for the protection of migrant workers in Thailand, registered and unregistered workers continue to face challenges and dangers in Thailand. In 2010, nine Karen job seekers were shot dead in Phop Phra, Tak Province, with allegations of police involvement.^{viii} Later

FACTS AND FIGURES: MIGRANT WORKERS IN THAILAND*

Number of migrants present in Thailand who had entered illegally:

- Total: 1,272,415
- Ethnic groups: 24,351
- Burmese: 905,573
(men: 504,171 and women: 401,402)
- Cambodian: 235,521
(men: 145,384 and women: 90,137)
- Lao: 106,970
(men: 53,164 and women: 53,806)

Registration numbers

Migrants who had entered illegally and registered with the Thai government under Cabinet Resolutions (pending NV): 1,248,064

Migrants who had entered illegally and have completed the NV process: 505,238
(Men: 266,291 and women: 238,947)

Migrants who had come to Thailand legally through the MOU recruitment process: 72,356
(Men: 41,974 and women: 30,382)

Source: Office of Foreign Workers Administration, Royal Government of Thailand, released in January 2012

**Recorded number of foreign workers, as of December 2011*

Box 1

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Migrants' experiences of arrest, detention and deportation

that year two young sisters, despite being registered for migrant worker cards, drowned while trying to escape a police night raid on migrant workers' living quarters in Phuket.^{ix} Refugees and asylum seekers also lack consistent protection from the Thai state. A widely publicised example in 2009 involved Muslim Rohingya refugees from Burma/Myanmar attempting to reach Malaysia by boat. In 2008 the Thai navy had forced the refugees, who had had only limited provisions and who had been adrift in Thai waters, back out to sea in rickety boats.^x Facing intense international criticism, the Thai government claimed that the refugees were economic migrants.^{xi} The response by the authorities to Rohingya asylum seekers with little to no compassion to their cause continues to make headlines today. In 2008, the Thai government also forcibly repatriated thousands of Hmong refugees to Lao PDR from a camp in Thailand's Petchabun province,^{xii} and another 158 from an immigration detention centre in Nong Khai. This was despite calls from the United Nations High Commissioner for Refugees to halt the returns,^{xiii} and the UNHCR status^{xiv} of some of the refugees.

FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

In 1998 all member states of the ILO came together to adopt the Declaration on Fundamental Principles and Rights at Work. The declaration reflects the values of four fundamental principles that member states decided to uphold regardless of whether they had ratified the supporting conventions or not. The four fundamental principles and relevant eight core conventions are:

- Freedom of association and the effective recognition of the right to collective bargaining (C87 and 98)
- The elimination of all forms of forced or compulsory labour (C29 and 105)
- The effective abolition of child labour (C138 and 182)
- The elimination of discrimination in respect to employment and occupation (C100 and 111)

As well as the relevance of the Declaration's conventions to migrant workers, the Declaration specifically states that "the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers".

Box 2

Decent work deficits lead to arrest, detention and deportation

Decent work deficits that migrants experience, can lead to situations of arrest detention and deportation. As migrants' legal status in Thailand is dependent on registration with a specific employer, migrants can be trapped in abusive, exploitative work situations, since to leave means a loss of legal status and risk of deportation. As a member of the International Labour Organisation (ILO), Thailand has committed itself to the promotion and realisation of decent work for all. Decent work entails opportunities for women and men to obtain productive work in conditions of freedom, equality, security and human dignity. The ILO's Decent Work Agenda has four strategic objectives: creating jobs, guaranteeing rights at work, extending social protection and promoting social dialogue, with gender equality as a crosscutting objective. The interdependence of the objectives is a determining factor in the attainment of decent work. Failure to achieve one jeopardises the achievement of all.

Achieving decent working conditions for all, including migrants, is key to Thailand attaining its development

goals, and ensuring that the benefits of development are shared throughout society. It is also a key means to enable migrant workers to raise their working and living standards without being pushed into irregular status.

Table 1. Status of Ratification of Principal Labour Standards by the Government of Thailand

Fundamental	
C29 Forced Labour Convention, 1930 (No. 29)	26/02/1969
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	-
C98 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	-
C100 Equal Remuneration Convention, 1951 (No. 100)	08/02/1999
C105 Abolition of Forced Labour Convention, 1957 (No. 105)	02/12/1969
C111 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	-
C138 Minimum Age Convention, 1973 (No. 138)	11/05/2004
C182 Worst Forms of Child Labour Convention, 1999 (No. 182)	16/02/2001
Migration Related	
C97 Migration for Employment Convention (Revised), 1949 (No. 97)	-
C143 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-
C181 Private Employment Agencies Convention, 1997 (No. 181)	-
C189 Domestic Workers Convention, 2011 (No. 189)	-
Source: ILO, NORMLEX, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:1:0:NO	

Enforcing labour standards

A migrant can only request to change employment under very limited conditions including the death of the employer, closure of their business or severe exploitation. Migrants with an annual registration then have just seven days to find a new employer and to update their documents to reflect the change in employment, while those under the MOU are given only three days. If a migrant fails to register the change, they forfeit their registration status and become “illegal”.^{xv} Restrictions on migrant workers’ mobility combined with the short time permitted to find a new employer means migrants end up with no choice but to take whatever jobs are available, regardless of the conditions and the pay or risk loss of regular status.

Lack of labour inspection services and application of sanctions to employers who do not enforce labour standards means many employers fail to comply with legislation. Thus even migrants who manage to become regularised through the nationality verification and those who have been recruited through the MOU process are unlikely to enjoy protected working conditions and labour standards.

These restrictions and lack of enforcement of existing labour standards not only put migrants at risk of abuse, or arrest, detention and deportation; they are also unreflective of labour market needs.

Guaranteeing rights at work

To obtain recognition and respect for the rights of workers, all workers, and in particular disadvantaged or poor workers, need representation, participation, and good laws that are enforced and work for, not against, their interests.

The Labour Protection Act BE 2541 (1998) covers labour rights of workers in certain sectors of the economy; within those sectors all migrant workers are covered by the law irrespective of their legal status. However the Act does not cover a number of sectors which hire a large proportion of migrant

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workers and under which migrants can register through annual registration schemes. These sectors include agriculture, fishing, services and domestic work, all of which fall outside the law. The Alien Employment Act (2008), however, provides different rights and protection for migrant workers and Thai citizens. Even when the law clearly covers migrant workers, enforcement is patchy and arbitrary. Many studies find that migrants work longer hours than is permitted by the law and receive wages well below the statutory minimum.

Migrants are at a disadvantage in exercising and demanding their labour rights. Migrants who have filed complaints of non-payment, exploitation or violations of working conditions are regularly dismissed from their work. Loss of employment leads to the loss of legal status and the migrant being deported before the dispute can be settled. At the same time, the level of dependency of migrants on their employers can discourage action. Many migrants are also dependent on their employer for housing as local authorities encourage employers to house migrants on the work site. Migrants who have disputes with their employers therefore also risk losing their accommodation. In terms of increasing awareness of rights, there is no pre-employment orientation provided to employers or migrant workers informing parties of their work relationship and rights. The Labour Protection Act only requires that workplace rules and regulations be written in Thai, which not all migrants are able to read.

The extreme level of dependency on employers and barriers to seeking new work without losing legal status can lead to situations of effective forced labour. According to the Abolition of Forced Labour Convention, 1957 (No. 105), forced labour is a violation of human rights with two essential criteria: the “menace of penalty” and “involuntariness”.

Extending social protection

To promote both inclusion and productivity by ensuring that men and women enjoy working conditions which are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare.

Under the new MOU regulations, employers of migrants with temporary passports may enter their employees into the National Social Security Schemes (NSSS) if they choose. This is a small improvement from regulations governing Thailand's unilateral registrations, under which migrant workers were covered under the Compulsory Migrant Health Insurance Scheme, but excluded from enrolment in the NSSS. Under the MOU coverage, all migrants can be enrolled in the NSSS, except those in the agriculture and domestic work sectors.^{xvi} In addition, in June 2011, the Thai Cabinet agreed that migrant workers completing the registration process should have access to a private insurance system, paid for by their employers.^{xvii} This insurance fund would be a stop-gap measure for migrants who were not yet included in the social security system because they had not yet been

ABORT OR DEPORT: ILLEGAL IF YOU DO, ILLEGAL IF YOU DON'T

Pregnant migrant women have been threatened publicly with deportation repeatedly over the last decade. Local authorities have encouraged employers to return pregnant women. Maternity leave for migrant women is unheard of.

As a result, migrant women can be left with no alternative but to seek abortions which are illegal in Thailand. Many women die or suffer long term damage from these back street abortions. Women who decide to keep their babies, have to struggle to survive without any supportive social services and without their extended family.

Source: Pollock, Pearson, Kusakabe

Box 3

issued with temporary passports, and would provide coverage to migrants in cases of work-related accidents or sickness.

Migrant workers who are excluded from the system are further deprived of their rights for compensation for workplace accidents and severance pay packages. This discourages collective action and calls for greater workplace rights.

Promoting dialogue and conflict resolution

The participation of employers' and workers' organisations helps to avoid disputes at work, and to build cohesive societies.

The Declaration on Fundamental Principles and Rights at Work, to which Thailand is party, holds that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) are core ILO conventions. Thus, Thailand is bound to adhere to both conventions, although it has ratified neither. Convention No. 87 guarantees the right of all workers and employers to establish and join organisations of their own choosing without previous authorisation. Convention No. 98 promotes voluntary collective bargaining, representation by trade unions and the right to a collective voice at work. It also protects workers and employers who exercise the right to organise and forbids interference in the activities of workers' and employers' organisations.

While these core conventions should provide substantive protection for migrant workers, and enable them to improve their working conditions, the spirit of the conventions has not been translated into Thai law. Under the Labour Relations Act BE 2518 (1975), migrants are barred from forming new unions or becoming officials in existing ones, as union officials must be Thai-born, Thai nationals. Although migrants can join Thai trade unions, they are often unable to, as in many areas where migrants work there are no union offices. Additionally, many migrants, particularly women, work in industries that are not unionised such as agricultural work, domestic work and sex work. The patchy application of labour law can lead to dismissals in cases where migrants do attempt to organise and claim their rights. Again, dismissal leads to loss of legal status and potentially deportation before legal claims are settled.

International Human Rights Framework on Arrest, Detention and Deportation

It is expected that the growing scope for the regularisation of migrants under the MOUs with neighbouring countries should lessen the occurrence of arrest, detention and deportation, but this has not been the case partly because of the large number of migrants who are unable to access such regularisation schemes, and partly because of the restrictive conditions attached to registration which leave even registered migrants vulnerable to arrest. Thailand is party to a number of international treaties and conventions which guarantee rights to non-citizens in arrest, detention and deportation, although in practice, their application is patchy and inconsistent.

PROTECTING PEOPLE ON THE MOVE

International human rights standards uphold the rights of people on the move. At the most fundamental level, all people have the right to life, liberty and security of person. There are nine core human rights treaties: two key covenants protecting civil, political, economic, social and cultural rights; five conventions which provide protections for specific groups of people—for children, women, migrants, people with disabilities and against racial discrimination; and two prohibiting torture and enforced disappearances. These treaties constitute legal obligations which protect all people and to which ratifying states must ensure conformity of their national law and policy.

The central principles of the core human rights documents are non-discriminatory and egalitarian. Human rights are universal and thus are not linked to citizenship. While there is room for states to make some distinctions between citizens and non-citizens in national law, any denial of rights must serve a legitimate state objective and be proportionate to the objective. In practice, interpretation of the human rights documents has varied in different states. This leaves migrants vulnerable and subject to the discretion of national governments and swings in political mood.

The Right to move

The right of all people to move freely is well established in international law. The Universal Declaration of Human Rights (UDHR), states that “everyone has the right to leave any country, including his own, and to return to his country” (Article 12.2). A number of the core human rights treaties further strengthen this principle^{xviii} although the ASEAN Declaration on Migrant Workers is a weak echo of these standards. Supporting the right to freedom of movement, no state may expel its nationals, and all states are expected to readmit their citizens.

Freedom of movement is, however, challenged by contemporary concepts of the nation state, under which population flows are seen as a threat to national sovereignty. States can regulate the presence of non-citizens on their territory, although international law curtails state exercise of this power, particularly when there would be an infringement on other human rights, as in the case of refugees. Reflecting contemporary practicalities, the Human Rights Committee has stated that “since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents”.^{xix}

AT THE HEART OF THE MATTER

A migrant worker is . . . a person involved in a remunerated activity in a state of which he or she is not a national.

A refugee is . . . a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his or her nationality, and is unable to or, owing to such fear, is unwilling to avail him or herself of the protection of that country.

Arrest is . . . the act of apprehending a person for the alleged commission of an offence or by the action of an authority.

Detention is . . . confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.

Deportation is . . . The act of a state, in the exercise of its sovereignty, in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.

Exclusion is . . . the formal denial of an alien's admission into a state.

