NO STATUS: MIGRATION, TRAFFICKING & EXPLOITATION OF WOMEN IN THAILAND

Health and HIV/AIDS Risks for Burmese and Hill Tribe Women and Girls

A Report by
Physicians for Human Rights

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GLOSSARY

Use of Terms in This Report

Child – The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (art. 1).

Burmese – The Burman are the largest single ethnic group in Burma and dominate the army and current military leadership. Most of Burma's ethnic minorities inhabit areas along the country's mountainous frontiers; the largest are the Karen and Shan groups. In this report, the term *Burmese migrants* refers generally to migrants from Burma, most of whom are ethnic minorities.

Exploitation – The Trafficking in Persons Protocol defines *exploitation* to include, at a minimum, "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs" (art. 3a). The ILO Forced Labour Convention (ILO No. 29) defines *forced or compulsory labour* as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (art. 2).

Hill Tribes – In Thailand, the term *hill tribes* refers to a subset of the country's ethnic minorities, most of whom live in the remote northern highland areas of the country. Members of these ethnic groups are also found variously in parts of China, Laos, Vietnam, and Burma. Many are indigenous peoples going back many generations; others are more recent arrivals. The direct translation from the Thai, *mountain people,* is infrequently used; some prefer the term *highlanders,* but that is somewhat imprecise, as many lowlanders from Thailand and neighboring countries have also relocated to the highlands.

Irregular or Undocumented Migrants or Workers – Noncitizens who enter or travel or work within a country without the necessary visa/travel documents and residency/work permits.

Migrant – In this report, the term *migrant* refers to both foreign persons and undocumented persons born in Thailand (e.g., from the *hill tribes*).

Migration – A description of the process of the movement of persons, and thus includes those forced or compelled to leave their homes, such as the movement of refugees, displaced persons, and uprooted people, as well as economic migrants.[1] *Unsafe migration* refers to a situation in which the movement of persons is insecure, particularly for those who are undocumented, because of the unscrupulous behavior of border officials, traffickers, and others and a lack of information with which to make choices and assess risks.

Prostitution – In this report, used to refer specifically to the criminal offense under Thai law.

Sex Work – As used in this report, *sex work* refers to the commercial provision of sexual services and encompasses a wide spectrum of coercion and/or force, from very little to extreme in nature and duration. This use is intended to recognize that the nature, degree, or existence of sexual and other forms of exploitation to which an individual in sex work is subject, and that individual's perspective, may vary over time. In this report, PHR refers to women as *sex workers* rather than *prostitutes* not wanting to further stigmatize individuals and to emphasize the importance of promoting their health, well-being, and rights. This is in no way to diminish the recognition that commercial sexual exploitation of children is criminal and violates human rights and that measures to end the trafficking of women and children into the sex industry must be a priority for the international community.

(Human) Smuggling – The Migrant Smuggling Protocol defines the smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident" (art. 3a). The chief distinction between smuggling and *trafficking*, for adults, is that persons consent to be smuggled.

(Human) Trafficking – The Trafficking Protocol defines *trafficking* in persons as "the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." The recruitment, transportation, transfer, harboring, or receipt of a *child* for the purpose of exploitation is considered trafficking regardless of the means used.

Acronyms Used

MOU – Memorandum of understanding

NGO – Nongovernmental organization

PHR – Physicians for Human Rights

SPDC – State Peace and Development Council of Burma

STI – Sexually transmitted infection

I. EXECUTIVE SUMMARY

Description of Study and Report

This study was designed to provide critical insight and remedial recommendations on the manner in which human rights violations committed against Burmese migrant and hill tribe women and girls in Thailand render them vulnerable to trafficking,[2] unsafe migration, exploitative labor, and sexual exploitation and, consequently, through these additional violations, to HIV/AIDS. This report describes the policy failures of the government of Thailand, despite a program widely hailed as a model of HIV prevention for the region. Physicians for Human Rights (PHR) findings show that the Thai government's abdication of responsibility for uncorrupted and nondiscriminatory law enforcement and human rights protection has permitted ongoing violations of human rights, including those by authorities themselves, which have caused great harm to Burmese and hill tribe women and girls.

Methods

Hill tribe women and girls from Thailand and migrant women and girls from Burma were chosen as the focus of this study because they are similarly subjected to human rights abuses, which result in an elevated risk of HIV/AIDS, due to their lack of legal status, discrimination and consequent exploitation, lack of personal security, and inability to access health care and other services. PHR's assessment included qualitative, semi-structured interviews with 1) women with direct experience of trafficking, unsafe migration, exploitative labor, or sexual exploitation; and 2) local NGO representatives and volunteers, fieldworkers and researchers from international agencies, policymakers, academics, and government officials. Individuals under age 18 were not interviewed for the study, given the ethical issues involved in obtaining informed consent from children affected by trafficking, unsafe migration, exploitative labor, or sexual exploitation and the risks of retraumatization in being interviewed. It was expected that many of the women interviewed would have migrated or been trafficked as adolescents and thus could provide some information on the experiences of girls.

Consequently, in terms of trafficking, this is a study primarily about women, not children, particularly with regard to trafficking into commercial sexual exploitation. Although the trafficking of children is an extraordinarily serious human rights concern, it is beyond the scope and contribution of this study. The close nexus that this report describes, however, between violations of human rights, in particular trafficking, and sexual exploitation and HIV/AIDS, may be useful as well for understanding, preventing, and remedying the untenable situation of trafficked children in Thailand and elsewhere.[3]

The findings of this study are not intended to be representative of the attitudes and experience of all migrant and hill tribe women and girls in Thailand, nor is the study able to establish causal associations with scientific certainty. Considered together with the key informant interviews, however, and in the context of similar testimonies collected by others, the narrations from women with direct experience of trafficking, unsafe migration, exploitative labor, or sexual exploitation provide considerable insight into patterns of abuse and strongly suggest corrective actions.

Summary of Project Findings

Although Thailand boasts impressive national institutions, a "People's Constitution," an active National Human Rights Commission, and a stable democratic process, the interviews conducted for this study nevertheless illustrate great cause for concern with regard to the current administration's commitment to human rights protection and HIV/AIDS prevention, care, and treatment for migrant and hill tribe populations. Vulnerability to HIV/AIDS for women and girls in these groups is associated with the human rights abuses that they experience: discrimination, unsafe migration, trafficking, labor exploitation, denial of health care, sexual exploitation, and gender-based violence. All of these violations increase the risks of HIV infection and bring with them other health, social, and economic consequences that are devastating for individuals and their communities.

Freedom from sexual abuse and exploitation, with their directly associated risks of HIV infection, depends, therefore, on the promotion of rights and the mitigation of violations. In the Thailand context, for Burmese and hill tribe women and girls this freedom means safe migration, fair labor practices, citizenship and its benefits, justice for crimes and violations, and the highest attainable standard of living. Safe, appropriate, and

accessible reproductive health care in particular is central to the overall well-being for these populations and to a decreased risk of HIV infection. Care and treatment equal to that received by Thais who develop AIDS — including anti-retroviral treatment — is also required to ensure the full enjoyment of human rights by Burmese and hill tribe women and girls.

Underlying Discrimination and Other Violations of Human Rights

The study findings indicate that both hill tribe and Burmese women and girls contend with denial of full legal status and gender-based discrimination, which make them vulnerable to trafficking, unsafe migration, subsequent exploitative labor, and sexual exploitation and place them at increased risk of HIV infection.

Hill Tribes[4]

Many hill tribe women, though born in Thailand, are not Thai citizens, and their children are stateless. PHR learned that noncitizens cannot register births or marriages, are denied opportunities for education and work, cannot access public health care services through the universal health care ("30-baht") plan, and are restricted in their freedom of movement. This situation further constricts the opportunities for women in hill tribe communities, which are already limited because of traditional gender norms and the isolated, agricultural nature of life in the highland villages.

Hill tribe women and girls also come from marginalized communities. Respondents noted that hill tribes in the north of Thailand are not represented politically, suffer traditional discrimination, and are at the mercy of central government control and sometimes corrupt and/or neglectful local authorities. As a result, families are often unable to sustain a viable livelihood, and the cultural traditions of their communities are imperiled. When hill tribe women are forced to leave the villages because of circumstances such as financial hardship or loss of farmland, their lack of legal status puts them at risk of unsafe migration. Without travel documents, and some without Thai language or literacy skills and lacking an informed network of support, women and girls (or their relatives) may pay smugglers or rely on the promises of traffickers. They are also especially vulnerable to exploitation and sexual abuse by employers, brokers, and police. The Thai administration's recent "war on drugs," targeting hill tribe communities and individuals for harassment, arrest, and even extrajudicial killing, has further stigmatized the hill tribes and greatly increased their insecurity.

Burmese Migrants[5]

The human rights situation and worsening economic crisis in Burma are well documented. The systematic rape of women and girls, part of the military's terror campaign against minority ethnic groups,[6] and the political and economic instability resulting from the State Peace and Development Council's militarization of Burmese society, have resulted in an exodus from that country.

There are at least one million Burmese in Thailand; some of them described to PHR their journey to Thailand over the long and porous Thai-Burma border. The vast majority are undocumented migrants and often must find the resources to pay bribes to authorities on both sides of the border to avoid detention; job brokers or other types of smugglers may facilitate this passage, and often a debt is owed. Once in Thailand and without work or residency documentation, Burmese women and girls lack the most basic rights and access to services, face acute discrimination, and are subject to the threat of deportation to Burma. The majority of stories of trafficked Burmese migrants collected in this study took place within Thailand once migrants had reached the western border town of Mae Sot.

To gain permission to remain legally in Thailand, the majority of Burmese must rely on the migrant worker registry for unskilled labor; although many are fleeing persecution, only a small percentage enjoy protected status and may legally reside in refugee camps. Having left Burma illegally, migrants in Thailand also fear punishment if they return home. PHR learned that registration is also the only means to safely and affordably access the Thai public health system through the 30-baht universal health care plan. Registration eligibility and the application process change annually, and registration has become more restrictive in the past three years; work permits have been linked to a specific place of employment, and many of the job categories dominated by migrants have not been covered by the registry. This situation has precipitously reduced the number of workers with legal status. Moreover, even with a work permit, migrant workers are at the mercy of unscrupulous employers and are constantly harassed by law enforcement authorities. PHR noted that women and girls are particularly subject to being exploited and extorted under these circumstances, as they constitute the majority of laborers in many of these low-skilled, low-pay positions.

Exploitation Due to Lack of Human Rights Protection and Promotion

Interviews with hill tribe and Burmese migrants made it exceptionally clear that as part and parcel of the denial of legal status and its protections, both populations routinely experience ill-treatment from employers, authorities, and members of the majority Thai community.

Women and girls are exposed to additional risks because of their gender, including sexual harassment and abuse, rape, unintended pregnancy, and unsafe abortion. Women and girls are also the majority trafficked into and sexually exploited in the sex industry. These additional risks and human rights violations are factors for HIV transmission and thus increase the likelihood that hill tribe and Burmese women and girls will become infected with HIV and, given the absence of treatment, most likely develop AIDS.

Interviews also revealed that, as undocumented migrants, many women and girls endure dangerous work conditions without safety precautions; receive low or no pay; are subject to employer confiscation of essential documentation; are forced to labor many hours and without rest periods; subsist in inadequate sanitary and living conditions; and/or are confined, physically abused, sexually abused, and sexually harassed by employers and their agents. For women and girls trafficked into these exploitative situations, the lack of enforcement of existing anti-trafficking laws and policies frequently results in further human rights violations, including repeated trafficking, exploitation by new employers, and abuse at the hands of authorities. Women and girls trafficked into the sex industry suffer particularly harsh and endangering abuse: beatings, sexual assault, and unsafe sex practices by traffickers, commercial sex venue owners, clients, and police or immigration officials that imperil their health in many ways and increase their risk of HIV infection.

