



(C. 2)

Current Situation of Burmese Migrant Workers and their Children in Thailand

*Ana I. Mendy and Nicole,
volunteers of Burma Lawyers' Council*

Abstract. It is estimated that over 2.2 million people from Myanmar have decided to flee the tyranny of the military government in their home country and cross the porous Thai-Burmese border.¹ Upon doing so, most Burmese migrants find work that most Thais refuse to partake in. These jobs, known to many as "dirty, dangerous, and degrading" or "3-D jobs," include working in garment factories, fisheries, and sweatshops in which beating and modern-day slavery are hardly uncommon.² In 2005, Burmese migrant workers comprised 80% of all migrant workers in Thailand.³ Yet by 2009, Burmese migrant workers earned less than half of Thailand's legal minimum wage (133 baht per day).⁴ Given the dire conditions that Burmese migrant workers face in Thailand one might expect the Thai government to step in and enforce national worker protection standards.⁵ Yet while the Thai Royal Government has established a number of registration processes in order to provide a path to legalization and protection under national law for migrant workers, these processes are poorly designed, feebly administered, and rarely implemented.⁶ In the aftermath of the 2008 economic downturn and with the appreciation of the kyat in comparison to the baht, Burmese migrant workers may begin to face even harsher working conditions, lower wages, and higher pressures to join the "3-D job market." Burmese migrant workers' children fare no better than their parents in Thailand, as education continues to remain limited to them.⁷

Burmese Migrant Workers in the Aftermath of the 2008 Economic Depression

There is a growing literature on the abuse and exploitation of Burmese migrant workers in Thailand.⁸ Burmese migrant laborers are not only faced with hardships due to workplace conditions, but also as a result of the poorly designed Thai immigration system, police corruption, and pro-business incentives for employing Burmese migrant labor.⁹ Although the Royal Thai Government has cautiously experimented with registration programs to regularize and control migration into Thailand from Myanmar since 1992, the registration process is still extremely complex and hardly serves to ameliorate the tenuous status of most Burmese people in Thailand.¹⁰ Problems with this system include odd intervals



for registration, high fees that render registration financially impossible for many, and employer oversight, which often leads to gross embezzlement.¹¹ In addition to the complicated immigration system, police forces in towns along the Thai-Burma border profit tremendously from the tenuous legal status of the Burmese in Thailand. Unofficial sources of income for the police in these areas include, but are not limited to, bribes to process and expedite legal documents, involvement in legal business ventures, illegal business ventures such as the smuggling of drugs and sex workers, as well as agreements with employers to only selectively implement certain aspects of the law that are meant to protect workers in Thailand.¹² In addition, the pro-business environment in Thailand that incentivizes the use of Burmese migrant workers does little to improve working conditions.¹³ For example, in 1993 the Thai Board of Investment created investment promotion zones to increase the industrialization of the country. Most of these areas lay near (or on) the Thai-Burma border, and investing in them would guarantee its investors exemption from import duties on machinery, corporate tax exemptions, and a 75% tariff exemption on raw materials used and sold domestically, among others. These pro-business incentives coupled with the wide availability of cheap Burmese labor lay the foundations for a system of protracted exploitation. Both Thai and Burmese workers who have a permanent legal status in Thailand are ostensibly protected under the 1997 Constitution of the Kingdom of Thailand, as well as the Labor Protection Act of 1998 (B.E. 2541).¹⁴ Yet whether these protections apply to Burmese migrant workers still remains much in question, especially as police in border towns align with businesses to overlook violations of these statutes.

The economic downturn of 2008 has exacerbated the conditions of Burmese migrant workers in Thailand, especially those in the garment industry. The local chapter in Mae Sot of the Federation of Thai Industries announced in March 2009 that orders were down by 12%, yet many workers confess that production has dropped, and that rumors of lay-offs, unpaid leave, and cancellations of overtime are widespread. Furthermore, the value of remittances has also taken a hit given the appreciation of the Burmese kyat, which has risen by a quarter against the baht over the past year. Not only has the appreciation impacted the value of remittances, but it has also exacerbated the falling demands for imports inside Burma. While migrant workers in the garment industry may continue to feel the pinches of the economic downturn and some may in fact face unemployment, those toiling in the "3-D jobs" will surely continue to face the same abuses, and the demand for employees in these industries will likely remain stable (if not on the rise), even as prices and incomes fall.