Expulsion is . . . an act by the authority of the state with the intention and with the effect of securing the removal of a person or persons against their will from the territory of the state.

Sources: Convention on the Status of Refugees (1951), Migrant Workers' Convention (1990), IOM, UNHCR (1999)

Box 4

Arrest and Detention: Methods of last resort

The right to liberty and to freedom from arbitrary detention are fundamental human rights guaranteed to all people, whether migrants or citizens of a state.^{xx} The International Covenant on Civil and Political Rights (ICCPR) holds that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention” (Article 9.1). Use of detention is to be strictly limited where the immigration status of non-citizens is under question. For example, the Convention on the Rights of the Child (CRC) requires states to ensure that children are detained only as a measure of last resort and for the shortest period of time possible (Article 37b). Similarly, the 1951 Convention relating to the Status of Refugees (“Refugee Convention”) holds that refugees are not to be penalised for irregular entry or presence in a receiving country and that restrictions on their movement must be limited and only applied until the persons migration status is regularised or they can be hosted by another country (Article 31). *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* issued by the UNHCR in 1999 underscore that asylum seekers should only be detained in exceptional cases.

Migrant workers around the world face arrest on grounds such as illegal entry, use of false documents, leaving their residence without authorisation, irregular stay, and breaching or overstaying their conditions of stay.^{xxi} While the arrests may be within the law, the motivation behind them is often unrelated to any breach of immigration law. Crackdowns and arrests of migrants may be used as a deterrent for potential migrants, as a means to discourage migrants from lodging complaints about violations of their labour rights, as a political show to campaign for support, or to persuade the population that the government is actively protecting national security. Governments are increasingly detaining migrants whose immigration status is questioned either as an administrative measure pending deportation or expulsion, or under criminal law for breaching immigration regulations. The UN Special Rapporteur on the human rights of migrants has criticised the high degree of discretion and broad powers to detain, which are given to immigration and law enforcement officials in many countries and which can give rise to abuse. Migrants can be detained for prolonged periods, in overcrowded and unhygienic conditions, subject to arbitrary and ad hoc decisions and in practice are often denied legal assistance and access to judicial review procedures.

While there is no specific international treaty or set of guidelines relating to the arrest and detention of non-citizens, international law nonetheless provides protection. The UNHCR has developed *Guidelines on the Detention of Asylum Seekers*, while the *Standard Minimum Rules for the Treatment of Prisoners* and the *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* (Body of Principles) set standards for all forms of detention.

People can only be arrested and detained in line with national laws: the UN Human Rights Committee, which monitors compliance with the ICCPR has clarified the definition of arbitrary detention and says that “arbitrariness” does not simply mean “against the law”, but includes aspects of “inappropriateness or injustice.”^{xxii} When detention does occur, all detainees are to be treated in a humane manner with respect for the inherent dignity of the human person (ICCPR, Article 10; Body of Principles, 1). Following arrest, migrants should be housed in a manner that reflects their status, namely, they should be separated from people awaiting criminal trials and those who have been convicted (ICRMW, Article 17(1); Body of Principles, 8). Special care must be taken of vulnerable

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detainees, such as women, children and the sick. The 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) prohibits torture and cruel, inhuman or degrading treatment or punishment and requires states to prevent such acts at the hands of public officials (CAT, Article 6; Body of Principles, 6). The 2002 Optional Protocol to the CAT provides for regular visits to places of detention by independent bodies to monitor standards.

Migrants have the right to challenge the lawfulness of their detention before a court and to access the justice system of receiving states (ICRMW, Articles. 9 and 17, CRC, Article 37d). To ensure that migrants can fully benefit from access to the justice system, and to maintain contact with the outside world, following arrest, migrants have the right to access the appropriate diplomatic authorities without delay (ASEAN Declaration, Article 10; Body of Principles 15 and ICRMW, Article 16). Detaining authorities are to provide migrants with information concerning their arrest, the options available to them and the ensuing process in a language they can understand. Migrants are entitled to interpretation services if necessary in connection with legal proceedings at no personal cost (ICRMW, 16(5) and Body of Principles, 14). These practices are rooted in the reciprocal interest of all states to safeguard their nationals abroad and have grown in importance as labour migration-both regular and irregular-has increased. Consequently, some embassies now provide a range of services to migrant workers.

All states should respect the human rights and the inherent dignity of migrants and put an end to arbitrary arrest and detention.

UN General Assembly, 2009, Resolution 63/184

At all stages of arrest, detention and deportation, migrants are entitled to equal respect for their human rights as nationals. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) maintains that all people are entitled to the full enjoyment of rights, regardless of race or origin. It provides for the right to

security of person, access to courts and reparation for damages resulting from discrimination. The treaty committee notes that “any differential treatment based on citizenship or immigration status will constitute discrimination” unless the reason for differentiation is legitimate or proportionate.^{xxiii} Importantly, detained migrants, like all other detainees, are not to bear the costs of detention relating to migration related infractions (ICRMW, Article 17.8). Finally, migrants are not to be subject to lengthy periods of detention while their case is processed. In 1999, the UN Working Group on Arbitrary Detention adopted Deliberation No. 5 concerning the situation of immigrants and asylum seekers, recommending that a maximum period of detention should be set by law and that custody may “in no case” be prolonged or indefinite.^{xxiv}

Regulating Deportations and Expulsions

Migrants are safeguarded in issues relating to deportation by three types of protection outlined in the international human rights framework: 1) substantive guarantees to prevent the deportation of people who would consequently face serious human rights violations; 2) procedural safeguards during deportation; 3) protection regarding the method of expulsion.

The right to remain

Refugees and asylum seekers are guaranteed substantive protection by states under the 1951 Refugee Convention and its 1967 protocol. The treaty enshrines states' obligation of non-refoulement (Article

33.1), meaning refugees and asylum seekers are not to be returned to territories where their lives or freedom would be threatened on the basis of their race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement has become a cornerstone of international refugee law and is now considered to be part of customary international law.^{xxv}

THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

This set of rules establishes the minimum international standard for the treatment of all prisoners. A broad range of issues are addressed:

Administrative and legal procedures

- Detainees must be registered, informed fully of the reasons and conditions of their detention and have the right to an interpreter if necessary.
- Maintenance of regular communication with the outside world is to be ensured, including with consular and legal representatives, as well as family.
- Penal institutions must be regularly inspected to ensure compliance with existing laws.

Protecting vulnerable groups

- Different categories of prisoners must be separated. Categories include: women, men and young persons; convicted and untried prisoners, and people convicted for civil and criminal offences. Detained women are to be attended and supervised only by women officers.

Health and welfare

- Penal institutions are to be kept clean and detainees to be provided with adequate sanitary installations, water and toiletry articles necessary for health; authorities are to ensure that detainees have adequate space, lighting and access to fresh air and recreation.
- Authorities are to provide detainees with adequate, nutritional food and water.
- Detainees are to be provided with medical services, including psychiatric care and women detainees with pre- and post-natal care and facilities for breastfeeding infants.

Box 5

Today, any person at serious risk of torture following expulsion is protected against refoulement under the 1984 Convention against Torture. This treaty holds that “No State Party shall expel, return (‘refouler’), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (CAT, Article 3). This principle is strengthened under the 1976 ICCPR (Article 7), which has been interpreted as prohibiting expulsion if there is a risk of torture. In this regard, the Human Rights Committee held that “State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement”. The Committee has also decided that a person should not be returned to a country where they cannot receive treatment for an illness linked to the state party’s violation of their rights. This decision could be applied to migrant workers who suffer occupational injuries or illnesses resulting from inadequate enforcement of occupational safety and health standards by the state.

International support for the principle of non-refoulement is strong. In a General Recommendation on Discrimination against Non-citizens, the Committee on the Elimination of Racial Discrimination recommended that national laws on expulsion should not discriminate against foreigners on the basis of race, colour, or ethnic or national origin, and that non-citizens should have equal access to the right to challenge expulsion orders. It reiterated that the principle of non-refoulement applies in cases where people are at risk of serious human rights abuses. Finally, reflecting on the right to family life, the Committee recommended that expulsions and deportations be avoided when this right would be disproportionately impeded.

Looking at the treatment of unaccompanied and separated children outside their country of origin, a General Comment adopted by the Committee on the Rights of the Child added further weight to international consensus regarding the principle of non-refoulement. The Committee held that state parties should not return a child to a country “where there are substantial grounds for believing that there is a real risk of irreparable harm to the child”, regardless of whether the harm would be inflicted by the state or non-state actors. It emphasised that in assessing the risk of harm, the age and gender of the child should be taken into account, as well as the particularly serious consequences for children of inadequate food and health services. Children should not be returned to a state where there is a real risk of underage recruitment to armed services or participation in conflict, for example as combatant or providing sexual services for the military.^{xxvi}

Victims of human trafficking have very few enabling rights under international law, despite a broad consensus on the need to fight trafficking. Once a person has been identified as a victim of trafficking, they may be returned to their country of origin, regardless of their personal wishes. State parties to the anti-trafficking protocol are simply to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases”. In their deliberation, state parties shall “give appropriate consideration to humanitarian and compassionate factors” (ATP, Article 7). Return of victims of trafficking is to “be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary” (ATP, Article 8). The OHCHR slightly expanded the right to remain in providing that the state should “ensur[e] the safe and, where possible, voluntary return of trafficked persons and explor[e] the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely)”.^{xxvii}

Working towards a fair process

International and regional human rights instruments make almost no reference to methods of expulsion. The Council of Europe has developed Recommendations to ensure respect for human rights, safety and dignity of migrants during expulsion.^{xxviii} However, there is no explicit tool at the UN level and the ASEAN Declaration on Migrant Workers makes no reference to the deportation of migrants. The 1999 Bangkok Declaration on Irregular Migration, agreed by the participants of the International Symposium on Migration, including all the Mekong countries, does however affirm in Article 13 that “timely return of those without right to enter and remain is an important strategy to reduce the attractiveness of trafficking. Return should be performed in a humane and safe way”. Though not binding, the Declaration provides some guiding principles in the region concerning treatment of irregular migrants.

The MOUs signed between Thailand and neighbouring countries do not refer to standard procedures or methods of deportation, although they maintain that migrants should bear the cost of deportation through a deportation fund to be established for the purpose. This legislative gap leaves migrants extremely vulnerable during the deportation process and is still more problematic as migrants who have already been returned to their countries of origin are unlikely to bring proceedings against those who deported them.

Nonetheless, general provisions of human rights standards should still apply. When deporting non-citizens, states are required to respect the right to life and physical integrity and should not subject any person, being expelled from the country, to cruel, inhuman or degrading treatment. The former Special Rapporteur on the human rights of migrants stated that “the expulsion, deportation or repatriation of undocumented migrants should be carried out with respect and dignity”.^{xxix}

Non-citizens are guaranteed protection during the deportation process under the Migrant Workers’ Convention. Article 22 of the Convention applies to all migrant workers and their families, regardless of immigration status (see Box 6). Migrants are to be informed of their right to the protection and assistance of the diplomatic authorities of their country of origin and assisted in the exercise of that right (ICRMW, Article 23). Documented migrant workers have stronger protection. They are not to be expelled from the state in which they work, except for reasons defined in national legislation, when considering expulsions, states must take account of humanitarian considerations and the length of residence in the country of employment. It is prohibited to expel a migrant worker or their family in order to deprive them of the rights derived from their residency and work permit (ICRMW, Article 56).

Migrant workers are guaranteed protection against arbitrary or collective expulsion (ICCPR, Article 13; ICRMW, Article 22). These two rights go hand in hand: the nature of collective expulsions typically exposes migrants to inhumane treatment and the speed at which they are carried out makes it impossible for governments to provide individual decisions on the lawfulness of expulsion. Documented migrants caught up in the net risk unlawful expulsion and there is a high risk that refugees, victims of trafficking and people at risk of torture are not identified.

**INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS
AND THEIR FAMILIES ARTICLE 22**

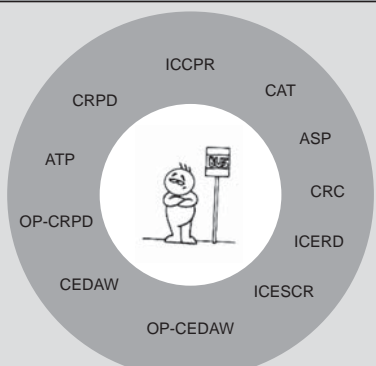
1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

Thai Laws and Policies on Arrest, Detention and Deportation

MISSING LINKS IN THE LAW

Although Thailand has a long history as both a regional hub for migration and as host to refugees from neighbouring countries, its legal system fails to live up to that history and is frequently in conflict with international standards. Response to migration has had the effect of classing many migrants out of regular status and pushing down labour standards in sectors employing large numbers of migrants. In other words, the policy response has fuelled a race to the bottom and left migrants vulnerable to arrest, detention and deportation.