Many traffickers of women and girls are in fact police, border, and immigration officials; they and other traffickers enjoy virtual impunity in Thailand, despite a highly praised national legal framework and the prioritization of the issue by the current Thai government. Moreover, PHR was repeatedly told that many Burmese victims of trafficking or other crimes are not identified as such by the Thai authorities, but are instead considered illegal migrants, are arrested and detained, and (if not trafficked again, extorted, or abused in some other manner) are summarily deported back to face further human rights violations in Burma. Such punishment of victims of trafficking without prosecution of traffickers or addressing the involvement of law enforcement and government officials is not only inadequate, it reinforces the pattern of exploitation of vulnerable women and girls.

Even the small number of trafficked persons who are assisted by the processes set up by the Thai law enforcement and social welfare system face an uncertain fate. The majority of these are women and girls trafficked into commercial sex venues, as law enforcement officials are reluctant, and perhaps ill-equipped, to identify as trafficked those who end up in situations of forced labor in factories, domestic service, or other sectors. The stories PHR collected reveal that stateless hill tribe women or girls are afforded long-term shelter, but denial of citizenship limits their opportunities for education, work, or independent living, and they end up in a kind of limbo in state custody. Burmese women and girls simply return, voluntarily or involuntarily, to Burma. Many trafficked persons are subjected to additional human rights violations in the process of their contact with authorities, as Thailand has not evolved and consistently implemented comprehensive policies on the identification, safe removal, witness protection, family reunification, and reintegration of trafficked persons.

The findings of the study also reveal that the general exploitation of hill tribe and Burmese women and girls is routinely aided and abetted by police harassment, which is a daily reality for all migrants. Burmese with work permits or refugee status are not exempt from the constant threat of detention, arrest, extortion, and violence. This situation also acutely affects the NGOs that seek to improve the migrants' lives, as they are staffed with members of same communities. Thus, corruption and official government and law enforcement complicity compound the vulnerability of Burmese and hill tribe women and girls.

PHR interviews also demonstrated that women from hill tribe and Burmese communities in sex work, whether trafficked or not, are subject to extortion, sexual exploitation, and/or sexual assault by police and immigration authorities. Like undocumented persons in general, sex workers,[7] no matter what their circumstances, are threatened with arrest and exploited by corrupt venue owners, including frequent debt-bondage. Moreover, as with domestic service, another occupation held in the majority by female migrants, women in the sex industry are also without recourse to labor protections, for example, under the migrant registration system. Sex workers, furthermore, are socially stigmatized.

Health Consequences of Human Rights Violations, Including HIV/AIDS

Not surprisingly, the human rights abuses inherent in trafficking, unsafe migration, exploitative labor, and sexual exploitation result in extraordinarily serious health consequences, including physical injury, sexually transmitted diseases (among them HIV), pregnancy/abortion complications, malnutrition, and mental health impacts. This study shows that, in addition to these and other health effects, access to health care for Burmese and hill tribe populations is critically limited because of the threat of arrest and deportation, forced confinement, confiscated legal documents, discrimination, lack of financial resources, lack of information, and/or language barriers. Inability to access reproductive health care services, including HIV-prevention education and condoms,

greatly increases the vulnerability of women and girls to HIV infection. Should they become infected, discriminatory denial of care and treatment virtually condemns them to living with (and quickly dying of) AIDS.

The lack of basic rights of Burmese migrants and hill tribes provides a case study of the ways in which denial of rights can have a negative impact on access to health care and vulnerability to disease, especially HIV/AIDS. While Thai HIV/AIDS policies and educational programs have had a positive impact on Thai society at large, hill tribe and Burmese migrant women and girls have been largely excluded from the benefits of these improvements. Moreover, the underlying discrimination and human rights violations they continue to experience elevate their risk of HIV and consign them to a terrible fate should they develop AIDS. The failure to reach these vulnerable communities is not only a failure of human rights, it is a virtual assurance that HIV/AIDS will continue to be a problem for Thailand.

Recommendations[8]

Given the serious personal and societal consequences of human rights violations in Thailand, Physicians for Human Rights urges the government of Thailand, the United States government, Burma's State Peace and Development Council, and international agencies to act on the following recommendations, with the long-term goal of improving the health and human rights of all persons living in Thailand:

The Government of Thailand

Justice and Law Enforcement

The government of Thailand must investigate, prosecute, and punish those who commit crimes, including human trafficking, against any individuals, including migrants of any legal status. The government of Thailand must investigate, prosecute, and punish the collusion or involvement of members of the Thai police and immigration and military intelligence agencies in human trafficking, other crimes (including crimes against migrants), and exploitative labor practices. This must include genuine and immediate efforts to eradicate the endemic corruption that allows human traffickers and smugglers to operate with impunity and to the financial benefit of both rank-and-file and commanding law enforcement officials.

The government of Thailand must investigate, prosecute, and punish members of the Thai police who extort, threaten, exploit, and sexually assault sex workers on the false premise of enforcing the anti-prostitution law.

The government of Thailand should ensure that the innovative One-Stop Crisis Centers for female victims of sexual assault and other crimes of violence are located in hospitals in all districts. It should also ensure that NGO-run hotlines and comprehensive support services, including interpretation and translation, are funded to assist undocumented migrants, sex workers, and others who are frequently subject to violence by authorities — and who may consequently fear to report crimes, pursue legal redress, or seek assistance for their injuries unaccompanied.

The government of Thailand should accord due regard to the human rights of trafficked persons, in accordance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights, paying special attention to ensuring that measures for the identification, protection, and support of trafficked children accord with the best interests of the child. The government of Thailand must cease the involuntary repatriation (refoulement) of Burmese persons. The government of Thailand must ensure that translation and interpretation services are available for all non-Thai-speaking individuals.

The government of Thailand should direct police and other security agents to immediately cease the harassment of NGO and ethnic organization volunteers and workers who are providing services to trafficked persons, vulnerable migrants, and Burmese refugees in Thailand. This harassment includes restrictions of movement, demands for bribes, physical abuse, and threats of arrest, detention, and deportation.

Health Services and Access

The government of Thailand should rapidly move to implement comprehensive health services and HIV/AIDS programs for Burmese migrants and hill tribes, in particular women and girls. It is essential to expand HIV prevention, voluntary testing, and counseling services; increase condom availability; and make anti-retroviral therapy available equally to Thais and to foreign resident migrants and members of hill tribes. The government of Thailand must ensure access to family planning, reproductive health services, and prenatal care. Further, translation of all relevant information and interpretation for health care services must be made available in the ethnic minority languages.

The government of Thailand should commit to the revitalization of the free condom distribution program and to ensuring access to comprehensive and accessible health services for sex workers at the local district level.

Labor and Migration

The government of Thailand should, as soon as possible or no later than the next round of registration, commit to a stable policy expanding the migrant worker registry, particularly to include those categories of work prone to

exploitation of migrants. Access to the 30-baht health plan should be expanded to include the families of registered workers and to remove barriers to access for those workers.

The Ministry of Labor should enforce the labor protections of Thai law equally for all workers and retain and train a workforce adequate to increase routine inspections of factories and other workplaces. The Ministry of Labor should collaborate with NGOs to strengthen complaint mechanisms, including hotlines, and make available legal services, safe houses, and other assistance for migrant workers. The Ministry of Labor should ensure that information about the registration process, labor protections, the complaint process, and workers' rights is available in migrants' native languages and widely circulated.

The Ministry of Labor should ensure that employers register all eligible workers in their employ, deduct from their pay no more than the cost of the work permit, and furnish workers with an original copy of the permit and all other worker documentation. The Ministry of Labor should overturn the regulation requiring pregnancy screening during health checks and protect registered workers from dismissal by employers based on pregnancy.

Statelessness and Citizenship

The government of Thailand should act immediately to confer full citizenship on members of hill tribes born in Thailand and take measures to ensure that they enjoy all rights of citizenship, including registry of marriages and births, school graduation certification, land rights, access to health care, and representation and participation at the village and district levels.

The government of Thailand should ensure that all children born in Thailand are registered at birth and receive a birth certificate, regardless of their nationality. The government of Thailand should ensure that no child is prevented from attending Thai schools and that all children receive a diploma upon graduation.

The United States Government

HIV/AIDS

USAID should pressure the government of Thailand to rapidly move forward with the implementation of funded programs for HIV/AIDS prevention and other health care provision for mobile and migrant populations. USAID should further act to ensure the coordination, coverage, sustainability, and quality of these services, including through direct involvement by its regional mission and by increasing funding to NGOs serving these populations.

The United States government should not include any provisions in its free trade agreement with Thailand that affect Thailand's ability to manufacture or import generic drugs for the treatment of HIV/AIDS.

Anti-trafficking

The United States government should maintain Thailand's Tier II Watch List status until Thailand implements a comprehensive anti-trafficking plan. The United States government should explicitly condition Thailand's promotion to Tier II status on the appropriate treatment of and assistance to Burmese persons. In particular, Thailand must end the impunity of traffickers and the corruption of its police, immigration, and other authorities. The United States government should strongly and publicly pressure Thailand to follow through on its stated commitment to anti-trafficking efforts, including prevention, prosecution, protection, and reintegration.

The United States government should expand the scope of its funding for NGOs currently engaged in community-based models addressing the root causes of trafficking, such as citizenship denial, to include gender and ethnic discrimination and lack of viable economic and educational opportunities. The United States government should increase funding for prevention, monitoring, and assistance by grassroots groups working to detect trafficking and remedy exploitation, including community watches, groups working with sex workers, and ethnic networks. The United States government should also support nongovernmental organizations that collect evidence of trafficking that can be used to assist victims and encourage accountability for those who commit crimes against them, including public officials.

Burma

Having recognized, through the renewal of sanctions, the continued importance of refusing to financially support the Burmese regime, the United States government should pressure Thailand to prioritize democratic reform and human rights in its relations with Burma. Moreover, the United States government should pressure the government of Thailand to take immediate steps to improve the treatment of Burmese migrants in Thailand and to support the International Labor Organization's efforts to end forced labor in Burma.

The State Peace and Development Council of Burma (SPDC)

Justice

The SPDC must immediately take steps to reverse the militarization of Burma and its reign of terror and to hold accountable those responsible for rape, forced relocation, forced porterage, and other human rights abuses that continue to force Burma's people, in particular ethnic minorities, to flee their homeland and seek refuge in

Thailand and other countries. In particular, the SPDC policies of forced labor and population transfers and the seizure of ethnic lands, assets, and livelihoods in ethnic minority areas must cease immediately. The SPDC must cease and desist from war crimes and crimes against humanity in ethnic conflict zones, including the use of rape as a tool of ethnic terror against the Shan and Karen ethnic minorities, and punish those responsible.

The Political Process

The SPDC should begin substantive tripartite dialogue with the 1990 election winners and the leadership of the ethnic nationality groups to move toward true national reconciliation and the voluntary return of Burma's people to their homeland.

Migration

The SPDC should reverse its policy of limiting the freedom of movement of young women by prohibiting unaccompanied travel out of Burma. The SPDC should cease the harassment, arrest, and penalization of migrants as they leave from and return to Burma.