The Plight of the Children

If one were to judge Thailand's commitment to furthering the education of all its children according to national law and its ostensible support for a number of



international conventions it would fare remarkably well. All children in Thailand, regardless of nationality, ethnicity, or registration status, are guaranteed a basic education under the National Education Act of 1999 (B.E. 2542), which explicitly states that "[a]ll individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge."¹⁵ Furthermore, Thailand has ratified the U.N. Convention on the Rights of the Child, and repeatedly announced its determination to leave no child behind.¹⁶ In August 2005, the government launched an "Education for All" campaign with the aim of giving all children in Thailand equal access to schooling. Most recently, speaking on the World Day Against Child Labor in June 2009, Chaiwut Bannawat, Thailand's Deputy Education Minister stated that the Thai government would introduce a new policy of providing equal educational opportunities to all children in the Kingdom including over 100,000 stateless and migrant children.

Yet the reality of the situation of Thailand's children is very different to the one it ought to be if laws and speeches directly translated into action, as there remain a large number of children who have failed to receive an education—especially migrant and stateless children from Burma. Despite Thailand's ratification of the Convention on the Rights of the Child, and the constitutional responsibility of its Ministry of Interior and Ministry of Education to uphold responsibilities that allegedly guarantee access to education to all children, the state has yet to enact these obligations, especially with regard to the children of Burmese migrant workers who live in the periphery of Thai society. According to the Ministry of Education, of the 93,000 children under the age of fifteen registered with the Ministry of Interior in July 2004, there were only 13,459 students (a mere 14%) from Cambodia, Laos, and Myanmar attending Thai schools.¹⁷ While Thai law states that all children in the country shall receive birth certificates and education, its authorities continue to define children of non-Thai parents as glaring exceptions to the rule. Consequently, they are continuously denied basic human rights, such as access to education. According to a recent report by the International Organization for Migration (IOM), an estimated 200,000 migrant children younger than 17 are in the country. Some NGOs, however, estimate there could be as many as 500,000 children born to Burmese parents in Thailand.¹⁸ Even though Thailand announced a policy in 1996 that would permit the registration of certain illegal migrant workers for employment, no children registered.¹⁹ The plight of the children of Burma may in part be explained by the following factors:

(a) *On-the-surface factors (lack of awareness, costs of schooling, lack of resources, language barriers)*. Although the Thai law guarantees access to education to all children aged 7 to 16, many Thais and Burmese seem unaware



of these statutes. As a result, schools, immigration officers, and governmental agencies routinely refuse to teach migrant children deeming it illegal to do so.²⁰ Similarly, migrant parents are not aware of the right they possess to enroll their children in Thai schools nor are they aware that a basic education is free of charge.²¹ The inherent costs of schooling and transportation have also prevented many from attaining a bare-minimum education. While costs of education remain high for the children of Burmese migrant workers, schools are sparsely stocked and lacking in good teachers. Amanda Bissex, chief of the child protection section with the UN Children's Fund (UNICEF) Thailand, noted that many teachers in Thai schools refuse to educate Burmese children and are often unwilling to make an extra effort to dedicate more time to these children who are not native Thai-speakers and still struggle with communication. Children of Burmese migrant workers thus often have difficulties adapting to their new schools as they have not yet developed their communication skills and do not speak Thai.²²

(b) Child labor. Tattiya Likitwong, a project coordinator of the Child Development Foundation, noted that the child labor situation in Thailand has not improved because children from Burma, Laos, and Cambodia are found working in several businesses, particularly in big cities and in the cities along the border. She declared that many children "are found working in fishing industries, selling flowers on the roads or begging" and criticized the numerous Thai employers who currently employ more than 200,000 migrant children between the ages of 15 and 18.²³

(c) Fear of trafficking. Not only is the cost of education beyond the grasp of most Burmese migrant workers who consistently earn a daily wages well below the minimum salary, but they also face the challenge of having to send their children to schools that are considerably far from their houses. Jackie Pollock, director of the Migrant Assistance Program (MAP) Foundation, remarked that Burmese parents, who have heard countless stories about the trafficking of children, often worry about sending their children off in busses to school for fear that their children will fall into the hands of sex traffickers.²⁴

(d) Transient lifestyle of parents. Given the nature of the jobs many Burmese parents engage in, children of migrant workers are often victims of a transient lifestyle. Reflecting upon this, Pollock, noted that "[s]ome migrant communities are very mobile; construction site workers don't stay in one place, they work on a construction site for three months and then move to another area, so it is difficult for the families to put the children to school."²⁵

(e) NGO-run schools. Parents who refuse to send their children to schools far from their residences, and those who cannot afford state-run schools often send



their children to schools run by local NGOs. Yet while these schools enable Burmese children to learn English, and teach them basic vocational skills, the Thai Ministry of Education does not recognize these educational certificates as legitimate.²⁶ As a result, children that go through these in NGO-run schools often find themselves hard-pressed to prove their credentials to potential employers and higher education schools as they lack the Thai certificate of education, which is essential for further study.²⁷

While working conditions for Burmese migrant workers only seem to worsen in light of the 2008 economic downturn, access to education for their children remains a challenge.