Box 7 summaries the current status of international treaties and principles in Thailand and the rights that non-citizens derive from Thailand's commitments to international human rights law. It also highlights unratified treaties that could enhance their protection.

International legal coverage and gaps of non-citizen detainees in Thailand		
Unratified Treaties	Treaties in Force in Thailand	International Principles
<ul style="list-style-type: none"> • Migrant Workers' Convention • Convention on the Status of Refugees • Refugee Protocol • Statelessness Conventions • ICPED • OP-ICPED • OP-CAT 		<ul style="list-style-type: none"> • Standard Minimum Rules for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any detention or imprisonment • Declaration on the human rights of individuals who are not nationals of the country in which they live • Rules for the Protection of juveniles deprived of their liberty
<p>In ratifying the international treaties listed above, Thailand is legally bound to guarantee the following basic rights to non-citizens in arrest, detention and deportation:</p> <ul style="list-style-type: none"> • Respect for detainees human rights and inherent dignity; • Provision of information on the reason for arrest, the migrants' rights as a detainee and the expected process; • Access to legal-council, consular authorities and interpreters; including assessment of refugee status; • Ability to challenge the lawfulness of detention in a court and to a prompt decision; • Separation from people awaiting trial, or convicted for criminal offences; • Separate accommodation for men and women; • Provision of healthy, sanitary accommodation, food, water and toiletries and access to medical care; • Due respect for the principle of non-refoulement. 		

Box 7

Following Thailand's signing of the MOUs with Burma/Myanmar, Cambodia and Laos, the process in which migrants in Thailand can regularise their status through a nationality verification process has been established. The deadline for completion has been extended repeatedly, from December 14th 2012 to April 14th 2013 and as that deadline approached, by a further 120 days. Migrants already enrolled in the process had been unable to complete verification due to severe capacity shortages. The "one stop shop" verification centres can process a total of 500 cases a day, as such by early April 2013

when the deadline was officially extended, over 380,000 of the 414,820 enrolled had yet to complete verification.^{xxx} Despite these efforts, it is estimated that up to two million irregular migrants remain in irregular status and have not participated in the nationality verification process.^{xxxi} It seems unlikely that there would be the capacity to register them within the new deadline. As each deadline approaches, fears of crackdowns and mass deportation rise. At the same time, the national minimum wage was increased in January 2013 to THB 300 a day, representing an average increase of over 20 per cent, and up to 70 per cent in provinces such as Tak.^{xxxi} Although the rise in wages was a positive move to improve workers' benefits, it also caused concern that many employers will be reluctant to pay the legally required minimum wages, and that they may avoid registering migrant workers to prevent them from complaining when not paid minimum wages. With limited labour inspection facilities to ensure compliance with labour standards, migrants risk arrest, detention and deportation as their employers seek to minimise costs. It is also to be noted that migrant workers in sex work have no means to register and thus they are liable for arrest both on immigration offence as well as for prostitution.

Table 2: Status of Ratification of Principal Conventions on Human Rights by the Government of Thailand

Core Treaties	
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965)	Acceded 27/02/2003
International Covenant on Civil and Political Rights (ICCPR) (1966)	Acceded 29/01/1997
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	Acceded 05/12/1999
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)	Acceded 02/10/2007
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)	Acceded 08/09/1985
Convention on the Rights of the Child (CRC) (1989)	Acceded 26/04/1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (1990)	-
International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)	Signed 09/01/2012
Convention on the Rights of Persons with Disabilities (CRPD) (2006)	Ratified 29/07/2008
Migration Related Treaties	
Convention relating to the Status of Refugees (1951) and its 1967 protocol	-
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (ATP), supplementing the UN Convention against Transnational Organised Crime (2000)	Signed 18/12/2001
Protocol against the Smuggling of Migrants by Land, Sea and Air (ASP), supplementing the UN Convention against Transnational Organised Crime (2000)	Signed 18/12/2001
Source: <i>UN Treaty Collection</i> , available at http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en	

The international treaties to which Thailand is party provide a broad scope of protection in the arrest, detention and deportation of non-citizens. The government of Thailand has acceded to six of the nine core human rights treaties, meaning it is bound to translate those international standards into national law and policy practice (see Table 2). It has also signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), which provides that people in detention be

registered and able to communicate with the outside world, however this treaty is not yet in force internationally.

Despite expanding its human rights framework, Thailand is yet to accede to two key treaties relating to the protection of non-citizens on its territory: the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), a core treaty, and the 1951 Convention relating to the Status of Refugees. Given the large numbers of migrants and refugees present in Thailand, this represents a significant gap in Thailand's human rights framework.

Although Thailand is not party to the Refugee Convention or the Migrant Workers' Convention, as a result of other commitments to international law, it remains bound to uphold basic human rights principles that apply for non-citizens in situations of arrest, detention and deportation, as well as the principle of non-refoulement (see *International Human Right Framework on Arrest Detention and Deportation*). At the same time, Thailand is a member of the UNHCR's Executive Committee and should therefore respect the Refugee Convention and UNHCR guidelines.^{xxxiii}

Barred from regularity^{xxxiv}

Migration into Thailand is governed by the Immigration Act BE 2552 (2009), the Alien Employment Act BE 2551 (2008) and a series of Cabinet Resolutions issued since 1992. Successive Thai governments have taken a two track approach in response to the immigration of undocumented migrants from neighbouring countries by (a) allowing irregular migrant workers to register for a limited period of work in certain sectors and (b) arresting and deporting migrant workers without registration documents.^{xxxv} There have been also explicit efforts to create work sites or economic zones in the border areas and contain migration in these areas.

In 2003, Thailand signed MOUs on Employment Cooperation with Burma/Myanmar, Cambodia and Lao PDR on the regulation of migrant labour. The aims of the MOUs are: 1) to establish proper procedures for employment; 2) to ensure effective repatriation of workers; 3) to ensure due protection of workers; and 4) prevention of, and effective action against, illegal border crossing, trafficking of workers and illegal employment of workers. To implement the MOUs, Thailand and the countries of origin started two processes including the nationality verification process, in which the migrants' country of origin provides travel documents to nationals already in Thailand and MOU recruitment process in which countries of origin establish recruitment processes through which new migrants can migrate to Thailand legally. If they are successful, the MOUs stand to bring significant change to the patterns of migration in the Mekong. Despite many setbacks with the implementation of the MOUs, the Thai government is concentrating its efforts on this process. While other temporary registration policies have continued, registration has been made contingent on migrants' participation in the MOU process.

Participation in the MOU process is complex, expensive and time consuming for all concerned. In order for migrants to receive a work permit, they must first undergo a process of nationality verification to be issued a temporary identification card or passport and health insurance. Each stage incurs a cost for the migrant - the costs of the document, travel and time away from work. Employers and migrants are using private brokers to facilitate the process, further increasing the financial burden. At the same

time, the Alien Workers Act BE 2551 (2008) introduced a levy imposed on employers hiring migrant workers (Section 8). In many cases, this has been passed onto migrants, as employers deduct the cost of the levy from their wages. Migrants from Burma/Myanmar have been very dubious about participation in the nationality verification scheme, some are simply too scared to submit their details to a country from which they fled, while others have voiced fears their nationality will not be verified, about the repercussions of admitting they left Burma/Myanmar illegally, or that their families will be taxed or their names used to vote without their knowledge. Only migrants currently registered in Thailand, with enough money and time and a willing employer can hope to be regularised, but even then a lack of administrative capacity in countries of origin has hugely delayed the process. This combination of factors has created frequently insurmountable barriers to regularisation under the MOUs.

Table 3. Number of Migrants Completed Nationality Verification	
Burma*	500,263
Cambodia**	67,238
Lao PDR**	44,780
Source: IOM, <i>Migrant Information Note, Issue 16, 08/2012</i> . http://www.burmalibrary.org/docs13/IOM-Migrant_Info_Note_No_16-en.pdf asdf (last accessed: 01/11/2012)	
* As of March 2012	
** As of August 2012	

All migration policies have left migrants insecure and only enabled temporary regularisation. Since 2010, migrants entering Thailand under the MOU process have been allowed to work for two years and apply for a two year extension. At the end of four years, the migrants are required to return to their country of origin and are not allowed to work in Thailand for three years. Under previous registration exercises, migrants were able to register for set periods of between three months and two years.

Migrants who have registered for temporary workers' cards issued following Cabinet Resolutions since 1996 are subject to considerable restrictions, including being denied freedom of movement, and being bound to a single employer. These migrants must request permission from local authorities to travel outside the area where they are registered. As well as violating a fundamental human right, the restriction on mobility creates labour market imbalances as migrants are unable to move to areas where work is available. Consequently, seasonal workers will stay in place when the season is over, creating an over-supply of workers and driving wages down in some areas. Mobility restrictions leave registered migrants vulnerable to arrest and deportation. If a migrant needs to travel to a different area, for example if they are subcontracted to a different work site or need to visit a hospital, they can only do so clandestinely. The death of migrants who have suffocated in trucks transporting them from one area to another is a direct consequence of restrictions to their freedom of movement.

Meanwhile, for migrants who have fully regularised their status through completing the nationality verification and migrants who have come through legal migration channels established pursuant to the MOUs are entitled to travel freely in Thailand in principle. While the lifting of mobility restrictions is a welcome improvement, workers are still bound to a single employer meaning labour market mobility is still strictly controlled. Moreover, there remain concerns that the principle of this freedom of movement may be once again restricted, as has been the case in Mae Sod where the local government has issued a notice to disallow migrants to leave the prefecture for fear of losing labourers who will

find better jobs elsewhere. Finally, the status of migrant workers' families remains even more vulnerable than that of the workers' themselves. The existence of dependents has been recognised under the Cabinet Resolutions and all children, regardless of legal status, are allowed to attend Thai schools and to register for a ten-year status while studying.^{xxxvi}

In contradiction to this, however, the MOU process makes no provision for dependents of migrant workers, raising concerns that within a single migrant family, each member could hold a different legal status, possibly leading to separation in raids and deportation.

Laws on arrest

Thailand's 2007 Constitution provides some protection in the areas of arrest and detention. Section 32 guarantees the right to liberty in "life and person" and prohibits torture, brutal acts and cruel and unusual punishment. It also provides that arrest and detention can only be made under legal grounds or with a warrant issued by a court of law and that if a person's right to liberty is impinged they have the right to take their case before a court of law.

Arrest and detention of non-citizens are also regulated by the 2009 Immigration Act, the 2008 Alien Employment Act, and a number of official orders. Under the Immigration Act, any non-citizen who does not have a residence certificate or documentation proving regular entry is considered to have entered Thailand illegally (Section 58). Non-citizens whose immigration status is irregular or suspected to be irregular can be arrested, detained for interrogation or deported by a competent official (Section 29). The 2008 Alien Workers Act provides that officials can arrest a migrant worker who does not have a work permit when the official has ordered the migrant to report to the police station but the migrant has resisted or attempted to escape. In this case, the official does not require an arrest warrant (Section 50). The Prevention and Suppression of Human Trafficking Act, BE 2551 (2008) also provides grounds for arrest without warrant when there are reasonable grounds to believe there is a case of trafficking and the delay resulting from obtaining a warrant will result in destruction of evidence or harm or concealment of the suspected victim of trafficking (Section 27). In cases where raids without warrant are carried out at night time, authorisation from a high-ranking official, at the minimum of Chief District Officer level or Deputy Superintendent, is required.

People have the right to be informed of the reason for their arrest and the charges against them (the Constitution, Section 237 and the Criminal Procedure Code, Section 84). While detained or held under arrest, the Criminal Procedure Code also grants detainees the right to a lawyer and private consultation, other visits and to receive prompt medical treatment if they fall ill; administrative or police officials in charge of the detainee are obliged to inform detainees of their rights (Criminal Procedure Code, Section 7 bis).

Laws on Detention^{xxxvii}

Migrants can be detained under the broad discretionary powers conferred by sections 19 and 20 of the Immigration Act. Under these provisions, "competent officials" have the authority to detain non-citizens. Once detained, there is no legal limit to the length of detention permitted. Although initial limits on detention are in place of 48 hours and then seven days, detention can thereafter be extended

indefinitely by application to a court every 12 days (Immigration Act, 2009: Sections 19-20).

Powers on arrest and detention have recently been supplemented by the 2010 Order regarding the suppression, prosecution and arrest of migrants working underground issued by the Prime Minister's Office (No. 125/2553). The order mandates special cooperation on immigration enforcement between the Ministry of Labour, Ministry of the Interior, the Office of the Royal Thai Police Force, the Army and the Navy. Cooperation between the police and armed forces in the apprehension and detention of migrants lacks operational transparency and has led to concerns about the treatment of migrants in detention.