International Organizations

International donors, including UNAIDS, the Global Fund for AIDS, Malaria, and Tuberculosis, and the International Organization for Migration, should pressure the government of Thailand to rapidly move forward with the implementation of funded programs for HIV/AIDS prevention and other health care provision for mobile and migrant populations. Donors should further act to ensure the coordination, coverage, sustainability, and quality of these services.

NOTES

[1] Source: International Organization for Migration. Available at: http://www.iom.int/en/who/main_policies_effrespect.shtml#4, citing Perruchoud, "Persons Falling Under the Mandate of the International Organization for Migration (IOM) and to Whom the Organization May Provide Migration Services." 4 *International Journal of Refugee Law* 205 at 209, 1992.

[2] The Trafficking Protocol defines *trafficking* in persons as "the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." The recruitment, transportation, transfer, harboring, or receipt of a *child* for the purpose of exploitation is considered trafficking regardless of the means used.

[3] For a detailed analysis of the trafficking of children, see Bangladesh Counter-Trafficking Thematic Group. Poster: "Dynamics and Strategies for Addressing Trafficking in Persons: A New Paradigm – Child Scenario." September 2003. Made available to PHR through personal communication, April 28, 2004.

[4] In Thailand, the term *hill tribes* refers to a subset of the country's ethnic minorities, most of whom live in the remote northern highland areas of the country. Members of these ethnic groups are also found variously in parts of China, Laos, Vietnam, and Burma. Many are indigenous peoples going back many generations; others are more recent arrivals. The direct translation from the Thai, *mountain people,* is infrequently used; some prefer the term *highlanders,* but that is somewhat imprecise, as many lowlanders from Thailand and neighboring countries have also relocated to the highlands.

[5] In this report, the term *Burmese migrants* refers generally to migrants from Burma, most of whom are ethnic minorities, not Burmans.

[6] See Shan Human Rights Foundation (SHRF) and Shan Women's Action Network (SWAN). *License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State*. May 2002. Available at: http://www.shanland.org/HR/Publication/LtoR/license_to_rape.htm; Apple B, Martin V. *No Safe Place: Burma's Army and the Rape of Ethnic Women*. Washington, D.C.: Refugees International. March 2003; Karen Women's Organization (KWO). *Shattering Silences: Karen Women Speak Out about the Burmese Military Regime's Use of Rape as a Strategy of War in Karen State*. April 2004. Available at: http://womenofburma.org/Report/Shattering_Silences.pdf.

[7] In this report, PHR refers to women as *sex workers*, rather than *prostitutes*, not wanting to further stigmatize individuals and to emphasize the importance of promoting their health, well-being, and rights. *Sex work* refers to the commercial provision of sexual services and encompasses a wide spectrum of coercion and/or force, from very little to extreme in nature and duration. It is intended to recognize that the nature, degree, or existence of sexual and other forms of exploitation to which an individual in sex work is subject, and that individual's perspective, may vary over time. This is in no way to diminish the recognition that commercial sexual exploitation of children is criminal and violates human rights and that measures to end the trafficking of children into the sex industry must be a priority for the international community. Where *prostitution* is used in this report, it refers specifically to the criminal offense under Thai law.

[8] See the Conclusion and Expanded Recommendations, p.59, for a comprehensive list.

II. INTRODUCTION

Human Rights and Vulnerability to Trafficking and HIV

In many regions of the world, men, women, and children of both sexes are trafficked into the most dangerous or undesirable work, particularly in agriculture, manufacturing, fishing, construction, domestic service, and, worst of all, the sex industry. The exact dimensions and nature of trafficking in persons are not known (see "A Note on the Nature and Dimensions of Trafficking"), but a substantial body of literature on the identity, circumstances, and experiences of trafficked persons has been emerging over the past decade.[9] The scope, causal factors, and affected populations of the global HIV/AIDS pandemic are far better understood.[10] Women and girls are particularly at risk for both trafficking[11]and HIV/AIDS.[12] This report aims to contribute to the documentation of the ways in which vulnerability to trafficking, like the risk of exposure to HIV, is directly linked to gender discrimination and other rights violations. Human rights violations increase the risk for trafficking (and for contracting HIV/AIDS), and being trafficked increases the risk that one's human rights will be violated (and increases one's risk of contracting HIV/AIDS). Moreover, those who are trafficked into sexually exploitative situations, or denied HIV prevention information and access to health care, are more likely to become infected with HIV. To prevent increased HIV infection and address AIDS, nations must, therefore, address trafficking by protecting, promoting, and ceasing to violate the human rights of marginalized and stigmatized groups.

The Impact of Female Inequality

It should come as no surprise that women and girls are particularly vulnerable to the nexus of trafficking and HIV/AIDS. The approach of international public health to HIV/AIDS increasingly recognizes that "women's vulnerability to HIV is…integrally connected with discrimination and unequal rights, involving property, marriage, divorce, and inheritance"[18] as well as to violence against women.[19] Similarly, the UN Special Rapporteur on Violence Against Women has identified the lack of women's rights as the root cause of women's trafficking within countries and across national borders.[20]

The centrality of gender discrimination to the various push and pull factors that underlie a woman's decision to migrate must be recognized. Women and girls are "pushed" to leave home for a variety of reasons, many of them gender-specific — for example, intimate partner abuse, sexual violence, traditional responsibility for family support and the effects of transitional economies on women's burdens and opportunities, displacement or flight due to armed conflict, and lack of educational opportunities.[21] Out of desperation, and absent social networks, access to established routes, and other information for safe migration, they are particularly susceptible to violence and other forms of coercion, deception, and abuse of power. At the same time, they are "pulled" to travel from their communities by income-generating opportunities that constitute a gendered demand for "women's work": low-skilled, -status, and -wage occupations in factories and private households; illegal work such as sex work and begging; and forced marriages (which may provide a dowry to the woman or girl's family and relieve them of financial responsibility for her survival). These situations often involve severe forms of exploitation, such as work without pay, confinement, and violence.[22] Concurrently, push and pull factors related to ethnic discrimination and marginalization compound the vulnerability of low caste, ethnic/race minority, or indigenous women, resulting in their "double marginalization."[23]

A Note on the Nature and Dimensions of Trafficking

As recently noted in *The Lancet*, a great deal of conceptual confusion surrounds the term "trafficking."[13] It is very often used, particularly in media reports and policy statements, without being clearly defined,[14] and is often conflated with smuggling, irregular migration, or prostitution.[15] Questionable data and anecdotes are repeatedly cited and recycled without discussion or account as to their provenance, credibility, or limitations.[16] The number of trafficked persons has been estimated at between 700,000 and 4 million worldwide.[17] The large variation is a product of both differences in definitions and the difficulties of counting and categorizing people subjected to a criminal activity.

The Relationship of Trafficking and Migration

Many researchers and commentators have pointed out that an individual's experience of trafficking is dynamic,

in both the transport and exploitation stages: coercion waxes and wanes, conditions and circumstances change, and the individual's perceptions of her situation are not constant over time. Push and pull factors, unsafe travel, and exploitation describe not only the circumstances of many trafficked persons,[24] but the experience shared by female migrants generally. In order for governments to formulate effective anti-trafficking policies for a particular country, the regional migration context and the quotidian experiences of nontrafficked migrants must be understood.[25]

For example, a 17-year-old Karen from Burma may hire a smuggler the first time to cross the Thai border without legal authorization, subsequently migrate home with the same agent to remit earnings to her family at the New Year's holiday, and return to Thailand with a friend; hearing of better paying work in Bangkok the following year, she may unwittingly end up debt-bonded in a factory. Or a woman from an ethnic minority hill tribe may start out tricked into coming from her village in north Thailand to the city to do housework, not realizing that she will never be paid and that she may subsequently end up being raped repeatedly by her employer's son, escape to sell sex in the relatively highly paid and more autonomous conditions of a karaoke bar, and, physically able to leave but, under the circumstances as she perceives them to be, choose to remain in that situation.[26]

It is especially useful, in seeking to document the human rights abuses suffered by trafficked persons, identify the perpetrators, design prevention programs, and analyze the points of remedial intervention, to think about the migration experience as five stages[27] of movement, as reflected in the findings of this and other studies:

1. Pre-departure (conditions at home)
2. Travel/transit
3. Destination and situation of exploitation (may include repetition of stages 1–3 as the migrant voluntarily returns periodically to see family and/or remit money or is deported)
4. If applicable: immediate post-exploitation (may include arrest or escape, shelter or detention, a criminal process, and voluntary return or deportation/repatriation)
5. If applicable: long-term (re)settlement or (re)integration at home, in the original destination, or in a third location.

In each stage, the populations who are trafficked are also highly vulnerable to human rights abuses when they are not trafficked. In the destination stage, for example, both nontrafficked and trafficked women and girls may be confined to the workplace, denied health care, have their travel and identity documents confiscated, or be sexually harassed by police or employers. Comprehensive and enforced trafficking legislation is essential in order to assist trafficking victims and punish perpetrators. In addition, a range of policy reforms — in labor and employment, public health, criminal justice, immigration, and economic development — are also necessary to address the root causes of the vulnerability of migrant women and girls and stop their exploitation and abuse.

Human Rights and Health Consequences

The lives of hill tribe and Burmese migrant women and girls in Thailand, whose situation is described in this report, illustrate that the promotion and protection of human rights is central to the health and well-being of individuals. Thai government laws and policies, as well as discrimination by both government and society against Burmese migrants and undocumented hill tribe peoples, mean that these populations are denied the rights afforded to Thai citizens. Consequently, they have far fewer opportunities for employment, education, and safe and affordable access to health care. Many are in exploitative situations and have little to no access to mechanisms that address the rights of workers or the victims of abuse.

Female sex workers are another group subjected to discrimination. In Thailand their criminal status and the stigma attached to them as prostitutes further limit these women's access to services and assistance for the legal, social, and health effects of inequality and marginalization. Women and girls who have been trafficked into the sex industry, or those commercially sexually exploited who routinely endure violence, threats of violence, degradation, or other forms of extreme abuse, suffer even greater harms to their health and are even more excluded from the assistance that they require.

Policy Prescriptions

As vulnerability to trafficking and risk of HIV are directly linked to gender discrimination and other rights inequities, policy prescriptions to eliminate trafficking in persons and programs to reduce HIV prevalence must reflect an understanding of how this link unfolds on the ground. Policies must be holistic and comprehensive and vigorously promote and protect the rights of marginalized and stigmatized groups in order to change the conditions that underlie vulnerability. This study illuminates the inextricable linkage of human rights and health in the Thailand context and provides a series of recommendations for the Thai and US governments, as well as international actors, designed to mitigate and abolish the ill-treatment of Burmese migrant and hill tribe women and girls.

NOTES

[9] See the UNESCO Trafficking Statistics Project database. Available at: http://www.unescobkk.org/culture/trafficking/ev.asp?ev=83&id=86.

[10] World Health Organization. *World Health Report 2004 – Changing History*. Geneva: World Health Organization. 2004.

[11] D'Cunha J. "Trafficking in Persons: A Gender and Rights Perspective." November 8, 2003. EGM/TRAF/2002/EP.8;3. Available at: http://www.un.org/womenwatch/daw/egm/trafficking2002/documents.html.

[12] UNAIDS. *World AIDS Campaign 2004: Women, Girls, HIV, and AIDS. Strategic Overview and Background Note*. February 2004:4. Available at: http://www.unaids.org/en/resources/publications.asp.