Conclusion

As a member of several international organizations and an ostensible exponent of international human rights, the Royal Thai Government has a long way to go with regard to the current status of its migrant workers from Burma and their children. Many of the factors that contribute to the influx of migration from neighboring countries, such as Myanmar, are not within the Thai government's control. However, as a member of the United Nations, the Thai government is not only culpable under numerous international agreements, such as the Responsibility to Protect, but furthermore, as a magnet for migrant workers it must immediately recognize that it has the responsibility to ameliorate the conditions of its very own inhabitants, especially the stateless Burmese.²⁸ The following solutions ought to be prioritized and addressed in the near future.

(1) The Royal Thai Government must revisit and revise the registration process for migrants and other cumbersome laws that currently force migrant workers to remain illegal in status. A comprehensive awareness campaign led by the Ministries of Education, Health, Labor, and Interior should be implemented with the goals of clarifying existing law and creating uniformity in how immigration officers, school principals, and employers understand and implement Thai laws. As discussed above, one area that causes widespread confusion is the registration process, which, if successfully utilized, would enable migrant workers to lawfully work in Thailand and thus enjoy benefits such as access to health care and education.

(2) The Royal Thai Government, as well as local NGOs, must seek to spread awareness of migrants' rights, among them the right to quality education. Burmese migrant workers cannot hope to improve their situation or reap the benefits of their legal rights if they remain unaware of what these rights are or confused regarding bureaucratic processes. Although this responsibility would ideally rest on the slothful shoulders of the government, NGOs are realistically



more capable of raising awareness within marginalized groups due to their non-governmental character. Given the number of schools already being run by NGOs in Thailand and their vast connections to migrant communities, they are also better suited to raise awareness more immediately and perhaps with more efficiency.

(3) The Royal Thai Government ought to recognize diplomas issues by NGO-run schools. Doing so would enable thousands of Burmese young graduates to pursue a university education, and thus rescue themselves and their families from poverty. While ideally the government would recognize these diplomas without external pressures, such an action seems highly unlikely. NGO pressure is thus crucial to draw attention to the present injustices that many children suffer upon graduating from these NGO-run schools.

(4) The Royal Thai Government ought to better enforce present laws that regulate its schools. While ignorance among the citizenry of the law may be understandable, the indifference of the government to these violations is not. It ought to be the government's responsibility to ensure that schools provide children not only with the right to enroll, but also with free lunches and textbooks, as decreed by the law.

Aside from these recommendations, this article calls for pragmatic solutions to deal with the glaring human rights violations in Burma. As the Harvard report "Crimes in Burma" declares, the Burmese have been subjected to "epidemic levels of forced labor in the 1990s, the recruitment of tens of thousands of child soldiers, widespread sexual violence, extrajudicial killings and torture, and more than a million displaced persons."²⁹ Immediate international attention ought to be drawn toward Myanmar—especially in light of the trial of pro-democracy leader Aung San Suu Kyi. As dire as the situation in Burma may seem, gradual action must be taken in order to promote democracy in Burma—doing so will not only improve the quality of life of millions of Burmese, but will also help Thailand to better deal with the thousands of Burmese that cross the Thai-Burma border every year. Indeed, if less Burmese cross the border every year, the Thai government and its agencies would be better able to deal with registering them, and enabling them to become legal workers under the law.

Moreover, international pressure ought to also be applied to the Royal Thai Government—for it to recognize its importance as a necessary haven for many within the region, and the needs of its inhabitants regardless of their nationality. While the abovementioned solutions would ideally happen overnight, the reality of the situation is that incentives are currently not aligned with reform, as businesses profit from cheap labor, the police count on bribes for their income, and the Thai population benefits from the lack of Burmese competition for higher paying jobs. International pressure will thus prove crucial in encouraging the



government to meet the human rights standards upheld by the international community—especially those dealing with the rights of migrant workers and their children.

(Endnotes)

¹ Note that estimates vary from 1 million to 6 million. Most reliable sources, however, agree that 80% of all of the immigrants to Thailand are Burmese.

² "Burmese Migrant Workers in Thailand: Myanmar's Overflow," *The Economist*, 19 March 2009.

³ For more see: "Thailand: The Plight of Burmese Migrant Workers," ASA 39/001/2005, Amnesty International.

⁴ *Ibid.* It must be noted, however, that the garment industries in Mae Sot are seen as the best alternative among a few bad choices.

⁵ While there are many international worker protection statutes, as well as laws that declare the access to education for all children—many of which have been ratified by the Thai government—this article will focus solely on national law.

⁶ "Thailand: The Plight of Burmese Migrant Workers," ASA 39/001/2005, Amnesty International.

⁷ "Freedom of Education for All—Is This A Reality in Thailand?" UNESCO Bangkok, 2007. www.unescobkk.org/.../Annex_C_ThaiParticipants_EFA_Thailand.doc.