A disturbing feature of registration periods has been the way in which they have been followed by harsh crackdowns on undocumented migrants. For example, in April 2010 it was announced that there would be no new registrations and a period of open hostility towards migrants commenced, supported by several directives announcing crackdowns and deportations.^{xxxviii} Ranong province, in particular led the way in treating unregistered migrants as criminals, and in 2010 set up an armed task force to control them.^{xxxix}

In June 2010 it was announced that a centre to investigate, suppress, arrest and prosecute alien workers at the national level was to be established.^{xl} Despite strong wording, the centre proceeded to work in an investigative manner, and took the rare step of also investigating and prosecuting employers of migrants who had broken the law.^{xli}

In terms of sanctions for breaches to immigration regulations, if a case is processed formally through the court system, the Alien Employment Act specifies that irregular migrant workers are subject to a period of imprisonment of up to five years and/or a fine of between THB 2,000 and THB 100,000. Further, if the migrant agrees to return voluntarily to their country of origin, the prison sentence may be waived (Section 51). The Immigration Act specifies that when an order of deportation has been issued for a non-citizen, detention is not always required. The non-citizen can be ordered to stay in a specific location, or issued a bond and required to report to an official at a set time and place. However, officials can decide to detain

THAI GUIDELINES ON IMMIGRATION DETENTION

New guidelines on standards in immigration detention centres were issued in 2010 under order 148/2553, which drew from principles established in the 2007 Thai Constitution relating to the rights and dignity of the person. The guidelines also clarify powers granted to immigration officers to detain and deport migrants, under the Immigration Act 2522 (Articles 54 and 55). The following are of particular relevance here:

Section 1: The immigration officer must inform detainees of their legal rights and provide translation services where necessary.

Section 2: (2.1) Men and women detainees must be housed separately. (2.3) Detainees must be separated according to nationality and religious affiliation to prevent conflicts and unrest. (2.4) Detainees must be screened for mental illness and communicable diseases and separated accordingly. (2.5) Children must be screened, housed separately from adults and relevant organisations contacted to assist them.

Section 4: Detainees have the right to access information and postal services.

Section 5: A manual for introduction to new detainees (legal rights, including rights to lodge complaints) shall be developed.

Sections 9 and 10: Cover sanitation and nutrition standards (for example, requiring availability of food compliant with religious needs)

Section 12: Complaints mechanism - detainees are to have access to supervisor/ Director of their place of detention to make complaints; officers should inform them of response to their complaint; detainees can contact a lawyer or representative.

Section 16: Protection issues including access to embassies and submission of reports to the NHRC.

Section 17: Rights to register marriages (Rights to make a request for immigration officers to contact relevant authorities to register marriages).

Section 23: Ways to prevent sexual harassment (e.g. dividing men and women and using CCTV).

non-citizens “at any given place as may be necessary” (Section 54). Significantly, the Immigration Act holds that “the expense of detention shall be charged to the alien’s account” (Section 54).

Under the Anti-Trafficking in Persons Act, people suspected of being victims of human trafficking can be held in custody in order to clarify facts surrounding their case. An initial period of 24 hours in custody can be extended by seven days with permission of a court. While in custody, people thought to be victims of trafficking are to be held in an “appropriate place, which shall not be a detention cell or prison” while taking into account “all human rights principles” (Section 29).

In a report to the UN Human Rights Committee in 2004, the Thai government stated that official policy was to separate detainees according to sex, age and conviction status. So men, women and children are to be held separately, as well as detainees awaiting trial and those who have been convicted. The report notes, however, that overcrowding in the prison system makes segregation very difficult in practice.^{xliii} The report also notes that prisons are to provide detainees with three meals per day, and “special meals” if the detainee is sick. To ensure health and sanitation, prisoners are to have access to clean bathing and toilet facilities and their prison uniform is to be laundered daily. Medical teams and psychiatrists are to visit prisoners, although in the report, the government notes that provision of medical personnel is “insufficient.”^{xliiii}

Laws on Deportation

Forced departure from Thailand is regulated under the Immigration Act and the Deportation Act BE 2499 (1956) as amended BE 2521 (1978). These two acts have different purposes: under the Deportation Act, deportation can be enforced when it appears necessary “in the interests of public peace and order or morals” (Deportation Act, Section 54), and once deported the deportees will not be able to return to the country. On the other hand, the Immigration Act is used for non-Thai nationals who have overstayed in the country. Their deportation is governed by the Immigration Act 2522 Article 55(1) and they will be allowed to return to Thailand when/if they get a visa. Thus in practice, deportation of migrants from Burma/Myanmar, Laos, and Cambodia are governed by the Immigration Act, and not by the Deportation Act. Deportation can be enforced when a non-citizen has entered Thailand “without permission or when such permission expires or is revoked” (Immigration Act, Section 54). Deportation can take any means or route considered “appropriate” by the authorities, although if a non-citizen prefers to take a different route they can pay to do so (Immigration Act, Section 55). The cost of deportation is a blurred area under the law. Section 55 of the Immigration Act specifies that the cost should initially be borne by “the owner or person in charge of the conveyance which brought the alien into the Kingdom”, if there does not appear to be such a person, the deportee will have to pay the expense of deportation. At the same time, the 2008 Alien Employment Act provided for the creation of a deportation fund (Section 31), which is to cover deportation costs when workers are to be deported from Thailand (Immigration Act, Section 20). The requirement for migrants to pay into the deportation fund followed agreements elaborated in the MOUs with Burma/Myanmar, Cambodia and Lao PDR, with which stated migrants’ contributions to the fund be deducted automatically from migrants’ wages. There have been some issues with implementation of this as it could be considered as “forced saving” which is against a law in Thailand and payments into the fund have been deferred until March 2013.^{xliv}

REFUGEES SWEEPED OVER THE BORDER

Refugees and asylum seekers are treated in an ad hoc manner, as there is no refugee law and no systematic screening system in place for their identification. In January 2004 the Thai government ceased to allow the UNHCR to conduct refugee status interviews for Burmese refugees and has itself refused to screen the overwhelming majority of new arrivals since then. Burmese refugees can now choose between living in registered camps where they cannot work, or being classed as irregular migrants. In violation of the human rights commitments under the CAT and the ICCPR as well as customary international law on the principle of non-refoulement, refugees are deported either in mass crackdowns, as with Hmong refugees in 2009, or can be swept up as “illegal” migrants and deported due to lack of screening procedures.

Box 9

The Anti-Trafficking in Persons Act 2551 (2008) holds that victims of trafficking should be returned to their country of “residence or domicile without delay”, unless they are allowed permanent residence in accordance with immigration law, or in exceptional cases they are granted relief by the Minister of the Interior (Section 38). This controversial clause has been tempered by a Cabinet Resolution passed on 4 May 2010 requesting Ministries to develop guidelines on the temporary stay and work of victims of trafficking. Advocacy groups had been calling for victims of trafficking to be granted access to the same legal status available to other migrants and that they be made eligible for a temporary passport and the right to work in all sectors available to other migrants. A regulation issued by the Ministry of the Interior in 2012 provided, however, that victims of trafficking could remain in Thailand for the duration of legal trials, medical treatment and rehabilitation. During this period, which must not

exceed six months, they could apply for a work permit to work in domestic work or manual labour.^{xlv} In their 2012 report entitled *Hit and Run*, sex workers advocacy organisation, Empower has pointed out that one of the impacts of the Anti-Trafficking in Persons Act is that migrant sex workers are punished under multiple laws following rescue operations. Most migrant sex workers aged over 18 years old arrested through the raids are charged under the Suppression of Prostitution Act 1996, the Immigration Act 1979 and/or the Alien Working Act 2008. The research also points out that there are problems with implementation of the law for those who are identified as trafficking victims. Trafficking victims may not receive the support they need and find the period of mandatory detention excessive-often lasting between three months and two years. These limitations often arise as a result of limited collaboration between Thailand the migrants’ countries of origin and also due to the frequently punitive attitudes towards sex workers by the authorities.^{xlvi}

SECTION 2: EXPERIENCES OF MIGRANT WORKERS

Arrest

Despite some progress in the registration of migrants under the MOU process (see Box 1) the majority of migrants continue to enter Thailand illegally and often have no documentation, complicating their participation in nationality verification if they attempt to regularise their status. Undocumented migrants are subject to arrest, detention and deportation from Thailand for having entered the country illegally and are often also liable for punishment on return to their home country for having left and re-entered illegally.

The people who shared their experiences of arrest, detention and deportation

Over the course of 2011 and 2012, members of the MMN interviewed 212 migrants who reported having been subject to arrest, detention or deportation since January 2011. Among the 212 interviewees, a total of 203 migrants provided information about their arrest (although all the 212 interviewed migrants had technically experienced arrest), 148 had experienced detention and 121 had experienced deportation (see Table 4). The majority of people reported being arrested, detained or deported once; however a significant number of people reported being arrested twice (30), detained twice (20) and deported twice (ten) and in some cases more times. There were many more incidents of arrest than detention or deportation, showing that people are often released at this point (see Table 5).

Reported incidents of arrest, detention or deportation	No. cases
Arrest	203
Detention	148
Deportation	91

Table 4. Source: MMN

Note: individuals may have been arrested, detained or deported on more than one occasion, and may not have gone through each step; for example a person may have been arrested and detained, but not deported.

No. incidents of arrest, detention or deportation	Arrest		Detention		Deportation	
	No. migrants	Per cent	No. migrants	Per cent	No. migrants	Per cent
0	7*	3.3	64	30.2	120	56.6
1	153	72.2	104	49.1	72	34.0
2	30	14.2	20	9.4	10	4.7
3	10	4.7	3	1.4	0	0.0
4	6	2.8	4	1.9	2	0.9
5	1	0.5	0	0.0	0	0.0
More	1	0.5	0	0.0	0	0.0
No answer	4	1.9	17	8.0	8	3.8
Total	212	100.0	212	100.0	212	100.0

Table 5. Source: MMN

Note: *According to migrants' own accounts. It can be assumed that those who were detained or deported were initially arrested.

Roughly half the participants were male and half were female, with one participant self-identified as transgender (see Table 6). The majority of participants were aged between 21 and 50 years (84.9 per cent) with very few in younger or older age groups (see Table 7). The majority of participants reported they came from Burma/Myanmar (67.5 per cent), significant numbers reporting they were members of Burmese ethnic groups such as Shan and Akha. The remaining migrants came from Laos and Cambodia with approximately equal numbers from each (see Table 8).

No. incidents of arrest, detention or deportation	No.	Per cent
Male	108	50.9
Female	101	47.6
Other (transgender)	1	0.5
No answer	2	0.9
Total	212	100.0

Table 6. Source: MMN

Age	No.	Per cent
0-15	1	0.5
16-20	27	12.7
21-50	180	84.9
51-60	3	1.4
No answer	1	0.5
Total	212	100.0

Table 7. Source: MMN

Country of origin	No.	Per cent
Burma	143	67.5
Cambodia	31	16.0
Laos	35	16.5
Total	212	100.0

Table 8. Source: MMN

Participants demonstrated a range of different documentation statuses: almost half had no documentation at all (47.2 per cent). Almost one fifth had a work permit, while smaller numbers had temporary passports, and various forms of ID cards. The variety of forms of documentation shows the complexity of the administrative process that migrants face (see Table 9).

Type of documentation status	No.	Per cent
Tor Ror 38/1*	26	12.3
Temporary passport	18	8.5
Work permit	36	17.0
Undocumented	105	49.5
Non-Thai ID**	10	4.7
Others	10	4.7
No answer	7	3.3
Total	212	100.0

Table 9. Source: MMN

Notes on types of documentation:

* Tor Ror 38/1: a special form of civil registration giving migrants permission to stay temporarily in Thailand issued by the Department of Provincial Administration, Ministry of Interior under section 38 of Civil Registration Act (No. 2) BE 2551 (2008).

** National Identity Cards for Non-Thai Nationals: Under the mandate of the Minister of Interior as approved by the Cabinet decision regarding immigration, the 2004 Regulations on National Identification Cards for Non-Thai Nationals, follows on from a 1992 move to classify ethnic minorities in Thailand. The Regulations grant permission for specific groups to reside in Thailand many of whom were born on Thai soil. The Ministry of Interior's Department of Provincial Administration issues 13-digits ID cards for members of ethnic minorities aged over 12 years. For those born outside Thailand, the ID numbers begin with the digit "6" while the ID numbers of their children who were born in Thailand begin with the digit "7". These ID cards are valid for ten years, according to the 2008 Central Registration Bureau.

Source: Jerrold W. Huguet, Apichat Chamratrithong, 'Thailand Migration Report 2011 Migration for development in Thailand: Overview and tools for policymakers', International Organisation for Migration, 2011, p.65.

Migrants worked in a wide variety of industries, with the largest concentration in the service sector (26.4 per cent) for example in massage parlours, karaoke bars, restaurants and in the sex industry. Other significant types of work included construction (17.9 per cent) and fishing (10.4 per cent). The category of “other” includes a variety of jobs such as abattoir workers, electricians and housekeepers (see Table 10). Migrant workers make a broad contribution to the economy in Thailand (for more detailed information see Annex 1).