[13] Loff B, Sanghera J. "Distortions and Difficulties in Data for Trafficking." *The Lancet*. 2004;363:566. Available at: http://www.thelancet.com.

[14] See the Glossary, p.vii, for usage of terms in this report.

[15] Morrison J. FMO *Research Guide: Human Smuggling and Trafficking*. October 2002. Available at: http://www.forcedmigration.org/guides/fmo011; Anti-Slavery International. *The Migration-Trafficking Nexus: Combating Trafficking Through the Protection of Migrants' Human Rights*. London: Anti-Slavery International. November 2003;3; Butcher K. "Confusion Between Prostitution and Sex Trafficking." *The Lancet*. 2003;361:1983.

[16] "UNESCO Clearing House on Trafficking Statistics." Press release. July 31, 2003. Available at: www.unescobkk.org/culture/ev/download.asp?id=227.

[17] World Health Organization. *International Migration, Health & Human Rights*. Geneva: World Health Organization Health & Human Rights Publication Series. December 2003;4:31(citing USAID as source). See also UNESCO. *Factsheet #1: Worldwide Trafficking Estimates by Organizations*. February 2003. Available at: http://www.unescobkk.org/culture/trafficking/GraphWorldwide.pdf.

[18] Mann JM, Gostin L, Gruskin S, Brennan T, Lazzarini Z, Fineberg H. "Health and Human Rights." In: Mann JM, Gruskin S, Grodin MA, Annas GJ. *Health and Human Rights: A Reader*. New York and London: Routledge. 1999:17.

[19] UNAIDS/The Global Coalition on Women and AIDS. "Violence Against Women and AIDS." February 2004. Available at: http://www.unaids.org/EN/other/functionalities/Search.asp.

[20]Coomaraswamy R. "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women." Commission on Human Rights 56th Session, 29 February 2000. E/CN.4/2000/68; see also Office of the High Commissioner for Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. 2002. E/2002/68/Add. 1; Guidelines 1 and 7.

[21] Rodriguez Pizarro G. "Specific Groups and Individuals: Migrant Workers – Human Rights of Migrants." Commission on Human Rights 56th Session, 6 January 2000. E/CN.4/2000/82; 56; Asian Migration Centre, Mekong Migration Network. *Migration, Needs, Issues & Responses in the Greater Mekong Subregion: A Resource Book*. Hong Kong: Asian Migrant Centre. 2002:10; Global Alliance Against Trafficking in Women. *Human Rights and Trafficking in Persons: A Handbook*. Bangkok: Global Alliance Against Trafficking in Women. 2001:46–51.

[22] In some areas of the world, organized crime networks coerce women's movement, particularly for the purposes of sexual exploitation in the destination countries. Women may end up in slavery situations.

[23] World Health Organization. *International Migration, Health & Human Rights*. Geneva: World Health Organization Health & Human Rights Publication Series. December 2003;4:24. See also Anti-Slavery International. *The Migration-Trafficking Nexus: Combating Trafficking Through the Protection of Migrants' Human Rights*. London: Anti-Slavery International. November 2003;11; Zimmerman C, Yun K, Watts C, et al. *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study*. London: London School of Hygiene & Tropical Medicine. 2003:22.

[24] The situations of those who do not choose to leave home, such as those who are abducted, and, more generally, of children, who cannot consent, are also distinct from those of other trafficked persons and adult migrants generally. For a detailed analysis of the trafficking of children, see Bangladesh Counter-Trafficking Thematic Group. Poster: "Dynamics and Strategies for Addressing Trafficking in Persons: A New Paradigm – Child Scenario." September 2003. Made available to PHR through personal communication, April 28, 2004.

[25] United Nations Economic and Social Council. "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women." Commission on Human Rights 56th Session, 29 February 2000. E/CN.4/2000/68. See also Busza J, Castle S, Diarra A. "Trafficking and Health." 5 June 2004. *BMJ*;328:1369–71.

[26] For analytical detail, see Bangladesh Counter-Trafficking Thematic Group. Poster: "Dynamics and Strategies for Addressing Trafficking in Persons: A New Paradigm – Adult Scenario." September 2003; Box J.

[27] Adapted from UNAIDS/UNDP. "The HIV/AIDS Portal for Asia Pacific." Available at: http://www.youandaids.org/Themes/Migration.asp; Zimmerman C, Yun K, Watts C, et al. *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study*. London: London School of Hygiene & Tropical Medicine. 2003:21.

III. THAILAND BACKGROUND

Demographics

Thailand is a country of approximately 63 million people. The Thai census has not allowed for ethnic self-identification, and thus these surveys have revealed little ethnic diversity.[28] Approximately half the Thai population is comprised of the Thai ethnic group, or speakers of Standard, Central, and Southern Thai, who live throughout the country. Ethno-regionally distinctive Northeastern and Northern Thai, speakers of a northern dialect *(kham muang)* make up approximately one-third of the population. Approximately 10 percent of the population is Chinese or Sino-Thai, living mainly in Bangkok and other urban areas. Thai Muslims, Thai Malay and Vietnamese, Indians, and Burmese each make up approximately 2 percent or less of the population.

Finally, Thailand's many indigenous ethnic groups make up approximately 3 percent of the population: the Khmer and Kui people live mainly on the borders with Cambodia and comprise approximately 2 percent of the population;[29] the hill tribes, who account for about 1 percent of the population, live in northern Thailand and on the borders with Burma;[30] and the Mon, who live in central Thailand, make up less than 0.1 percent of the population.[31]

Because of Thailand's robust economic growth and relative political stability, foreign migrants and refugees have made their way to Thailand from all the surrounding countries, including large numbers of Laotians, Burmese, Cambodians, and Chinese from Yunnan Province.[32] Since the early 1990s, migrant workers have formed a cornerstone of the Thai economy, particularly in the "3D" jobs (dirty, dangerous, and disdained).[33] The flood of migrants from Burma into Thailand is one of the largest migration movements in Southeast Asia.[34]

Political Background

Thailand is a parliamentary democracy with a constitutional monarchy. The only country in Southeast Asia never ruled by a European colonial power, Thailand existed as an absolute monarchy until the 1932 revolution led to a constitution. Until 1973, however, the country was ruled by a succession of military governments. Since 1973, when a civilian government was established, administrations have tended to be short-lived and unstable[35] (the last coup occurred in 1992), with greater stability and democratic participation from the mid-1990s onward.

In 1997, thanks in large part to the emergence of a strong and vibrant civil society — including a press that is one of the most free in the region — Thailand developed a reformist constitution (the sixteenth since 1932). Known as the "People's Constitution," it was created to expand citizen participation in government, curb government corruption, and transform the electoral process.[36] In the same year, an independent National Human Rights Commission was created.

Despite these new tools for reform, significant barriers to implementation remain. The current prime minister of Thailand, Thaksin Shinawatra, and his Thai Rak Thai (TRT) party won power in January 2001 in the first general election under the 1997 constitution. Thaksin is a billionaire telecommunications tycoon, whose economic policies and efforts to eradicate the trade in illegal drugs have made him immensely popular in the region. His autocratic style and human rights record, however, have deeply concerned political observers in Thailand and abroad.[37]

Furthermore, the corruption that the new constitution was meant to curb is still a serious problem. Despite the appearance of reform, there remains a close intertwining of personal business interests and government under Thaksin's administration.[38] Indeed, the Berlin-based nongovernmental organization Transparency International conducts an annual Corruption Perceptions Index survey, with corruption defined as the abuse of public office for private gain. The 2003 survey results indicate that Thailand continues to be seriously corrupt; it scored a 3.3 on the Index (ranking 70 out of 133 countries), where 10 is the highest "clean" ranking.[39]

Gender Inequality

The 1997 Thai constitution contains clauses guaranteeing equal rights for men and women, including the right to privacy and dignity, the right to health care, and freedom from forced labor. Gender inequality persists, however, both in law and as a social and cultural norm.[40] For example, the Thai government has enacted prohibitions against sexual violence, but laws specifically regarding domestic violence have not passed the legislature.[41] Moreover, marital rape is not a crime, and enforcement of the rape law is lax.[42] Abortion is limited to cases of

rape or situations in which a woman's physical health is imperiled.[43]

While equal participation in political life is mandated, in actuality men dominate positions of political power, especially at senior levels.[44] Women in Thai culture have a lower social status than men,[45] brought about in part by long-held beliefs in Thai culture regarding a women's duty and responsibilities in society.[46] These beliefs may lead family members to discourage a young woman from furthering her education,[47] remove her from school before she completes the compulsory nine years,[48] or consider her less physically and mentally capable than male children.[49]

Although women are expected to contribute financially to the family, they are denied the same economic opportunities that men enjoy. In practice, women are discriminated against in hiring, despite legal prohibitions.[50] Although women compromise 46 to 48 percent of the workforce, they earn 15 to 20 percent less than men.[51] Female sex workers suffer from an even lower social status than other women.[52] Those who are not ethnic Thai are doubly marginalized.[53]

HIV/AIDS

HIV first appeared in Thailand in 1984.[54] By the early 1990s, HIV — transmitted in the overwhelming majority of cases by heterosexual activity — had become a serious health crisis. In 1991, Thai officials, led by Prime Minister Anand Panyarachun, took concerted action to prioritize HIV/AIDS with the allocation of a substantial amount of money to combat HIV/AIDS (compare $180,000 spent in 1988[55] with $44 million annually by 1993[56]) and the initiation of a national program to coordinate prevention, testing, treatment, and care efforts.[57] The comprehensive program included funds for people living with HIV, mandatory allotted media slots for HIV prevention messages, and an enhancement of sexually transmitted infections (STI) testing to include HIV testing and treatment.[58]

An essential part of the program was the 100% Condom Campaign, which sought to encourage a 100-percent condom-use rate in commercial sex establishments.[59] Despite the illegality of prostitution, the cooperative, collaborative effort by a range of public and private agencies — including the Ministry of Public Health, the Thai Royal Police, and brothel owners — resulted in behavior change, particularly when it came to the use of condoms for commercial sex. Access to commercial sex venues by visiting public health nurses was twinned with a program to encourage regular visits by sex workers to STI clinics. The Thai government also closed commercial sex establishments that did not comply with the campaign.[60] HIV prevalence declined, and there were confirmed reductions in risky behavior and HIV/STI consultations.[61] There is evidence that men began to visit brothels less,[62] and that teens began to delay sexual activity until they were in some form of a "dating" relationship.[63]

The campaign seems not to have reached the trafficked or lowest-end, brothel-based workers in the country, however.[64] Commercial sex venues with the worst conditions may be the least known to public health authorities, and thus the most inaccessible for outreach. Their owners are also the least likely to permit women and girls to leave the premises or to go unaccompanied to STI clinics. Perhaps because of their risk of being trafficked, as well as the fact that low-end work is almost exclusively the province of non-Thai women, HIV prevalence and risks continue to be higher among Burmese sex workers than among Thai sex workers.[65]

By the late 1990s, however, there were concerns about a decreased commitment in Thailand to HIV/AIDS prevention. The Southeast Asian financial crisis of the late 1990s led to sharp cuts in HIV/AIDS spending, including a 50-percent reduction in prevention funds and a 63-percent reduction in treatment and care funding. The number of condoms purchased and distributed for free by the government dropped from 50 million to 20 million.[66] Meanwhile, the observed decline in brothel-based sex work appeared to see a concomitant increase in sex work in other venues, such as restaurants, karaoke bars, and massage parlors,[67] indicating that a renewed and refocused approach to access sex workers outside of the original brothel-based framework was required.[68]