⁸ See for example: "Thailand: The Plight of Burmese Migrant Workers," ASA 39/001/2005, Amnesty International.

⁹ Erick Gjerdingen's "Human Smuggling vs. Human Trafficking: The Impact of the 'Exploitation' Standard on Burmese Migrant Workers in Thailand," identifies these three issues as central to the poor working conditions faced by migrant workers in Thailand.

¹⁰ Philip Martin, *Thailand: Improving the Management of Foreign Workers* (International Labor Organization, 2004).

¹¹ The intervals in which the government enables people to register are irregular, leaving many confused regarding when they can or cannot register, and rendering those eligible to register illegal in status. Furthermore, the 3,800 baht fee leaves most Burmese unable to pay such an impossibly high fee. In addition should workers decide to change their employer, they must re-register and thus incur a new wave of fees. Some migrant workers pay the 3,800 baht fee through their employers—the employers pay the fee and later discount it from their employees' salary. While this pragmatic solution occasionally works, frequently unscrupulous employers charge their employees with fees higher than the original 3,800 baht

¹² For more see: Erick Gjerdingen's "Human Smuggling vs. Human Trafficking: The Impact of the "Exploitation" Standard on Burmese Migrant Workers in Thailand," in "Police Corruption."

¹³ Bryant Yuan Fu Yang, "Life and Death Away from the Golden Land: The Plight of the Burmese Migrant Workers in Thailand," *Thailand Law Journal* 2009, *Spring Issue 1, Volume 12*.

¹⁴ For a longer discussion of the specific sections of the Constitution that protect workers see: Darunee Paisanpanichkul, "Burmese Migrant Workers in Thailand: Policy and Protection," *Legal Issues on Burma Journal*, No. 10 – December 2001. The



Labor Protection Act defines employee as follows: " a person who is employed by an employer for remuneration, regardless of the title that he is given." It is therefore safe to assume that this act applies to ALL workers in the kingdom of Thailand—regardless of their nationality, gender, or race.

¹⁵ National Education Act B.E. 2542 (1999), Ch. 2 §10 (Thail.), <http://www.moe.go.th/English/edu-act.htm>.

¹⁶ "Reaching Out to Migrant Children," Bangkok Post, 19 May 2009.

<http://www.bangkokpost.com/leisure/leisurescoop/16957/reaching-out-to-migrant-children>

¹⁷ Bryant Yuan Fu Yang, " Life and Death Away from the Golden Land: The Plight of the Burmese Migrant Workers in Thailand," Thailand Law Journal 2009, Spring Issue 1, Volume 12.

¹⁸ "Thailand: Burmese migrant children missing out on education," Children Education, <http://www.irinnews.org/Report.aspx?ReportId=84844>.

¹⁹ Siwaporn Auasalun, Supang Chantavanich, Premjai Vungsiriphisal, " Migrant Children in Difficult Circumstances in Thailand," The Asian Research Center for Migration Institute of Asian Studies, Chulalongkorn University, 1999.

²⁰ Bryant Yuan Fu Yang, " Life and Death Away from the Golden Land: The Plight of the Burmese Migrant Workers in Thailand," Thailand Law Journal 2009, Spring Issue 1, Volume 12.

²¹ Ibid

²² "Thailand: Burmese migrant children missing out on education," Children Education, <http://www.irinnews.org/Report.aspx?ReportId=84844>.

²³ For more on child labor see: Siwaporn Auasalun, Supang Chantavanich, Premjai Vungsiriphisal, " Migrant Children in Difficult Circumstances in Thailand," The Asian Research Center for Migration Institute of Asian Studies, Chulalongkorn University, 1999.

²⁴ "Thai Education Reform to Benefit Burmese Migrants," All Burma I.T. Students' Union, < <http://www.abitsu.org/?p=5102>>. For more on the sex trafficking of children see: Siwaporn Auasalun, Supang Chantavanich, Premjai Vungsiriphisal, " Migrant Children in Difficult Circumstances in Thailand," The Asian Research Center for Migration Institute of Asian Studies, Chulalongkorn University, 1999.

²⁵ "Thai Education Reform to Benefit Burmese Migrants," All Burma I.T. Students' Union, < <http://www.abitsu.org/?p=5102>>

²⁶ "Thailand: Burmese migrant children missing out on education," Children Education, <http://www.irinnews.org/Report.aspx?ReportId=84844>.

²⁷ For an example of such NGO-run schools see: <http://www.globalgiving.com/projects/thailand-education-to-children-at-risk/>. Note that this is one of countless such organizations.

²⁸ "The Crisis in Burma," International Coalition for the Responsibility to Protect. <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma>

²⁹ "Crimes in Burma," International Human Rights Clinic at Harvard Law School, 2009, iii.

* * * * *