Type of work	Frequency	Per cent
1. Agriculture	17	8.0
2. Construction	38	17.9
3. Factory	13	6.1
4. Fishing and related industries	22	10.4
5. Service workers	56	26.4
6. Informal traders	9	4.2
7. Daily labour	18	8.5
8. Domestic workers	4	1.9
9. Unemployed	5	2.4
10. Others	30	14.2
Total	212	100.0

Table 10. Source: MMN

Wrong place, wrong time

Migrant workers are under constant threat of arrest, a threat that takes a great psychological toll. Of the 203 participants who shared their accounts on arrests, 31 per cent were arrested at their place of work and 22 per cent were arrested in their homes. People also reported being arrested on the journey between home and their place of work, at national festivals such as Songkran (Thai new year) and even on their way to renew work documents. Some 50 per cent of arrests were classified as raids, meaning the arrest situation was likely to have been highly stressful. In raids, documented migrants risk being swept up in the net.

“I was half naked at the time the police did the raid. I was not allowed to get even a shirt to wear after I was arrested. When the authorities did the raid, they came with many police officers in order to arrest more migrants”.

Cambodian fishery worker, Rayong province

“While I was celebrating the Songkran festival, the police came and checked my documents. The police asked me, “Do you have a card/document?” Then I was told to go to the police station to pay a fine. I paid THB 2,000 for my release”.

Akha (Burmese) massage worker, Mae Sai, Chiang Rai province

“I was on the bus to Chiang Mai and the police at the Mae Chan checkpoint stopped the bus to check the passengers’ documents. I was arrested because I had no document. I paid THB 5,000 to the police and later I was taken to the Mae Sai check point and I was deported to Burma”.

Shan (Burmese) Karaoke worker, Mae Sai Chiang Rai

“The police stopped me to check my documents when I was on the way to work. After the police found that I did not have any documents (either Tor Ror 38/1 or Temporary passport), they asked me to pay THB 500 for my release. I informed them that I had only THB 100, so that the police just collected THB 100 and released me”.

Burmese farm worker, Mae Sot, Tak province

While it is an offence under Thai law to employ or smuggle irregular migrants, during the arrests documented here, the proportion of cases where employers (9.4 per cent) or brokers (1.5 per cent) were arrested alongside the migrants was very low, while in over 55 per cent of cases, the migrant was arrested alongside other migrants, including family members, colleagues and friends.

Migrants who have registered with the authorities and hold a valid migrant workers' card are required to carry this card with them at all times. The migrant workers' card confers limited legal rights. While Thai citizens are fined for not carrying their national ID card, migrants completely lose their legal status in Thailand if they are caught without their card. This then leads directly to their arrest, detention and deportation. The migrant workers card is also only valid as an immigration document when the arresting authority can verify that the migrant actually works for the employer named on the card, and in the type of work and geographic area designated on the card.

“Three friends and I were arrested while we were watching television at my house on a holiday. Two police came into the room and asked for documents. Even though we all showed our documents, they took us to the Nam Khem police station, saying that we should ask our employer to come and get us out. We contacted our employer for our release. The employer arrived at the police station around 7 PM and we were released. All of us could show documents, but they took us to the police station anyway. Many migrants who were arrested had documents at that time”.

Burmese construction worker holding temporary passport, Phang Nga province

“I was arrested because someone informed the police that I have illegal items. After the police had done a body search and not found any illegal items, they asked me to show the work permit. Then my work permit was taken and I was brought to the police station”.

Burmese construction worker with work permit, Mae Sot, Tak province

“The local police stopped me when I came back from Ban Niang weekend market (Khao Lak, Takuapa district). Even though I showed my work permit and I explained about my legal status, I was slapped on my face for talking against them. I was put on the police truck and four undocumented migrant workers were also arrested on the way to Phang Nga Immigration Detention Centre. Fortunately, an immigration officer from Phang Nga immigration detention centre was my former employer and I explained the situation to him. The officer (my former employer) was angry and blamed his fellow police. He asked his fellow police to pay THB 200 for my transportation. I was detained for one night and was released the next morning. I was allowed to stay freely in the detention centre”.

Burmese construction worker, Phang Nga province

“The police came to check the massage shop where I was working. They asked the owner something and after that, they asked me to show my work permit. They told me that I worked at a worksite different from the one specified in my work permit, so I was informed to pay a THB 5,000 fine. I didn’t have the money, but the owner lent it to me. Now I have to pay back the owner every week and I’m in debt”.

Akha (Burmese) Thai massage worker, Mae Sai, Chiang Rai province

Among the migrants interviewed in this study, 6.4 per cent of arrests were of people who were registered but did not have the relevant documentation with them. However, the majority (58 per cent) were arrested as they had no documents at all. A significant proportion (16.3 per cent) were arrested as they were working in a different place of work than the one specified on their work permit (see Table 11).

Reasons for arrest	Frequency	Per cent
Not documented (irregular status)	118	58.1
Registered, but expired migrant worker card	3	1.5
Registered, but did not have a migrant worker card with them	13	6.4
Being outside the area registered for work	4	2.0
Working at a worksite different to that specified under their registration	33	16.3
Other	29	14.3
Unknown	3	1.5
Total	212	100.0

Table 11. Source: MMN

Knowledge is power

Under international and Thai law, anyone who is arrested has the right to be informed of the reasons for their arrest and the charges against them. Among the people interviewed here 46.3 per cent said they were informed of why they were being arrested and what was going to happen to them. It should be noted however that the majority of migrants who received information said they were given information in a language that they could not fully understand. Some 45.3 per cent were simply not informed.

Screening of migrants on arrest is important to prevent miscarriages of justice and to ensure the most vulnerable are protected. Although Thailand has no law or policy regulating the humane treatment of refugees on its territory, it is bound to offer some forms of protection. International customary law prohibits the refoulement of people to states where their lives or freedom would be threatened. Thailand has also ratified the Convention Against Torture and the ICCPR which prohibit expulsion of people to states where there is a serious risk of them being subjected to torture. The Anti-trafficking Act stipulates that when it is suspected that a person may have been trafficked, it is possible to take them into custody to clarify facts, but that the person must be housed in an “appropriate place” namely, somewhere other than a police cell (Section 29).

In practice, authorities often fail to screen migrants on arrest, itself a violation of human rights, but also putting vulnerable groups in extreme danger. Among the migrants that participated in the survey, only three per cent reported that arresting authorities asked them questions to screen them as labour abuse victims, trafficked persons or refugees. When asked whether they had been referred to a relevant authority to ascertain their status, just two migrants reported yes. In no cases did migrants report that authorities explained what assistance might be available for them to seek justice. The lack of recourse to justice regarding labour abuses means many migrants are afraid to stand up for their rights. This exerts downward pressure on labour standards across Thailand.

“We worked at the grocery store for 9 months, and my ex-employer, the store owner, had a bad habit of not giving us our salary regularly. The day we were arrested, we had asked the employer to let us quit from this job but the employer said, ‘Wait until I found someone who will work here instead of you’. So, we continued working and then the police came to the store around 1 PM. The police took us (me and three others) to the police station with our hands tied the hands by rope. The police asked for THB 4,000 each to release us, otherwise we would be sent to the district jail. So we contacted our friends and family in order to pay the THB 4,000. We were released around 5.30 PM in the evening”.

Burmese fruit shop worker, Phang Nga province

Quickly to justice

The behaviour and action of arresting authorities is an important component of the rule of law in Thailand. However, a lack of consistency and predictability displayed in practice is eroding the rule of law.

Payment of fees was a common report; 85 per cent of migrants were requested to pay a fee on arrest. Among those who paid the requested fee, just four per cent were given a receipt. A variety of reasons were given for charging fees. The charges ranged from THB 20 to THB 50,000 (US\$ 0.60 to US\$ 1,600) while the majority paid between THB 1,000 (US\$ 33) and THB 2,000 (US\$ 66). Depending on how the authority explained what the fees are for, the amount charged to migrants varied as follows:

- Fees for preparing documents: THB 1,000
- Fine for being undocumented including having expired work permit: THB 500-2,000
- Fine for engaging in prostitution: THB 400 and THB 50,000
- Fine for working at a worksite different from the one specified under registration: THB 2,000
- Fine for working without work permit: THB 1,000-5,000
- Fine for travelling outside a registered area without permission: THB 1,000
- For release and not being charged with other unlawful acts: THB 2,000-10,000 (majority fell between THB 3,000 and THB 5,000)

Some 22 per cent of migrants reported having been handcuffed during arrest. Among those who were handcuffed, 63.4 per cent said they were handcuffed immediately after being arrested. In total, 53.2 per cent of migrants were fingerprinted.

Some 41 per cent of migrants reported that they were subject to a body search during arrest. Men were nearly three times more likely than women to be searched. Almost half of the women had their body search conducted by a man. In some cases migrants reported verbal abuse during the arrest (9.4 per cent), physical abuse was reported less commonly (5.4 per cent) and one person said they had been sexually abused. Abuse ranged from shouting threateningly at migrants and calling them stupid. Others reported being slapped or punched in the face, in one case when the migrant showed their work permit to police, being kicked and being stripped, inappropriately touched and given unidentified pills during a body search.

“The authorities used truncheons to touch migrant women, including me, to do body searches. The police did body searches, but there were no female officials there”.

Burmese women farm worker, Mae Sot, Tak province

In line with international law, migrants have the right to maintain contact with the outside world, following arrest. Almost two thirds of migrants were informed of this right and were able to make outside calls which they used to inform family, friends and employers of their whereabouts. 47 per cent of migrants who were allowed to call called their family members, 43.4 per cent called their friends, and 47 per cent called their employers. However, just five migrants (2.5 per cent) were told that they had the right to seek outside legal assistance for example from lawyers, their embassies, or NGOs.

Detention

Protecting the vulnerable

Following arrest the majority (nearly 70 per cent) of migrants interviewed were sent to a detention facility; while a significant number were released, some people were deported immediately. There continues to be little standard practice in procedures relating to the detention of migrants. Migrants are subject to a range of different procedures, held in different types of detention centres and for varying periods of time. The procedure also varies according to where the migrant is arrested and where they would be deported. Among the migrants interviewed here, people were detained in a variety of centres, including immigration detention centres, police cells and shelters. In total, 39 out of 148 were detained in more than one detention facility.

In line with international and Thai human rights standards, detained migrants should be treated with humanity and dignity. However cases of verbal abuse (13), sexual abuse (2) and physical abuse (3) were reported during the detention.

“I was arrested by the police when I got back from work around 5 PM. The police officer loaded a gun and threatened me. I was handcuffed with my hands behind my back. At first, I was sent to a police station and investigated. They asked, “Did you steal some money?” I replied that I had not taken any money. Then, the police officer took me to a forest near a beach and told me that he had killed someone here and he would kill me if I did not give

him money, and he put THB 10 in my pocket. I replied that he could kill me, but I did not steal any money. After that, I was sent to the village headman in Thomkhamin. A group of my friends came to the headman's house and finally I was released at 10.30 PM. I was handcuffed for the whole night and I went to police station the next morning around 8.30 AM and requested that the handcuffs be removed".

Burmese construction materials shop worker,
detained at the village headman's office for 15 hours.

Reported Detention facilities	Frequency	Per cent
Immigration detention centre	21	14.2
Police cell	61	41.2
Immigration detention centre and police cell	31	20.9
Prison	6	4.1
Police cell and prison	8	5.4
Shelters	1	0.7
Others	3	2.0
Unknown	8	5.4
No answer	9	6.1
Total	148	100.0

Table 12. Source: MMN

Migrants also reported abuse at the hands of other prisoners: one woman explained that she was sexually assaulted by other female prisoners; another migrant was physically assaulted following a failed rape attempt. In another instance, one male migrant reported that another male prisoner officer attempted to rape him in a police cell. Two migrants detained at the Mae Sod police station also reported being kicked, beaten and humiliated by authorities. Just two people were informed of their right to access a complaints procedure in the event that they experienced abuse during arrest or detention; one person was informed by family members and the other by visiting NGO staff.

To protect their interests and ensure the course of justice, detainees have the right to maintain contact with the outside world. Some 60 people, the majority (72 per cent) of whom were detained at a police station, reported that they were able to contact outside help during their detention, for example NGOs, friends, family and employers. However, just three migrants (two detained at a police cells, one in another facility) reported that regular visits were allowed by outside organisations. In some places of detention, social workers or interpreters were present to assist detainees, although again few migrants reported that they had benefitted from such assistance. Three people (two in prisons, one in a police cell) said there was a bilingual social worker in their place of detention who could respond to the needs of detainees; three people (two in immigration detention centres, one in a police cell) said there was a bilingual social worker but that they could not help and in two cases, there was a social worker, but they could not speak the migrants' language. In total, 16 people said there was an interpreter, but they were not a social worker.