In the current epidemic, overall rates of HIV/AIDS are decreasing, but the shift in new infections is disproportionately toward females.[69] Half of the newly identified infections are among women, many of them not in commercial sex service, as in the earlier epidemic, but wives of men who were infected with HIV years ago.[70] At the end of 2001, the adult prevalence for persons with HIV in Thailand was 1.8 percent of the population, or about 670,000 people.[71]

The shape of the current epidemic, with an apparent increase in HIV transmission between spouses,[72] reflects the fallout of an HIV prevention campaign that focused on condom use exclusively for commercial sex. Thus, Thai men apparently use condoms for commercial sex but far less frequently in other sexual relationships in which HIV can just as easily be transmitted.[73] The association of commercial sex with HIV has reinforced the stigmatization of sex workers as women who are "bad" and spread disease.[74] The 100% condom program has also been faulted for failing to recognize that condom use is not an effective tool for women if they do not have adequate control over their bodies or power within sexual relationships.[75]

Two important omissions in Thailand's response to HIV/AIDS are prevention services for those at risk through injecting drug use and for Thailand's large foreign migrant worker population. HIV prevalence among injecting drug users is high (35 to 50 percent) and is rising in some regions, yet HIV prevention strategies for injecting drug users, such as needle exchange programs and other harm-reduction programs, have not been a priority.[76]

Among the HIV sentinel surveillance of high-risk groups, the highest infection rates have been found at Burma's cross-border points with Thailand.[77] Burmese migrants face many barriers to HIV/AIDS services (see the Findings – Burmese Migrants section, p.33). Those of Shan ethnicity appear to be particularly at risk. In a prevalence assessment carried out by Johns Hopkins University, the HIV prevalence for Shan women was 3.0 percent overall (95 percent CI 1.9, 4.4) and 9.0 percent for men, among the highest reported in Asia for any ethnic group.[78] Another prevalence study done in 1999 in ethnic Shan migrant workers in the Chiang Mai area revealed an HIV-1 prevalence of 4.9 percent overall (5.7 percent in men and 3.8 percent in women), almost double that of comparable local Thai populations at the time.[79]

In Thailand, discrimination against people living with HIV/AIDS in health care and in employment is a serious problem. A recent UN working group decried the widespread nature of discrimination across employment sectors and pointed to a lack of political leadership on this issue.[80] Further, the Asia Pacific Network of People Living with HIV/AIDS conducted a regional study in 2001 and 2002 of AIDS-related discrimination in Asia.[81] In Thailand, respondents noted significant breaches of confidentiality in the health sector and coercion into abortion or sterilization because of HIV status, among other problems. In a more positive finding, compared with other countries in the study, Thailand had the highest prevalence of people living with HIV/AIDS receiving anti-retrovirals and prophylaxis for opportunistic infections.[82] But national figures show that access to medications for the prevention and treatment of opportunistic infections is seriously lacking for Thailand's poor.[83]

The Sex Industry

In Thailand, although sex work is illegal, it is a significant and visible component of the Thai economy. It should be noted that despite Thailand's notoriety as a destination for "sex tourism," and the high visibility of this sector (for male clients of adult women), the commercial sex demand in Thailand is also a domestic one.[84]

Sources estimate that there are between 200,000 and 325,000 (female and male) sex workers in Thailand.[85] Between 30,000 and 80,000 of these are estimated to be undocumented migrants,[86] the majority of whom are Burmese. The overwhelming majority of those in the commercial sex industry are female. There have been a handful of attempts to estimate the number of girls who are commercially sexually exploited in Thailand, but these data, like those for the number of trafficking victims (see the Introduction, p. 7) are notoriously difficult to collect and are based on inconsistent definitions and methodologies (often unstated). Existing estimates comprise projections based on a small number of studies sampling only a fraction of the commercial sex venues or service population.[87] Most recent estimates cite a range of 10 to 20 percent (boys and girls),[88] although in 2003 UNICEF referenced a 2002 Thai government statistic that up to 25 percent of those in the commercial sex industry were under the age of 18. Significantly, none of these data are disaggregated by age. According to respondents interviewed by PHR, it is currently widely believed that the majority of girls presently in the Thai sex industry are older adolescents, 15 to 17 years old.[89]

The Thai commercial sex industry generates significant money. It is difficult to estimate the true amount because of the illegal and hidden nature of the business, but calculations such as those by Pasuk Phongpaichit and colleagues estimate it to be in the 40 billion baht range (approximately US $1 billion).[90] Enforcement of the anti-prostitution law is generally lax, despite periodic crackdowns. Police are sometimes paid protection money by operators of commercial sex establishments, and, in border areas, law enforcement officials themselves are involved in the trafficking of women and/or operation of commercial sex establishments.[91] Finally, as mentioned above, the nature of the sex trade in Thailand has changed over the last few years. Sex service venues have shifted away from house-based brothels to bars and karaoke, massage, and sauna venues.[92]

Trafficking

Thailand is a source, transit, and destination country for trafficking and, as a center of economic prosperity in the Greater Mekong Subregion, exerts a strong migrational pull on its much poorer neighbors.[93] As a destination country, Thailand receives trafficked persons from poorer neighboring countries into many sectors; there is also internal trafficking of members of the northern hill tribes.[94] It is difficult to estimate the dimensions (see data box, Introduction section). Thailand has the longest history of developing anti-trafficking policies in the region and is generally considered a regional leader.[95] Most recently, Thailand was the initiator of the novel Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process to strengthen cooperation to combat trafficking.[96] (For additional discussion on trafficking in Thailand, see the Law and Policy section, p. 45.)

Human Rights Record

Despite the new constitution, the establishment of a Constitutional Court, and the creation of an independent National Human Rights Commission, Thailand's recent human rights record is poor. Prime Minister Thaksin's administration has curtailed freedom of the press, with government interference in news reporting and the government effectively controlling broadcast media.[97] Extrajudicial killings of more than 2,000 people in the government's war against drugs, which Thaksin launched in February 2003, resulted in international condemnation.[98] Further, Thaksin's crackdown on suspected Muslim insurgents in the south has drawn strong criticism from national and international observers.[99] Indeed, in its annual report on human rights around the globe, the US State Department noted that the Thai government's human rights record worsened with regard to extrajudicial killings and arbitrary arrests.[100] Thaksin has shown himself to be intolerant of criticism; for example, following the release of the State Department report, he called the United States a "useless friend."[101]

In addition, human rights groups have decried the Thai government's lack of protection and harassment of Thailand's most vulnerable populations, such as members of indigenous tribal groups from northern Thailand, as well as Burmese who seek refuge in Thailand from civil war, human rights abuses, and serious socio-economic problems.[102] For example, most tribal people in Thailand still do not enjoy full citizenship and do not have full access to the health and educational systems in Thailand (see the Background to Findings – Hill Tribes section, p.28). In addition, persons who have fled Burma are also at great risk of ill-treatment as well as deportation back to Burma (see the Background to Findings – Burmese Migrants section, p.33). As the findings of this study illustrate, the women and children of these groups are particularly vulnerable to trafficking and/or exploitation in an array of dangerous and poorly paid jobs and in Thailand's sex industry.

Finally, local human rights activists who raise concerns about human rights in Thailand are themselves at risk. The UN Special Representative on Human Rights Defenders visited Thailand in 2003 and noted the "climate of fear," due to government intimidation and harassment, in which Thai human rights nongovernmental organizations work.[103] A recent report noted the risks faced by those working with Burmese migrants to Thailand.[104]

Thai-Burmese Relations

Thailand and Burma share a long, porous border[105] and have a history of poor relations. Under Thaksin's predecessor, Prime Minister Chuan, relations with Burma were strained: Chuan publicly condemned the Burmese regime and its human rights record.[106] In contrast, Prime Minister Thaksin has cultivated amicable relations with the Burmese ruling regime, the State Peace and Development Council (SPDC), and has cooperated on mutually advantageous commercial deals. Thai officials have been quoted as saying that "economic development would solve the Burmese refugee problem."[107]

Thai businesses are encouraged to invest in Burma, and, in addition, Thaksin is alleged to be collaborating with the Burmese military regime to fight some of the armed Burmese ethnic rebel groups along the border and to support others more closely aligned with the SPDC, such as the Democratic Karen Buddhist Army (DKBA).[108] Burmese pro-democracy dissidents in Thailand face harassment and are increasingly vulnerable to Thaksin's crackdown on illegal immigrants, in violation of established standards of international conduct. These violations include raids on Burmese pro-democracy groups, a ban on public demonstrations by Burmese, and arrests and deportations of Burmese activists, despite the risks of returning them to a regime with a known history of maltreatment of its own citizens, including returning Burmese.[109]

Furthermore, unlike most in the international community, Thaksin has signaled his support for the Burmese military rulers' plans to implement democratic reforms at a self-determined pace and to the exclusion of that country's elected leaders. [110] In December 2003, Thaksin hosted an international forum on Burma's planned reforms, called the "Bangkok Process," intended to give Burma's military regime an opportunity to gain wider support.[111] This has since been rejected by the SPDC, which has instead pursued a unilateral process rejected by the United Nations and the US government, and for which Thaksin has also expressed disappointment.[112]

NOTES

[28] "Inclusion of Minorities in Public Life, in Laos, Thailand, and Vietnam." Paper prepared by Vatthana Pholsena. Asia Research Institute, National University of Singapore. May 5, 2003. E/CN.4Sub.2/AC.5/2003/WP.11/At 7. [Hereinafter "Minorities in Public Life."]

[29] "Minorities in Public Life," 9.

[30] "Minorities in Public Life," 9.

[31] "Minorities in Public Life," 9.

[32] For further details on migration in Thailand, see Asian Migrant Centre and Mekong Migration Network. *Migration Needs, Issues, and Responses in the Mekong Subregion: A Resource Book*. Hong Kong: Asian Migrant Center (AMC). December 2002:141–74. For related discussion, see Regional Synthesis, 1–20, and Burma, 21–50.

[33] Asian Migrant Centre and Mekong Migration Network. *Migration Needs, Issues, and Responses in the Mekong Subregion: A Resource Book*. Hong Kong: Asian Migrant Center (AMC). December 2002.

[34] United Nations Development Programme. *Population Mobility in Asia: Implications for HIV/AIDS Action Programmes*. Malaysia: UNDP. 2000.

[35] Economist Intelligence Unit. "Thailand: Constitution and Institutions." EIU ViewsWire. May 7, 2004.

[36] United Nations Development Programme. *Thailand Human Development Report 2003*. Bangkok: UNDP. 2003:36.

[37] Kurlantzick J. "Wrong Man." *The New Republic*. February 23, 2004.

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[39] Transparency International. Corruption Perceptions Index 2003. Available at: http://www.transparency.org/surveys/index.html.

[40] Constitution of the Kingdom of Thailand, Chapter 3, Sect. 30, 34, 51,52; Committee on the Elimination of Discrimination Against Women (CEDAW), *Thailand*, CEDAW/C/1999/I/L.1/Add.6 (par.10–38). January 1999. Available at: http://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf.

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[43] Center for Reproductive Rights. "The World's Abortion Laws." June 2004. Available at: http://www.crlp.org/pub_fac_abortion_laws.html.

[44] United Nations Development Programme. *Thailand Human Development Report 2003*. Bangkok: UNDP. 2003:76.

[45] UNAIDS. *Reducing Girls' Vulnerability to HIV/AIDS: The Thai Approach*. June 1999:1.

[46] Committee on the Elimination of Discrimination Against Women (CEDAW). *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Thailand*. April 1997:23–24.

[47] CEDAW, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Thailand*. April 1997:23–24.

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[89] Regardless of their ages, the sexual exploitation of any children at all should be a priority human rights concern for the Thai government. As noted in the Executive Summary, a more thorough discussion of child trafficking and child sexual exploitation is beyond the scope of this report. See the Executive Summary, p. 1.

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[103] Chimprabha M. "UN Envoy Cites Climate of Fear." *The Nation* (Thailand). May 28, 2003.

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IV. BURMA BACKGROUND

Overview of Economics and Development

The differences between Thailand and Burma with regard to basic health, economic, and demographic indicators are striking (see Table – Comparison of Burma and Thailand).

Burma once ranked as one of the richest and most promising nations of Asia, boasting abundant natural resources and a health and educational system that was the envy of its neighbors. In fact, prior to Ne Win's coup in 1962, Burma and Thailand were in similar stages of economic development, with a comparable per capita GNP of about $100. General Ne Win's policies, however, led to widespread poverty and left the health system on the point of collapse.[113]

In 1987, Burma applied for least-developed-nation status under the United Nations to qualify for special financial assistance, while Thailand was well on its way to becoming a "little tiger" economy of Asia. By 2000, the World Health Organizaiton ranked the health care system in Burma the second worst of its member states, outperforming only Sierra Leone.[114]

Inflation, inadequate public salaries and pensions, an unrealistic exchange rate, the need for commodities, and movement toward a more market-oriented economy have produced widespread corruption.[115] Indeed, Transparency International ranks Burma as one of the five most corrupt countries in the world.[116]

Part and parcel of corruption is the growth of the illegal economy in Burma, which has eclipsed the country's legitimate economy. In particular, Burma now has the dubious distinction of being the world's second-largest exporter of opium and heroin. Although production has declined since 1998, this decrease is related more to inclement meteorological conditions than to active interdiction on the part of the SPDC.[117] Burma is also increasingly an exporter of methamphetamines to neighboring countries, particularly Thailand. As Burma becomes a center of the lucrative regional narcotics trade, it is also increasingly becoming a center for money laundering, with the millions of dollars of profit being invested into legitimate businesses, such as hotels, real estate, and construction.[118] There is also official complicity in the trafficking of persons internally and into Thailand.[119]

Comparison of Burma and Thailand: Key Demographic, Health, and Economic Indicators

	Burma	Thailand
Total population (1000), 2002*[120]	48,852	62,193
GNI per capita, international $**	220	1,980
Life expectancy at birth, years*	56.2 (males) 61.8 (females)	66 (males) 72.7 (females)
Child mortality (probability of dying under 5 years, per 1000 live births)**	109	28
Infant mortality (probability of dying under 1 year, per 1000 live births)**	77	24
Per capita total expenditure on health, 2001 (international $)**	26	254
Per capita government expenditure on health, 2001 (international $)**	5	145
General government expenditure on health as % of total government expenditure, 2001**	5.7	11.6
Total adult literacy (% of population)*	85	96

** Not actual dollars; these figures are based on PPP and are adjusted for differences in price levels between different countries.

Demographics

In Burma, with a population of approximately 50 million people, ethnic minority groups make up approximately 30 percent of the population, with the Burman ethnic group as the majority group. Since there has been no formal census since the end of British rule, these ethnic figures are highly contentious, as discussed below.

Since independence in 1948, armed opposition groups representing the minority ethnicities have fought the Burman-dominated government with goals of greater self-rule or complete independence. Most of Burma's ethnic minorities inhabit Burma's mountainous frontiers.

Burma's political repression makes it possible to only roughly estimate the size of the country's ethnic groups (and some observers believe that the official population data are skewed to exaggerate the number of Burman).[121] Karen and Shan groups may make up about 10 percent each of the population, while Akha, Chin, Chinese, Danu, Indian, Kachin, Karenni, Kayan, Kokang, Lahu, Mon, Naga, Palaung, Pao, Rakhine, Rohingya, Tavoyan, and Wa may each constitute 5 percent or less of the population.[122]

Ethnic armed groups include the Karen National Union, the Karenni National Progressive Party, and the Shan State Army-South. Since the SPDC took control of the country in 1988, some groups have negotiated ceasefires, but others, such as the Shan State Army-South, continue their armed struggle.[123]

Political Background

Burma shares its long eastern border with Thailand (2,000 km/1,250 miles); it is also bordered by Laos, India, China, and Bangladesh.

Burma gained independence from Britain as the "Union of Burma" in 1948 and existed as a parliamentary democracy for 14 years. In 1962, General Ne Win overthrew the government to establish a repressive, one-party state headed by the Burma Socialist Programme Party (BSPP). The resulting "Burmese path to Socialism" led to economic stagnation and international isolation for over a quarter of a century, resulting in widespread poverty.

Students sparked a general rebellion, and on August 8, 1988 ("8-8-88"), hundreds of thousands marched to demand democratic elections, provoking a bloody crackdown. That September, the army announced a coup by the State Law and Order Restoration Council (SLORC), a group of 19 military officers.[124] This new military regime further repressed the popular uprising by killing thousands and arresting thousands more.[125] It has ruled by decree ever since. In 1989, the SLORC renamed the country Myanmar; this decision was not approved by any sitting legislature in Burma and the US government, among others, has not adopted it.[126]

Surprisingly, the SLORC went ahead with promised elections in 1990. The main opposition party, the National League for Democracy (NLD), won a landslide victory, but the SLORC refused to hand over power. NLD head and Nobel Peace Prize recipient Aung San Suu Kyi has been under house arrest for long periods under SLORC/SPDC rule, most recently since May 2003. Her supporters regularly face harassment, jail, torture, and death. Over 1,300 NLD leaders and other political opponents of the regime remain in prison or under house arrest.

In August 2003, Burma's Prime Minister, General Khin Nyunt, announced a "road map to democracy" and called for a constitutional convention as a first step. Many political observers and Burma's opposition leaders regard this proposal as a ploy to try to appease the international community, outraged by the most recent arrest of Aung San Suu Kyi.[127] This "road map" did not prevent the reauthorization of new US sanctions on Burma.[128]

Despite earlier assurances by the SPDC that Aung San Suu Kyi and other leading members of the NLD would be released and allowed to participate in the constitutional convention, this did not happen. Instead, the military convened the convention without the participation of the NLD and other major minority groups, appointing most of the 1,088 delegates. The meeting took place outside of Rangoon, the capital, ringed by military bases, and the delegates were prohibited from criticizing the state or disclosing information about the convention, revealing the Burmese regime's lack of sincerity in the democratic process. The situation led UN Human Rights Envoy Paulo Sergio Pinheiro to call the process "a meaningless and undemocratic exercise" and to refer to the convention as a "mass house arrest."[129]

HIV/AIDS

As a result of the combination of poverty, military misrule, conflict, a booming illegal economy, chronic systematic human rights violations, and mass migrations, Burma, according to UNAIDS, "stands on the brink of what may be one of the most serious [HIV] epidemics in Asia."[130] A study by the Johns Hopkins Bloomberg School of Public Health using highly conservative methods estimated HIV prevalence in Burma in 1999 to be at least 3.46 percent among reproductive-age adults, suggesting a widespread, generalized HIV epidemic.[131] The study found HIV/AIDS infections in every region of Burma, with the highest prevalence in the troubled Shan States and in the northern Kachin area. The largest number of infected persons was found in the central Burman areas, since these contain the bulk of Burma's registered citizens. Meanwhile, Burma's pariah status in the international community has affected the flow of overseas development assistance to respond to HIV/AIDS in the country, while the repressive political climate and tight social controls have left little space for indigenous groups to organize or respond in nongovernmental sectors.

The Burmese regime's response to the crisis has been spotty. Although the government was relatively quick to establish surveillance systems, its efforts at control

remain grossly inadequate for a variety of reasons, including denial of the magnitude of the epidemic (and denial of the magnitude of the illegal economy fanning the epidemic), lack of qualified personnel, and insufficient funds.[132] Despite the explosion of HIV, according to UN estimates Burma reduced its health care spending from 0.38 percent of the country's GDP in 1995–1996 to 0.17 percent in 1999–2000, among the lowest rate in the world.[133] Health professionals also have cited the government's failure to implement an adequate HIV/AIDS awareness campaign, the arrest of sex workers for possessing condoms, and government censorship of news on the virus.[134] Burma is in the process, however, of implementing a 2003–2005 UNAIDS joint program involving the Burmese regime, international relief groups, local government-affiliated aid groups, and the opposition NLD. Some have alleged that the SPDC has shown political willingness to take these steps because members of the elite and military are increasingly becoming infected with the virus.[135]

Informal reports exist from NGOs and several individuals of ongoing human rights abuses in Burma, including mandatory HIV testing in the holding center for those deported back to Burma, with segregation of those testing positive.[136]

Trafficking

Officially, the SPDC recognizes human trafficking as a problem and has worked to combat it through its Penal Code, which prohibits kidnapping, and the Suppression of Prostitution Act and the Child Law, which include provisions against the sale, abuse, or exploitation of children.[137] The SPDC has, however, also attempted to restrict the free movement of women as an anti-trafficking measure, by making it difficult for single females to obtain passports and forbidding women under 25 years of age from crossing national borders unless accompanied by a guardian. Unfortunately, these regulations can be circumvented through bribery;[138] in fact, they encourage human smuggling and facilitate trafficking by making it necessary for women to be accompanied — thereby increasing the likelihood that they will be targeted for deception and exploitation.

The US State Department has reported that the scope of trafficking, both internally and leaving Burma, is not known, nor are the results of the government's activities because of the government's lack of transparency: "While experts agreed that human trafficking from the country was substantial, no organization, including the government, was able or willing to estimate the number of trafficking victims. The government did not allow an independent assessment of their reported efforts to combat the problem."[139] Burma is, however, a party to the regional Co-ordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process and will host the second meeting in October 2004, at which a declaration including an action plan and monitoring process is to be adopted.[140] Burma is also, like Thailand, a participant in the ASEAN-initiated[141] Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), a law enforcement reform and training project incorporating human rights.[142]

SPDC Human Rights Record

Draconian authoritarian rule in Burma has resulted in a very grim human rights situation. Burmese citizens require government permission to leave the country and face a seven-year prison sentence for illegal emigration upon return. There is no freedom of press, assembly, association, or movement, and the Office of the Chief Military Intelligence (OCMI) exercises control through widespread surveillance of citizens. The government regularly harasses, incarcerates, tortures, and kills political dissenters; at the end of 2003, there were 1,300 political prisoners in Burmese jails.[143] The government also wields great power over the everyday lives of the Burmese — for example, forcing villagers to work without pay as porters in army camps and on construction and agricultural projects. Repression is particularly focused on women, who are the subject of a well-documented campaign of sexual violence by the Burmese military (discussed below).

Ethnic minorities are especially targeted for abuse, particularly in border areas in which insurgencies continue, a situation that has led to internal displacement and attempted flight into neighboring countries such as Thailand. Government troops forcibly relocate villages of ethnic minorities in order to deprive armed ethnic groups of civilian bases of support and/or make way for public works projects. Rapes, executions, and forced labor reportedly accompany these relocations.[144] In 2002, in a widely cited study, the Thailand-based group Burma Border Consortium estimated that since 1996, the government has destroyed or forcibly relocated the populations of more than 2,500 villages, displacing more than 600,000 citizens.[145] More than 350,000 of these were forced into government-controlled "relocation centers," while the remainder lived in hiding, in very poor conditions, in the jungle.[146] Many have fled to Thailand.