International law maintains that while in custody, accused people should be separated from those who have been convicted and their treatment should reflect their status (ICCPR, Article 10.2.b). At the same time, children should be held separately (ICCPR, Article 10.2.b) and only held as a measure of

last resort (Article 37.b). Special care should be taken of vulnerable groups, such as women, children and the sick. Thai policy reiterates these principles.^{xlvii}

During their time in detention, only two out of 148 migrants were asked whether they had experienced labour abuse or exploitation and just one person was interviewed by the Anti-trafficking unit and Social welfare. None were interviewed by authorities about experiences with forced labour or persecution at home. In the three screening interviews, authorities used a language that the migrant could not understand. In practice, migrants recounted that special consideration was given in some cases, noting unaccompanied or separated children, the elderly, pregnant women, torture victims and people with severe medical conditions. While the 2010 Thai guideline on Immigration Detention state that healthcare service and referral of cases is provided at the detention facilities, less than ten per cent of migrants who were detained at immigration detention centres and police cells were aware that medical care was available during detention, 86 per cent of migrants who were detained in prison were aware of medical services. Of migrants interviewed in this study that were detained in immigration detention centres, 58 per cent did not know about the availability of medical services, while in 35 per cent of cases there was no medical care available at all. In addition, 47 per cent of migrants interviewed here who were detained in police cells did not know about medical care and 40 per cent of them said no medical service was available. Women and men were typically housed in separate quarters although not in all cases (see Table 13). However, only in a very few cases (7.4 per cent) were female officers present to attend female migrants.

Were there separate quarters for men and women?	Frequency	Per cent
Yes, men and women were separated.	99	66.9
No, men and women were detained in the same cells.	26	17.6
Other special arrangement	4	2.7
No answer	19	12.8
Total	148	100.0

Table 13. Source: MMN

Although it is generally safer for women to be housed separately from men, in isolated areas women may prefer to be held with their male compatriots rather than being left alone with the male authorities. The lack of standard procedures also means that families can be separated during the detention and deportation as male and female detainees are typically deported at different times and even to different locations. Twelve migrants reported that children were separated from their parents and there was one report of families being housed in a separate cell. Of 148 migrants interviewed 65 said there was no special arrangement for families and 64 did not know of any arrangement.

Living conditions

Migrants pass through many different police cells, holding centres and immigration detention centres and it is difficult to generalize conditions. However, it still appears that police holding cells are crowded and in some rural areas, men, women and children are held together. Overall, the larger facilities had more services, such as access to medicine or medical care (see Annex 2). A total of 14 (six detained in police cell, five in prison, one in a juvenile centre and two no answer) out of 148 migrants reported that women were given special consideration such as separate bathrooms, space to breastfeed, or

during menstruation. Migrants' perceptions on hygiene in detention varied, possibly as a reflection of the length of their detention. Most people thought the toilets were hygienic (74 per cent), less found the bathing facilities hygienic and still less thought the sleeping quarters were appropriate.

"I had to use the toilet water tap to take showers; we had to buy drinking water and food by ourselves".

Burmese fishery worker, Phang Nga province

"Inside the room, there were three meter high walls that divided the room into a bathroom and a toilet. But there's no door separating the rooms and no air passage to let air filter, so when someone pees, the whole room stinks".

Burmese construction worker, Chiang Mai province

"Many migrants were arrested at the same time as me, so the immigration detention centre did not have enough space. I was deported after three days in an immigration detention centre room which was crammed with detainees".

Cambodian fishing worker, Rayong province

Many migrants felt that provision of food and water was inadequate, or experienced problems with hygiene standards. While the Water Authority of Thailand claims that tap water in Thailand is clean, few people in the cities drink tap water. Just 17 out of 148 thought that eating facilities were hygienic and 33 thought that drinking water was hygienic; while 93 of 148 said that they were not provided with adequate food.

"If my relatives didn't visit me and buy food and drinking water for me, I didn't get enough food and as no drinking water was provided, I had to drink tap water from the prison/police cell".

Cambodian auto repair worker, Rayong province

"We were given three meals a day, but I didn't have enough to eat. We only had one dish of rice with food on the top and no drinking water. Detainees who had money could buy drinking water, but for others who didn't have money, they had to drink water from the tap".

Cambodian unemployed, Rayong province

"The food was not good quality and smelt bad".

Cambodian fishery related worker, Rayong province

"At Mukdahan police station, officials provided food for detainees who did not have relatives visiting. But if the detainee's families visited, they would be asked to buy food for the police as well. In the meantime, the officials threaten our families that unless they buy food and coffee for the officials, they will be not allowed to visit us".

Laotian factory worker, Mukdahan province

Guilty until proven innocent

Laws and standards are in place to ensure that migrants can access justice; migrants must be informed of the reasons for their detention and have the right to challenge its lawfulness before a court of law under both Thai and international law. At the same time, the ICCPR, to which Thailand is signatory requires states to enforce minimum guarantees including provision of legal defence and translation services. The Thai legal system provides court procedures to determine whether or not an individual has committed any immigration offences. During the premiership of Chuan Lekpai (Prime Minister 1992-95 and 1997-2001) a one stop deportation "service" was introduced whereby it was no longer necessary to follow court-based procedures, instead, suspected illegal immigrants could be immediately deported. While this is in breach of Thailand's international commitments, it appears that today both procedures continue to be practiced, with some migrants, particularly those along the border going through express deportation procedures, and others through the lengthier court-based procedures.

In this study, a large number of people (43) reported that they were deported immediately on transfer to the detention centre. They had no trial, no time to appeal their case and there was no time to adequately assess their status. Most migrants were detained for relatively short periods of several days before being released (43 per cent), deported (29 per cent) or transferred to another facility (24.3 per cent), leading to concerns about due process, although detention periods ranged from several hours to over 45 days.

Further highlighting the lack of access to justice, the majority (60.8 per cent) of migrants reported that they were asked to sign a confession of guilt, which was written in Thai and as a result they could not understand. In terms of enabling migrants to claim their rights and strengthen their position, roughly one third were provided reasons for their detention at this stage, although again language was often a barrier. Some 78 per cent of respondents did not have a court proceeding; among the few who did, just three people were accompanied by a lawyer and four were provided with an interpreter.

"I was taken to court three times having been accused of illegal entry to Thailand. I never met the prosecutor; only the interpreter came to get my personal information and told me what I was accused of. Then I was taken back to the prison after I signed a confession".

Burmese farm worker, Mae Sot, Tak province

"I was taken to the court on 19 September with no lawyer, and deported to the border on 20 September 2011".

Burmese waitress, Chiang Mai province

"I was told by the policeman who took me to the court to confess to all charges, and I followed his advice".

Burmese construction worker, Chiang Mai province

"I was sentenced to imprisonment for 45 days, no lawyer".

Burmese orange farm worker, Chiang Mai province

Many migrants reported that they were asked to pay a fine, or money to be bailed out of detention pending trial. Those that could not pay were typically either kept in detention pending trial or deported. While migrants may prefer to pay authorities to secure their release, rather than being deported, the practice contributes to erosion in the rule of law. Further, the arbitrariness in the application of the law threatens to break any confidence migrants have in the Thai legal system.

“I was sentenced to pay a THB 2,000 fine, but I didn’t have money so I was sent to prison instead. I don’t know if I had a lawyer”.

Burmese construction worker, Chiang Mai province

“After I had been detained for one day, I paid THB 5,000 for our release (me and my family of five people) and I didn’t get any receipt”.

Burmese domestic worker, Mae Sot, Tak province

“The first time I experienced detention, I paid THB 700 at the Mae Sot police station after I had been detained for two days. The second time, I didn’t pay, so I was deported back to Burma/Myanmar”.

Burmese manual labourer, Mae Sot, Tak province

“My employer knows the police well. In fact, they pay the police every month. So I was released after my employer visited”.

Burmese construction worker, Mae Sot, Tak province

“For detention at Mukdahan police cell, if the detainee cannot pay THB 6,000 to be bailed out, they will be detained for approximately one week to finish court proceedings. While being detained, detainees will not be provided food so their relatives have to be in charge of making sure they have food as well as giving food to the officials”.

Laotian daily labourer, Mukdahan province

Deportation

Keeping the eye of the law focused

Migrants deported to Burma/Myanmar, Cambodia and Lao PDR continue to be viewed as having violated the law for leaving their home countries illegally. They are stigmatised to varying degrees (depending on the country and political situation) as being disloyal, unworthy citizens and for deserting their country. Hence migrants from all three countries may be required to attend lectures, or “re-education” sessions. The sections of the Immigration Act governing deportation clearly demonstrate the precarity of migrants’ situation in Thailand: deportation can be enforced when a non-citizen has entered Thailand “without permission or when such permission expires or is revoked” (Immigration Act, Section 54).

Among the migrants interviewed here, 91 were deported. In most cases, migrants are held in detention until the immigration authorities' arrest enough migrants of the same nationality to fill a truck or a bus to send them back to the border. Most migrants were deported to the closest border crossing to their home, but not in all cases. Typically authorities took migrants to a border crossing near to their place of detention.

Upholding the right to life

During deportation, authorities are required to uphold human rights principles-respect the right to life and physical integrity of detainees and not subject any person to cruel, inhuman or degrading treatment. Migrants were deported in a variety of vehicle types and overcrowding was reported by almost 40 per cent of deportees (see Table 14). Sometimes the vehicles were dangerously overcrowded, leading to extreme discomfort to migrants and potentially putting their lives at risk. In most cases, migrants reported that they had seats in the vehicle used to deport them, however 30 per cent of respondents did not have a seat, calling into question safety standards adhered to by authorities. Migrants interviewed commented that they were often concerned about their safety, for example due to overcrowding in the vehicle, overheating or that the vehicle was driving too fast or dangerously. Just four migrants of 91 were able to relay their safety concerns to a responsible official during the deportation.




Type of deportation vehicle	How many people was the vehicle designed for?	How many people were in the vehicle?
	Approximately 10 people	3-7 people
	Approximately 30 people	30-100 people
	Approximately 40 people	20-100 people
Police car	4-5 people	3 people
Shared taxi (song theaw) A song thaew is a passenger vehicle commonly used adapted from a pick-up or jeepney.	Approximately 15 people	9-12 people
Local Bus	Approximately 17 people	Approximately 10 people
Thai-Laos cross border bus	Approximately 10 people	Approximately 3 people

Table 14. Source: MMN

While it is accepted that deportations cost money and ensuring safe deportations is more costly, there should be sufficient funds available since migrants pay deportation fees upon registering for their migrant worker card. There have been cases where overcrowding and speeding deportation vehicles have caused serious accidents.

Upholding the rights to dignity and humanity

The length of time spent travelling to the point of deportation varied greatly. Those deported to Burma/ Myanmar from detention centres in Mae Sot district, Tak province had short journeys of 15 to 20 minutes. Burmese migrants being deported from Chiang Mai province tended to have longer journeys, typically around four hours, although journeys of up to 13 hours were reported for deportation via Mae Sai district, Chiang Rai province. Most people detained in Ranong province had journeys ranging from 30 minutes to two hours. Cambodian migrants detained in Rayong province had journeys of between three to five hours, while those detained in Bangkok or Prachuap Khiri Khan province had journeys of 11 or 12 hours to the Aranyaprathet check point in Sa Kaeo province. Laotian migrants tended to have shorter journeys of between 30 minutes and one hour, although one person reported a journey of over six hours.

Almost all migrants (84 per cent) complained that they were not allowed toilet stops during the deportation journey. This was particularly difficult in the longer journeys, more so as many of the roads to border areas are winding and dangerous as they pass through mountains. So as well as not being able to go to the toilet, migrants who suffer from motion sickness have no relief. It appears that the trucks do not stop for toilet breaks for fear that the migrants will escape. Drinking water and adequate food was provided to only six migrants.

“While I was in the deportation vehicle, I felt so panicked because the driver drove very fast. I was hungry and thirsty, but I was scared that the official would be angry and shout at me if I said anything”.

Cambodian unemployed worker, Rayong province

“While we were being deported, the official didn't feed us, didn't provide drinking water and gave no toilet break”.

Burmese construction worker, Mae Sot, Tak province

In remote border areas, migrants can be vulnerable to abuse at the hands of the authorities. Some migrants reported verbal, physical and sexual abuses during their deportation. Officials in charge of the deportation shouted aggressively as the migrants got on and off the bus. One man reported that all the migrants were beaten as they got off the truck and told to exit more quickly; another man saw females being touched inappropriately by male authorities.

Crossing over

On arrival at the border, migrants are either deported through official channels, handed over to authorities or released unofficially. In this study, 50 of the 91 migrants interviewed reported that they had been handed over to the authorities of their home country, while 29 had not (other participants

gave no answer). Most often, migrants were handed over to immigration officials, border control officers or staff in reception centres. In Laos, one migrant reported being handed over to an official from the Ministry of Labour. In Burma/Myanmar migrants also reported being handed to the Democratic Karen Buddhist Army or the Burmese military. At this point most migrants were immediately released after authorities checked their identification, although in Burma/Myanmar and Cambodia, many reported being charged a fee to enter and be released. Again in Burma/Myanmar, four migrants reported that they were required by authorities to undergo a mandatory health examination on return; this practice was not reported in Laos or Cambodia.