Women and girls in ethnic minority regions are systematically raped by the Burmese military. A 2002 report entitled *License to Rape* by the Shan Women's Action Network and the Shan Human Rights Foundation garnered widespread international attention. The report documents 173 cases of rape and sexual violence involving at least 625 girls and women by Burma army soldiers between 1996 and 2001 in Shan State.[147] In addition, a

2003 report by Refugees International found that the Burmese military used rape against ethnic Karen, Mon, Karenni, and Tavoyan women to control and terrorize these ethnic populations.[148] The ongoing pattern of rape in Karen State is the subject of *Shattering Silences,* an April 2004 report by the Karen Women's Organization, documenting 125 cases from October 2002 to March 2004.[149] The SPDC consistently disputes documentation of a rape campaign; for example, its delegate told the recent session of the UN Commission on Human Rights that, "In Myanmar, women are treated with respect and have never been subjected to degrading treatment."[150]

As a result of its human rights record, Burma has been isolated from most of the international community, and access for human rights groups has been difficult and dangerous.

NOTES

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[118] Lintner B. "Drugs, Insurgency, and Counterinsurgency in Burma." In Brandon JJ ed. *Burma: Myanmar in the Twenty-First Century: Dynamics of Continuity and Change*. Chulalongkorn University, 1997:207–08.

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[121] The Burma Campaign UK. "Ethnic Groups." In *Burma: Land of Fear*. Available at: http://www.burmacampaign.org.uk/aboutburma/ethnicgroups.html.

[122] The Burma Campaign UK. "Ethnic Groups." In *Burma: Land of Fear*. Available at: http://www.burmacampaign.org.uk/aboutburma/ethnicgroups.html.

[123] See the International Crisis Group's report *Myanmar Backgrounder: Ethnic Minority Politics*. ICG Asia Report no. 52. May 7, 2003.

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[141] ASEAN is the acronym for the Association of Southeast Asian Nations.

[142] Information collected by PHR at the UNIAP Brown Bag Lunch with Paul Holmes of ARCPPT and UNIAP Working Group on Law Enforcement and Criminal Justice in Human Trafficking. March 24, 2004. Bangkok, Thailand.

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V. PROJECT METHODOLOGY

Purpose

The goal of the PHR project was to understand the continued vulnerability to HIV/AIDS of Burmese and hill tribe women and girls in Thailand, despite a program widely hailed as a model of HIV prevention for the region, and to identify effective remedial recommendations. To this end, qualitative fieldwork was designed to: 1) identify and understand the human rights abuses suffered by Burmese migrants and members of hill tribes in Thailand; 2) identify the factors, conditions, and practices that facilitate the trafficking and exploitation of these two groups; 3) assess the health consequences, including HIV/AIDS, of such conditions and practices; 4) understand the relationship of the commercial sex sector and sexual exploitation to trafficking, unsafe migration, and HIV/AIDS; 5) describe and assess government responses; and 6) formulate recommendations with study participants to ensure the health and human rights of affected women and girls.

Methods

PHR's assessment included interviews to elicit: 1) testimonies from women with direct experience of trafficking, unsafe migration, exploitative labor, or sexual exploitation; and 2) information from local NGO representatives and volunteers, fieldworkers and researchers from international agencies, policymakers, academics, and government officials. The interview instruments consisted of a series of semi-structured questions designed to elicit the participants' attitudes and experiences, in the case of affected individuals, or expertise, in the case of key informants. Remedial recommendations were solicited from both groups as well. Interviews were conducted in English, Burmese, Shan, or Thai and translated as needed.

Subjects and Sampling

Hill tribe and Burmese migrant women and girls[151] were chosen as the focus of the project because they are similarly vulnerable to human rights abuses, which result in an elevated risk of HIV/AIDS, because of their lack of legal status, discrimination and consequent exploitation, lack of personal security, and inability to access health care and other services. Even those who are better off because of a somewhat protected status or special circumstances are often victimized and routinely subject, with impunity, to threats and/or actions of abuse by Thai authorities and others.

Based on literature review and background interviews with experts on trafficking and migration routes and the geographic areas in which some of the most exploited persons are located, interviews were conducted in Bangkok, Mae Sot (central west Thailand on the Burmese border) and Chiang Mai (the northern region of Thailand).[152] PHR sampled a range of organizations and individuals working in public health and health care, anti-trafficking, migration, law enforcement, government, HIV/AIDS research and activism, assistance to women and girls in sex work, and refugee, ethnic minority, and Burmese communities, to obtain a broad range and depth of information and perspectives. Individual women with direct experience of trafficking, unsafe migration, exploitative labor, or sexual exploitation were introduced to PHR by representatives of local organizations that provide services and protect and promote their rights and/or well-being. Key informants were identified by chain (snowball) sampling;[153] a purposeful approach was used to identify Burmese and indigenous women with experiences of trafficking, unsafe migration, exploitative labor, or sexual exploitation. The PHR field team conducted 68 key informant interviews (many with more than one organizational representative) and collected 34 individual narratives, either directly, through representatives, or through stories shared by key informants.

Human Subjects Protections

This research was conducted in accordance with the Declaration of Helsinki (as revised in 2000) and reviewed and approved by an independent group of individuals with expertise in public health, clinical medicine, bioethics, refugee and migrant populations, and international human rights research. All participants were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used, and verbally consented to be interviewed. Participants who requested confidentiality, or who spoke off the record, were assured that their names and other identifying factors, or the name of their organization, would not be used and would be kept separately

from the data collected. Participants did not receive any material compensation.

Only adults were interviewed.[154] Care was taken not to retraumatize affected individuals through the discussion of sensitive experiences. No names are used in the accounts of individual experiences. In the findings that follow, the exact (translated) words of participants are used wherever possible to give full expression to their opinions and narratives.

Limitations

This study was designed to provide critical insight and remedial recommendations on the manner in which human rights violations committed against Burmese migrant and hill tribe women and girls in Thailand render them vulnerable to trafficking,[155] unsafe migration, exploitative labor, and sexual exploitation, and consequently, through these additional violations, to HIV/AIDS. The findings of the study are not intended to be representative of the attitudes and experience of all of migrant and hill tribe women and girls in Thailand affected by such practices, nor is the study able to establish causal associations with scientific certainty. Access to affected women was limited to some extent by security considerations as well as time and resource constraints, and many of the individual narratives collected were consequently brief. Considered together with the key informant interviews, however, and in the context of similar testimonies collected by others, these findings provide considerable insight into the patterns of experiences of those affected and add to the conclusions of prior research and the experience of a wide range of practitioners, fieldworkers, and grassroots organizations concerning ongoing human rights abuses. This suggests that the interview findings, including the limited testimonies, comprise a credible foundation from which to prescribe a range of intervention strategies for these populations.

NOTES

[151] The majority of Burmese migrants to Thailand are ethnic minorities; of the minority ethnic groups in Burma, the Akha, Lahu, Lisu, Karen, Karenni, and Shan are also hill tribes (and ethnic minorities) of Thailand.

[152] Because of time and resource limitations, information and testimonies about the northern border crossing areas (Fang and Mae Sai) was collected in Chiang Mai. The PHR team was unable to go to the south of Thailand, where especially vulnerable fisherpersons and sex workers are located, given these restraints and the ongoing violence in that region.

[153] Snowball, or chain, sampling is "an approach for locating information-rich key informants or critical cases," wherein the researcher begins with a small group of well-informed individuals and through their networks accumulates additional key informants and individual cases. Patton MQ, *Qualitative Evaluation and Research Methods*. Sage Publications: Newbury Park, Calif. Second edition, 1990:176.

[154] Individuals under age 18 were not interviewed for the study, given the ethical issues involved in obtaining informed consent from children, the potential for retraumatization, and the likelihood that girls affected by trafficking, unsafe migration, labor exploitation, or sexual exploitation would be unaccompanied by a parent or guardian. It was expected that many of the women interviewed would have migrated or been trafficked as adolescents and thus could provide some information on the experiences of girls. In two instances researchers excluded individuals who they were informed were under age. No other potential participants were believed or judged to be under 18.

[155] The Trafficking Protocol defines *trafficking* in persons as "the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." The recruitment, transportation, transfer, harboring, or receipt of a *child* for the purpose of exploitation is considered trafficking regardless of the means used.

VI. FINDINGS

Background to Project Findings

The Hill Tribes in Thailand

The hill tribes, minority ethnic groups living in Thailand's northern and western highlands, number 600,000 to 1 million people.[156] Thailand has recognized nine hill tribes: the Karen (Sgaw and Pwo), the largest single ethno-linguistic minority group in northern Thailand, as well as the Hmong, Mien, Lahu, Lisu, Akha, Lawa, Htin, and Khamu. Several other minority groups in the upland areas of northern Thailand and also along the border with Burma have received no official recognition.[157]

The hill tribes are the only minorities who have been subjected to policies explicitly based on their distinct ethnicity.[158] Before the 1950s, they were for the most part ignored by the Thai government and were not included in the first national census in 1956. But political upheavals in China, Laos, and Burma resulted in an influx of migrants to the hills of northern Thailand. By 1959, the Thai government came to view the people residing in the hills as a threat to national security and set up a special committee to deal with the "hill tribe problem."[159] Thai authorities believed the hill tribes to be involved in guerrilla movements, claimed that their traditional agricultural practices destroyed forests and watersheds, and decried their cultivation of opium poppies.[160]

Thailand has not extended citizenship to at least half of the hill tribe population. Until recently, Thai government policies have not generally attempted to distinguish between the indigenous peoples who have lived in the highlands for generations and recent irregular migrants from neighboring countries.[161] Those without Thai citizenship or permanent residency status[162] are subject to the threat of arrest and deportation; even with a temporary grant of status, they are restricted in their movement, cannot own land, are not protected by labor laws, and are barred from participating in the political process.[163] The are also ineligible for universal health care (the 30-baht plan) and other social welfare benefits.[164] Further, children born in Thailand of parents without Thai citizenship or permanent residency status are stateless.[165] In addition to the restrictions described above, they cannot receive the school certificates necessary for higher education and access to a range of employment opportunities.[166]

The citizenship application process itself has been a barrier for the eligible hill tribe people to attain legal status. In 2000, the Ministry of Interior took steps to clarify and facilitate the process, including allowing a wider range of evidence and authorizing local officials to decide cases.[167] Widespread corruption and inefficiency, however, resulted in the government's missing the initial deadline for citizenship processing for some groups of hill tribes.[168] Overall, complex regulations not always fully grasped by local district officials, arbitrary decision making and abuse of the process for personal financial gain, a lack of resources and leadership, and confusion about the identification of eligible persons have contributed to the very slow pace of citizenship grants.[169]

The Status of Women in Hill Tribes

Thai women overall have lower status than men (see the Thailand Background section, p.11), and hill tribe women and girls in Thailand endure particularly low status among women because of poverty, lack of citizenship, and general discrimination against ethnic minorities. Moreover, the hill tribes themselves have norms of female inferiority and subordination and a history of excluding women from leadership positions — even those, such as the Karen and Lahu, that are matrilineal.[170] Traditionally, women looked after the fields and their extended families and served as the keepers of the cultural traditions in the community. These roles are changing, because of both positive and negative impacts and influences from the advent of modern culture and economic development.[171] The disenfranchisement of the hill tribes from participation in Thai government policies that directly affect them has been particularly felt by women, who are even less informed and educated than men and find it harder to meet the qualifications for citizenship, such as Thai language skills.[172] At the same time, the development or resettlement of these communities has disproportionately burdened women with increased workloads because of new technologies or increased pressure to leave home to work and support families in the face of the loss of farmland. As a result, many have

relocated to the slum areas of Chiang Mai or Bangkok for work as low-skilled laborers such as market vendors, construction workers, or sex workers.[173]

Project Findings

Hill Tribe Women and Girls in Thailand

Interviews with indigenous women and organizations working with hill tribes revealed that longstanding legal, social, and economic barriers to full rights and equality of opportunities persist for members of Thailand's hill tribes, despite some positive impacts in the areas of girls' education, community empowerment, and awareness of trafficking and HIV/AIDS. The failure of the Thaksin administration to remedy the disenfranchisement and marginalization of up to half a million people, as well as its authoritarian approach, have left communities to a marginal existence, at the mercy of neglectful and often unscrupulous local authorities and without viable and acceptable means of livelihood. Consequently, among Thai-born women and girls, already possessing a lesser status on the basis of gender, those from the hill tribes remain especially vulnerable to trafficking, exploitation, and sexual abuse by brokers, employers, and police.