A total of eight migrants reported that they were transferred to another authority on arrival at their home country; those in Laos were either taken to an office of the Ministry of Labour or to an immigration office. In Burma/Myanmar, one migrant was taken to another authority, but did not know which authority it was. A total of 27 migrants (four Burmese, one Laotian and 22 Cambodian) were sentenced to some form of punishment on return, in many cases (39 per cent) the migrants were required to pay a fine, while others (58.3 per cent) were obliged to attend a lecture. Fines reported ranged from THB 200 in Cambodia, to THB 500 in Laos and ranged between THB 300 and THB 2,500 in Burma/Myanmar. In Burma/Myanmar and Cambodia, migrants stated that if they were unable to pay the fine, they were required to work without pay, for example cutting grass or working on road repairs.

In some cases, migrants were provided assistance by authorities on their return. Three migrants were given counselling by a social worker, seven (one Burmese and six Laotians) were given financial assistance to help them travel home and five (all Laotian) were given assistance to help reintegrate into their home community. For example, one Burmese migrant was accompanied half way to his home and then given some money to continue the rest of the way. In Laos, a migrant reported that the reception centre provided him with the bus fare home.

Unpaid wages

Many migrants are deported before they receive their last pay packet. If migrants are arrested and deported without any contact with their employer, they are not likely to receive the wages that are owed to them. Just two migrants reported that they were informed of their right to claim wages owed—one was informed prior to arrest by an NGO and another was informed by their employer. Following deportation, five migrants said that there was a system in place to help them claim the unpaid wages; among them one Burmese was returned wages by his employer and two Laotians were informed by a Ministry of Labour official, the other three (one Cambodian and one Burmese) did not report where they obtained their information.

Return to Thailand

All of the interviews with migrants in the study conducted by the MMN took place in Thailand, so the migrants interviewed had either remained in Thailand following arrest and detention, or had returned after deportation. Consequently no conclusions can be drawn regarding the rate of return of deportees, or the effects of arrest and deportation on migration streams. Nonetheless, the information in this section highlights broader issues around migration into Thailand.

Among the migrants who returned following deportation, the length of time between arriving at the border and returning to Thailand varied. Some people returned immediately, while others stayed some days or months before returning. In total, 19 per cent of migrants interviewed here returned to Thailand immediately and returned within one week. 13 out of 41 Burmese deportees returned to Thailand immediately while 9 out of 28 Laotian deportees returned to Thailand in one month later. The main reason people gave for returning was a lack of work in their home country. Thailand is the wealthiest country in the sub region by a significant margin, and an abundance of jobs with higher pay than in migrants' countries of origin is a significant draw factor. Others said they returned to be reunited with their friends or families in Thailand. A very small proportion said that they see Thailand as their home. Almost two thirds of returnees went back to the job they had been taken away from. Some of the people who were deported said the experience had put them off returning to Thailand, however over time the lack of jobs at home and better prospects in Thailand had led them to change their minds.

"I can't get a job in Cambodia and life is very difficult there".

Cambodian auto-repair worker, Rayong province

"I was escorted by a Thai immigration officer to a boat dock at the frontier with Burma/Myanmar, and then the Thai immigration let me take the boat to cross back to my country by myself. There were Burmese authorities (I don't know from which office) waiting on the other side to collect money from deportees, the entry fee was THB 500 per person. I didn't have money, so I was told to donate THB 20 to the temple for being released. After release, I borrowed 500 Kyat from my friend for the boat fee to return to Thailand".

Burmese manual labourer, Mae Sot, Tak province

"I was deported by Thai immigration and dropped off at the middle of the Thailand-Burma friendship bridge (the end of Thai territory), and they let me go back to Burma/Myanmar by myself. Rather than go back to Burma/Myanmar, I returned to Thailand immediately".

Burmese daily labourer, Mae Sot, Tak province

"I decided to be deported through the informal channel in order to avoid the authorities in my home country because I was scared they would punish me. I paid THB 3,000 to the Thai immigration officer for the deportation fee".

Laotian undocumented worker, Mukdahan province

"When arrived at the border, I was told that there were two processes for deportation: 1) the official channel where Thai immigration will contact Lao officials and the deportee will be transported back by bus and will have to follow the process in Lao; 2) the unofficial channel, where the deportee will not have a stamp in their passport saying they are a prohibited person. For the unofficial one, you have to pay a deportation fee of THB 3,000 and the Thai official will not guarantee your safety".

Laotian sex worker, Mukdahan province

Conclusions and Recommendations

CONCLUSIONS

Recent efforts by Thailand and its neighbouring countries to implement the MOUs on Employment Cooperation has, to a certain extent, led to the regularisation of migrants through nationality verification and the creation of legal migration channels. However, these measures continue to be restrictive or too expensive for the majority of ordinary people to access. Consequently, many have no choice but to migrate through irregular channels, and many in Thailand find themselves unable to participate in regularisation processes within the country.

Requiring migrants who have succeeded in obtaining legal status to return to their countries of origin after a period of four years is counter-productive. It fails to reflect both the real life experiences of migrants and the labour needs of Thailand. It is likely that many will revert to irregular status in order to remain in the country. Barriers to job mobility coupled with the weak enforcement of labour standards mean that many work in exploitative conditions, often bordering on a situation of forced labour. Migrants, including those who have obtained legal status, consequently face a choice between leaving their jobs and losing their regular status on the one hand, or staying and suffering abuses on the other. In all cases, migrants remain vulnerable to the risk of arrest, detention and deportation.

Thailand is a party to various international treaties which cover issues relevant to arrest, detention and deportation, including ICCPR, CAT, CRC, and CRPD. It is thus legally bound to guarantee the basic rights of non-citizens in the arrest, detention and deportation procedures described in the report. Although there are laws and policies to govern the practices of arrest, detention and deportation in Thailand, the experiences of migrants highlight significant inconsistencies in practice, indicating a lack of legal oversight and leading to uncertainty for migrants who are subject to such law enforcement. In addition, information on procedures is not easily accessible, resulting in a process which lacks transparency.

Migrants also lack access to necessary support from their respective embassies when needed. Based on key informant interviews, services provided by authorities of countries of origin tend to focus on assisting trafficked persons and/or assisting migrants who came under the MOU recruitment process. It is hoped that the countries of origin can play a greater role in protecting the rights of their nationals, including those who are subject to arrest, detention and deportation.

RECOMMENDATIONS

All migrants have a right to liberty, dignity and respect for their human rights. In order to address the human rights issues raised by this report we urge the Government of Thailand to: 1) Enhance and strengthen efforts to facilitate regular migration under existing agreements, including the regularisation of migrants already in Thailand and amend existing policies to ensure due respect for the rights and freedoms of migrants; 2) promote decent working and living conditions in order to prevent situations

where migrants have no choice but to leave their employers resulting in a loss of their immigration status; and 3) adopt alternatives to arrest, detention and deportation in managing its irregular migrant population and in limited cases where such law enforcement is inevitable, reform the procedures of arrest, detention and deportation to make them more humane, transparent and subject to independent legal oversight. MMN makes the following recommendations:

STRENGTHEN AND ENHANCE EXISTING CHANNELS FOR REGULAR MIGRATION

To promote and extend access to regular migration channels and regularisation of migration status, as well as to respect the inherent dignity and rights of all migrants, the MMN recommends:

1. To enable all migrants already in Thailand to register under the MOU process in place with the governments of Cambodia, Laos and Myanmar:
 - a. that deadline for nationality verification be lifted;
 - b. that administrative capacity be increased and more registration posts be opened to enable easier geographical access;
 - c. that the costs of registration be significantly reduced to reflect migrants' average salaries;
2. To facilitate those entering Thailand through the MOU recruitment processes, we recommend a simplified process with cheaper fees and that migrants' right to change employers in case of labour abuses be protected, to avoid the situation where they have no choice but to fall out of regular migration channels;
3. That the Royal Thai Government rigorously enforces the law that prohibits the confiscation of personal identification documents and holds anyone who confiscates migrants' documents accountable. Migrants should not be criminalised if their documents have been confiscated;
4. That migrants arrested despite being registered with the authorities, for example for failure to carry their identification documents, be immediately released and not subject to sanctions; and
5. That the Royal Thai Government immediately repeal restrictions placed on the internal mobility of migrants.

DECENT WORK AND LIVING CONDITIONS

To prevent situations where migrants become subject to arrest, detention and deportation, the MMN recommends efforts to address decent work deficits relating to migrants, notably access to and free choice of employment, social security, protection and freedom of association and collective bargaining. Specifically, the MMN recommends:

6. That freedom of choice in employment be fully recognised for migrants; to enable this, migrant workers who wish to change their employment, should be allowed ample time to find a new job;

48 No Choice in the Matter:

Migrants' experiences of arrest, detention and deportation

7. That migrants' right to freedom of association and collective bargaining be reflected in law and practice; that authorities strictly prohibit employers from terminating workers' contracts when they exercise these rights; and
8. That migrants who suffer abusive working relations be made aware of and be given access to legal recourse; that in such cases migrants shall not be deported and instead are given sufficient time to secure new employment and/or to remain in Thailand for the duration of any pending litigation.

ADOPT ALTERNATIVES TO ARREST, DETENTION AND DEPORTATION AND REFORM ADD PROCEDURES TO REFLECT HUMAN RIGHTS PRINCIPLES

Arrest, detention and deportation should be used only as a measure of last resort. MMN therefore recommends:

9. That in line with international standards, the Royal Thai Government adopts genuine alternatives to arrest, detention and deportation in managing its irregular migrant population.

In the limited number of cases when arrest, detention and deportation is necessary, reform is needed to ensure a humane, transparent process in line with international human rights standards that is subject to independent legal oversight. The MMN recommends:

10. That a clear policy and strong public stance is taken to protect migrants against arbitrary or unreasonable arrest, detention and deportation;
11. That governments stop the practice of mass arrests or deportations;
12. That in the case of unlawful detention, migrants be immediately released and receive compensation;
13. That all GMS governments prosecute with the full force of the law those who physically or sexually abuse migrants during the arrest, detention and deportation process;
14. That all guilty parties cease the extortion and blackmailing of migrants during the processes of arrest, detention and deportation. We recommend that the authorities make codes of practice publically available and provide greater oversight into enforcing them among officials;

Addressed at countries of origin:

15. That the embassies of migrants' home countries provide labour attachés with sufficient funding, staffing and a clear mandate to protect the country's migrant workers, including in cases of arrest, detention or deportation;
16. That the authorities of migrants' countries of origin provide consular assistance and other appropriate support when it is requested by its nationals, including by those who are in detention;

17. That labour attachés be trained on migration, labour rights and counselling skills in order to promote the rights of their compatriot migrant workers;
18. That nationality verification centres be transformed into one-stop service centres staffed with trained staff who can provide migrants with necessary information and counselling;
19. That governments of countries of origin negotiate an end to mass deportations;
20. That governments of countries of origin collaborate with the Royal Thai Government on behalf of migrants to ensure humane conditions during the arrest, detention and deportation process, and to ensure that deportations are carried out in a humane and safe manner;
21. When migrants have been deported or have returned voluntarily to their countries of origin, we urge their governments not to treat them as criminals and subject them to punitive sanctions such as fines and imprisonment;

Addressed at the Royal Thai Government:

Arrest

22. That law enforcement officials receive initial and on-going training on the provisions of national legislation in accordance with basic international human rights standards applicable to law enforcement officials.
23. That law enforcement officials make existing laws, policies and guidelines governing arrest, detention and deportation procedures public and transparent;
24. That practices of arrest, detention and deportation of migrant workers be reviewed by police, immigration, and border control officials in collaboration with migrant groups and civil society and standardise them to make the procedures more humane;
25. That arrested migrants be informed of their rights to, and be given access to appropriate legal aid and support services, including services provided by NGOs and consulate staff;
26. That professional interpreters be employed in police stations in areas where there are large numbers of migrants. In other areas, officials in police stations must fulfil their duty to ensure access to translation or interpretation services and establish links with NGOs or embassies for that purpose;
27. That the practice of night-time arrests and dawn raids is immediately ceased. In cases where such actions are deemed necessary and appropriate they must be subject to rigorous legal oversight;
28. That arresting authorities ensure that necessary interviews take place with migrants to identify vulnerable groups who will need special assistance or should be referred to agencies specialised in screening and providing appropriate assistance;

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- 29. That arresting authorities ensure that appropriate medical care is provided to those in need;
- 30. That arresting authorities ensure migrants' belongings are returned if confiscated;
- 31. That all the parties concerned ensure that arrested migrants are paid in full the wages and benefits owed to them;

Detention

- 32. That Thailand adopt alternatives to detention for managing its irregular migrant population;
- 33. That the authorities ensure immigration detention is used only as a last resort;
- 34. That authorities not detain vulnerable migrants, including: children, asylum seekers, pregnant women, the elderly, people with disabilities, people with special medical needs, or victims of trafficking;
- 35. That when detention is inevitable, the authorities minimise periods of detention;
- 36. That the authorities ensure that all detainees are treated humanely in accordance with international principles and standards governing the use of administrative detention; including:
 - a. provision of health care, information about the reasons for detention in a language the person understands, legal assistance, recreation, and adequate food and water;
 - b. freedom from ill-treatment, including physical and psychological abuse;
 - c. separation of immigration detainees from criminal prisoners;
 - d. the ability to challenge detention in an appropriate legal setting;
 - e. maintenance of contact with outside world, including family members and consular representatives.
- 37. That the authorities provide bi-lingual social workers with appropriate language skills in response to the needs of the detainees;
- 38. That sanitary and other facilities in detention be improved to reflect Thailand's commitments under international law. Namely, to ensure that migrants are provided with clean toilets and bathing facilities, drinking water, food, decent bedding, appropriate space, as well as access to medical attention;
- 39. That the authorities provide separate quarters for male and female migrants held in detention, and in addition make appropriate arrangements for families;
- 40. That the authorities assign appropriate numbers of female immigration and police officers to police stations and IDCs;
- 41. That the authorities screen migrants for possible abuses of their human rights, including forced labour or potential refugee status and immediately refer migrants to relevant agencies such as the UNHCR;

Deportation

42. That officials of the Royal Thai government never deport migrants to countries where they have no legal status, or if their safety and security cannot be guaranteed in the receiving country;
43. That law enforcement officers treat deportees humanely and with dignity;
44. That safety and health standards regarding vehicle, driver and passenger safety are strictly enforced regarding transportation of migrants for deportation;
45. That appropriate arrangements including provision of sufficient water and food and toilet stops be made for migrants who are deported through long journeys; and
46. That the practice of collecting fees from migrants in order to pay for their own deportation is ceased.

Annexes

Annex 1. Type of work by sector and sub-sector

I. Type of work by sector and sub-sector	No.	Per cent
1. Agriculture	17	8.02
2. Construction	38	17.92
3. Factory	13	6.13
4. Fishing and related industries	22	
• Boatman	2	0.94
• Fishery related	19	8.96
• Fishing	1	0.47
5. Service workers	56	
• Beauty salon	1	0.47
• Car wash	1	0.47
• Other service	12	5.66
• Resort	1	0.47
• Restaurant	4	1.89
• Sex worker	5	2.36
• Thai massage	8	3.77
• Massage	15	7.08
• Karaoke	9	4.25
6. Informal Traders	9	
• Fruit seller	1	0.47
• Store (selling construction materials)	2	0.94
• Vending	6	2.83
7. Daily Labour	18	
• Daily labourer	15	7.08
• Manual Labourer	3	1.42
8. Domestic Workers	4	1.89
9. Unemployed	5	2.36
10. Others	30	
• Abattoirs	1	0.47
• Auto repair	5	2.36
• Company	1	0.47
• Dependent	2	0.94
• Electrician	1	0.47
• Furniture	1	0.47
• House keeper	4	1.89
• NGO worker	1	0.47
• Printing	1	0.47
• Saw mill	2	0.94
• Seasonal worker	1	0.47
• Security Guard	1	0.47

I. Type of work by sector and sub-sector	No.	Per cent
• Wood mill	1	0.47
• No answer	8	3.77
Total	212	100.00

Annex 2. Type of work by sector and sub-sector

Location	Type of institution	Approx. size of holding facility	No. People	Further info
1) Chiang Mai areas				
Chaiprakan district, Chiang Mai	Police cell	Unknown	15	
Khaokha district, Lampang	Police cell	3x3 metres	8	
Muang district, Chiang Mai	Police cell	Unknown	10-15	Could contact employer
Nawaai, Chiang Dao district, Chiang Mai	Police cell	5x4 metres	15	
Fang	Police cell	5x4 metres	15	
Chang Phueak district, Chiang Mai	Police cell	No answer	Crowded	Medicine and doctor available
Chiang Mai	IDC	5x4 metres	15	
Fang	Prison	3x3 metres	15	
2) Tak areas				
Mae Sot	Police cell	10x10 and 50x50 metres	50-100	All men and women in same room, area divided by gender. Could contact friends, families, employer
Tak	IDC	From 15x10 metres to 50x50 meters	50-200	Medicine provided
Tak	Prison	From 20x20 metres to 30x30 metres	20-100	First aid room and nurse/public health officer. Basic medicine. Seriously ill referred to hospital. Regular medical check-ups every morning. "I got medicine but was verbally abused by doctor".
Bangkok	Prison	Don't know	30	Doctors came every day and performed medical check-up. Medicine available. "If family members wanted to come and meet me, they must have a document. My legs and hands were chained".
Tak	Juvenile Observation and Protection Centre	40x40 metres	300	Referrals to hospital provided. Detainees could contact families.

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Location	Type of institution	Approx. size of holding facility	No. People	Further info
3) Mukdahan areas				
Muang district, Mukdahan	Police cell	2x2 metres	5-7	Detainees could contact families, friend and employers.
Loeng Nok Tha district, Yasothon	Police cell	2x2 metres	5	Detainees could contact families, friend employers.
Mukdahan	IDC	5x3 metres	10-20	
Mukdahan	Prison	4x3 metres	5	First aid room and basic healthcare service.
4) Rayong areas Could contact families, friends and employers				
Ban Phe district	Police cell	5x4 metres	30-50	"I saw only nurse, but I don't know what kind of service they provide". Breastfeeding women separated.
Klaeng district	Police cell	8x6 metres	20-70	
Muang district, Rayong	Police cell	5x3 metres	10-45	
Map Ta Phut district	Police cell	6x6 metres	Over 100	
Prachuap Khiri Khan	Police cell	2.5x3 metres to 40x40 metres	20-100	
Rayong IDC	IDC	Min. 5x3 metres Max. 10x15 metres	30-170	Basic medicine available. Able to contact families.
Bangkok IDC	IDC	Min. 12x8 metres Max. 50x50 metres	100-400	Basic medicine available. Able to contact friends.
Rayong	Prison	8x6 metres	45	Doctor, nurse and basic medicine. If seriously ill have to stay in first aid room. Detainees able to contact employer, friends. Separate male and female bathrooms. Women housed separately from men and not allowed to meet any men.
5) Phang Nga areas				
Takua Pa district	Police cell	30x20 metres	10-100 people	Able to contact friends, family, employers. Regular visits allowed by FED staff.
Ranong	Police cell	15x15 metres	10 people for sleeping	Able to contact outside help by phone.
Phuket	Police cell	Don't know	Crowded	
Ranong IDC	IDC	15x15 metres	15-over 100	Medicine available. Separate cells for alcoholics. Able to contact friends and employers.

Location	Type of institution	Approx. size of holding facility	No. People	Further info
Phang Nga IDC	IDC	Big	Can't estimate	
Takua Pa, Phang Nga	Prison	No answer	3	Medical clinic in prison, medical check carried out.
Ranong	Prison	45x45 metres	12-160 people	Medical clinic in prison. Detainees could use phone in prison to chat and order food from outside.
Ranong	Juvenile Centre	No answer	5	Regular weekly medical check-up held at the prison clinic and referred to a hospital outside if necessary
Ranong	Army gate	No answer	5	Allowed to contact NGOs outside.

Annex 3. Report of Policy Dialogues

1) Bangkok, Thailand

In order to present the key findings and recommendations arising from this research, MMN representatives held a policy dialogue meeting with the Immigration Bureau of the Royal Thai Government on 28 June 2013.

To ensure that the issues raised at the meeting reflect the current situation, MMN held a consultation meeting in Bangkok with migrants and Bangkok-based NGOs on 25 June 2013. This preparatory meeting was attended by representatives of the Jesuit Refugee Service (JRS), the Foundation for Education and Development (FED), the Foundation for AIDS Rights (FAR), and four migrant leaders from the Lat Krabang district of Bangkok. MMN presented key findings and recommendations emerging from the ADD project to partners, jointly strategised as to how best to protect migrants' rights during the ADD process, and prioritised issues for advocacy with the Thai Immigration Bureau. An important set of findings to emerge from the consultation meeting was that issues pertaining to arrest remain common in Bangkok. Migrants continue to be arrested while travelling or reporting their stay over 90 days. Arrests include documented migrants. In addition, it was noted that migrants still lack knowledge about their rights during the ADD process.

It was decided that key advocacy strategies would be to firstly distribute the research findings and information on ADD in an ADD report and executive summary, and to continue monitoring the ADD situation in Thailand and implement recommendations through alerting the network and submitting a statement to National Human Rights Commission of Thailand (NHRC). Secondly, following coordination with partners and officials, migrant advocates will be trained on the rights of migrants who are subjected to ADD, and thirdly, a Workshop on Laws and Policies concerning ADD will be held in coordination with external partners.

Participants raised concerns for the MMN secretariat to present in the meeting with immigration officials. Firstly, with regards to the one-stop service centre for National Verification, it was noted that office hours clash with the working hours of migrants, which makes it difficult for them to make use of the service. Also, migrants run the risk of being arrested and detained while traveling to the centre, and they face discrimination from locals when visiting the centre, which is located in a shopping mall. Secondly, on the matter of health, migrants under arrest who are unwell are sent to the Immigration Detention Centre (IDC) rather than to hospital, and detainees who have serious illnesses are immediately deported rather than sent to hospital. Thirdly, concerns were raised about fines for overstaying on visas or missing deadlines for reporting a stay over 90 days, with participants noting that the amount of THB 2,000 per day is excessive.

MMN then held a meeting with the Deputy Superintendent 2, Investigation Division of Immigration Bureau at Bangkok Immigration Office on 28 June 2013. The officials commented that problems related to the ADD process arise from migrants' lack of understanding of Thai laws and policies. This information should be provided by their employers. As a result, the Immigration Bureau, UN High Commissioner for Refugees and the International Organisation for Migration have jointly organised training at the Bangkok Immigration Detention Centre every Tuesday afternoon on Thai laws, with a focus on the Immigration Act for Migrant Detainee.

The Immigration Bureau has also been helping migrant detainees disabled as a result of work accidents to claim compensation and has coordinated with NGOs to arrange special deportation.

With regards to health, there are two clinics in Bangkok IDC which provide healthcare services to detainees, namely the Jesuit Refugee Service clinic and the Ministry of Public Health (MoPH) clinic. However, the MoPH clinic is not staffed by a regular doctor, and in other immigration detention centres where there is no clinic, migrant detainees who are ill are referred to local hospitals. The immigration officials said migrant detainees should be able to access appropriate healthcare especially in the case of an unexpected illness, but full healthcare services are not always available to all detainees. However, in the event of the death of a detainee, authorities will be investigated and prosecuted. In addition, authorities must not transfer the body until the investigation process has been completed.

A number of points were clarified or noted. Immigration officials are not authorized to detain any migrants who are willing to return to their countries of origin. If migrant workers are arrested during a period in which they are changing employment, they can contact their former employer for bail. Regarding food and drink provided at IDCs, according to the annual government statement of expenditure, both IDC and police cells receive government subsidies of THB 15 per person per meal. Currently, some IDCs are supported by NGOs.

The official agreed that mistakes occur during the ADD process, mainly due to language barriers, migrants' lack of understanding of Thai laws and policies, and no visible signs of health problems during the process. The Immigration Bureau expressed concern over IDC detention conditions, especially in the case of provincial IDCs. The main issue to be addressed in this regard is the limited space of IDCs in relation to the large numbers of detainees.

Possible implementation of MMN recommendations:

Regarding access to translation services, the Immigration Bureau has planned to employ more interpreters in immigration offices across the country. In the meantime, language training for immigration officials in provincial offices, especially the areas where larger numbers of migrant workers are employed, has been arranged. MMN would be welcome to contribute to this if resources are available. In order for MMN to engage in this training, a request letter needs to be submitted to the commissioner of the Immigration Bureau to inform them noting the focus. For example, MMN may be able to submit its publication such as *Speaking of Migration: Mekong Vocabulary on Migration and Legally Binding: A Summary of Labour Laws in the Greater Mekong Sub-region* labour law publications, and professional interpreters who could train immigration officials.

2) Burma

The MMN secretariat has submitted the ADD report and Executive summary (in Burmese) to selected Burmese ministries (all in Naypyidaw) through the MMN contact person from the Ministry of Home Affairs (Anti-Trafficking Division). The report went to the Ministry of Home Affairs (Anti-Trafficking Division), the Ministry of Immigration, the Ministry of Labour, Employment and Social Security.

MMN also submitted the report to two ministries based in Yangon, namely the Ministry of Foreign Affairs and the Myanmar Human Rights Commission.

3) Cambodia

ADD project partner, Legal Support for Children and Women (LSCW), has submitted the ADD report (in English) to the H.E. Chou Bun, Secretary of state, Ministry of Interior.

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