The Community Level: Forced Relocation, Lack of Representation, and Discrimination

As is the case with many indigenous peoples in other parts of the world, the story of the remote highland communities in northern Thailand — home to at least 13 different ethnic hill tribe groups — is one of increased insecurity and decreased self-determination under the encroachment of central government control and the sublimation of community needs to national economic schemes.[174] As one trainer and organizer said, "Villagers have no space for their voice — they're not given information, they don't make decisions."[175]

On the one hand, recent economic development and forest preservation projects of the central government have not improved highlander living conditions and opportunities; instead they have taken advantage of the isolation of formerly remote communities, divorced hill tribe villagers from their traditional cultural practices and governance structures, forced them away from their farmland, and broken apart their social networks.

> *There is one Karen village in a big forest, 82 to 83 households…the forest was declared a World Heritage Site by UNESCO. The tradition is rotation farming, now the government is only giving one piece of land [for relocation of the village] — this won't produce enough. The people want self-reliance, the government wants them to stop farming — the discussion goes on and on. A [National Human Rights] Commissioner went to the village where 19 families were having a hunger strike [to protest the relocation] and asked, "Why?" [One villager] said, "It's not necessary to be alive because we have no hope in our life, we can't make a living like our ancestors." There were military all around and the translator was the chief of the district and couldn't translate all [the villager] said because of the police, but [we] recorded this. The Commissioner asked, "What do you want?" He said, "Jackfruit plants." You see, he didn't ask for land title, it was very modest…But government is very bureaucratic, not human, like a computer.*[176]

On the other hand, the evolution of the reach of the Thai government into formerly self-governing villages and its decentralization has meant that hill tribes lack representation at the local district *(amphur)* level and are voiceless in matters directly affecting their well-being. This is doubly true for women, who rarely hold leadership positions in traditional structures.

> *People can't claim land by themselves because they have no place to speak…Some of the villages have heads, and some don't. These are the leaders in the traditional system, but they are not accepted by the government.*[177]

The disregard for community rights and participation has led to food and livelihood insecurity and an overall decline in the well-being of people suffering not only threats to their health and bodily security, but a dilution of culture and an affront to their dignity and collective identity. It is also a process rife with lack of representation and abuse of authority.

> *They relocated five villages last year…to a place that is very dry, no water or food, where in the mountain they had food from the forest…The chief of district said they agreed to be moved, but they don't speak Thai…[On a visit in March 2004] the [National Human Rights] Commissioner said, "I don't think they can survive here." There's no water, and then in the rainy season the water comes in the middle and splits the village, and the government road will become a river. There will be no income in this season…The soil quality is bad. Traditionally, they move along the river, for a good quality of soil. Before they move, they search for land, soil, water, food — no traditional activity was done here. It was not even done according to the Master Plan…[Villagers] are to receive 300,000 baht ($7,500*[178]*) for transportation, compensation, materials, but they didn't get cash, they just gave a packet of ready food for people building a house and pay for gas, but not enough…It was*

supposed to take two months but took five months to move the houses, and the rice was in storage. The houses burned. The villagers reported it to the police, and the police said it was a rice fire — but it's far from the forest, it's a compound, it's not possible, a rice fire. But the villagers can't read what the police wrote in their report.[179]

This decades-long history of rights violations bespeaks, and reinforces, widespread discrimination in Thai society against nonmajority Thai peoples. As an official from UNESCO who has worked for over 30 years in hill tribe communities commented, "If you do a program for hill tribes or Burmese migrants, people say, 'Why not do something for Thais?' It's the moral system, unlike in China or Laos, where this is not an acceptable response."[180]

Denial of Citizenship

At the heart of the vulnerability of the hill tribes is their lack of full citizenship status in Thailand.

They can't help themselves, because of the government system in Thailand — the ID cards…They have no representation in the system, no place. No ID? No room for you. Traditionally, we have an identity when we are born, when we are given a name. [With regard to citizenship] we are not asking for rights, but for responsibility [of the government].[181]

As a result of this ongoing denial, every stage of a hill tribe person's life is negatively affected; for example:[182]

•Undocumented parents cannot register the births of their children born in Thailand, so they have no evidence of where and to whom the children were born. This is not simply a question of oversight or neglect on the part of the government; according to UNESCO, in 2002 the Ministry of Interior directed district officials not to register these births.[183]

•Unregistered children cannot receive a school diploma (primary school certificate), thus prohibiting the continuation of their education and limiting job opportunities.[184]

•Noncitizen individuals cannot obtain health care under the 30-baht plan. Given the poverty of this population, this restriction effectively deprives tribal women and girls of access to medical care, including reproductive health services.[185]

•Individuals, though born in the country, are considered to be illegally in Thailand, are not permitted to work, and can legally be deported (and therefore held in custody indefinitely, given their technical statelessness). Those holding one or another category of limited temporary resident alien status are not much better off, as they are geographically restricted to living and working in certain areas, usually the immediate district or some portion of it. The effect is confinement to the meager opportunities for work in the locality, without special permission of the (Thai) district chief.

Given the unjust denial of the privileges and protections of full legal status, women and girls migrate to fulfill their traditional obligation to help support their families, to better their opportunities, or to escape the gender or geographic restrictions or other hardships of family, village, or tribal life. When they seek to go to urban areas, however, they are forced to risk a roster of forms of abuse and exploitation to which their gender makes them especially vulnerable.

Trafficking, Unsafe Migration, and Labor Exploitation

Among those who work with hill tribes, there is unanimous agreement that lack of citizenship is the chief factor in the particular vulnerability of hill tribe women and girls to trafficking and other forms of exploitation.[186] As a result of the restrictions on their level of educational attainment and their confinement to the boundaries of the district, many girls (and boys) are effectively limited to hired farm labor and sex work, unless they migrate.[187] Members of families who have lost their land to government projects are also forced to migrate to the lowlands and find work. This is very difficult to do safely, especially for those without facilitating networks of trustworthy friends or relatives or Thai language or literacy skills; they must find their way and evade arrest by somehow obtaining, often borrowing, the means to hire smugglers and pay off police. As a result they may fall into debt and into situations of deception, coercion, and/or exploitation.[188]

Villagers who have been to the city will tell you where you can work, and neighbors follow. Some go permanently, or they go seasonally, in the dry season or after harvest. In the past it was men in construction. Now women and children come down…because they don't have enough rice because the farms are controlled by the government…The migration stories are very diverse: some go for one or two months and go back, some move the family to the city permanently. From every village people come down, some want to make money, some want to see the city. Many have a bad experience: they are cheated from wages, arrested because of no ID card, treated differently…threatened with the police, women are raped.[189]

Employers also take advantage of the traditional values of many hill tribe people, according to one NGO worker: "Villagers don't want to negotiate or bargain because they never claim their own rights; people want to pay respect and have relationships."[190]

Hill tribe girls and women without full citizenship are by all accounts dependent on, and often at the mercy of, their employers. Violations of the labor and criminal laws by employers are routine, unreported, and unpunished.[191] For example, the need for a place to live and find meals, as well as to obtain income, leads many older teenage girls away from home to work as housemaids, where they are subject to rape and attempted rape, as one shelter worker concludes, "because they are hill tribe people, and employers think they can do whatever they want to them."[192] These assaults go unreported because employers threaten the girls' lives or threaten to report their illegal status to the police.[193] These human rights abuses are a direct consequence of holding only hill tribe identification of some kind, at best: "They can't legally work here, so employers threaten them with arrest."[194] Some women and girls have found it necessary to live in a shelter in order to obtain help applying for citizenship, in the hope that this status will lead to a better paying job than those they can currently obtain, and one with humane conditions. Others seek shelter to escape physical and sexual abuse. Many end up spending several years in a kind of limbo.

> *There is an Akha girl here who was in school until the 9th grade, but she can't continue because she has no papers. She went to beauty school at night [while living in the shelter] and does all the girls' hair here. She wants to open her own salon, she has a lot of skills.*[195]

For young hill tribe women like this one, trapped between a lack of opportunity in their villages of origin and barriers to betterment through education or work, the future looks bleak. Given the dearth of legal, remunerative work opportunities, it is unsurprising, then, that as reported to PHR, some women who have been trafficked end up becoming traffickers themselves.

Thai Government's Failure to Address Root Causes

By all accounts, there have been some significant improvements in the situation of hill tribe girls and women in the past 10 or 15 years. Respondents particularly singled out the salutary effect of a compulsory education law mandating attendance through age 15 and government- and NGO-sponsored programs providing scholarships and other interventions to keep girls in grade school.[196] Development has also provided some positive aspects, increasing the standards of living for many villagers. Reportedly, anti-trafficking programs supported by the Thai and US governments and other donors collaborating with NGOs have raised villagers' awareness, enabling them to identify traffickers and unscrupulous job recruiters. Many now apparently understand the need for obtaining information in advance and the potential consequences of agreeing to job brokerage and clandestine travel for themselves or their relatives in the custody of agents. Although these programs have not tracked results nor been evaluated, those who work with trafficked or at-risk women and girls have noticed a decline in those trafficked who are from the hill tribes: "We see many fewer hill tribe girls [in the shelter]…villagers have information."[197]

The fundamental inequalities derived from denial of citizenship, however, have not been remedied by the Thai government. Thus, these improvements and interventions have not necessarily translated into more opportunities for teenagers and young women, as secondary and university education and other avenues to betterment and income generation remain elusive. Continued pressure on girls and women to contribute to their family's survival, and their own desires to seek a better or different way of life, mean that, despite knowing the potential risks of unsafe migration, they still remain vulnerable to a need for smugglers to leave the village, to the enticements of traffickers offering a way to make money, to exploitation by employers, and/or to abuse by unscrupulous police and others who seek to profit from these women's lack of legal status. Circumscribed in these ways, many also may still end up for a time in sex work.[198] Thus, hill tribe women and girls remain at risk for human rights abuses, including sexual exploitation, and for transmission of HIV/AIDS.

Continued Human Rights Abuses

For the discriminatory situation of women and girls to be addressed, the oppression of hill tribe communities must end. Minority ethnic communities, including those of the hill tribes, have been targeted for violence and intimidation, both as a matter of routine at the local level and in the form of a national policy directive in the name of the "war on drugs," which continues despite the prime minister's announcement of its successful completion. This is widely believed to have been a vehicle for the police to intimidate highland people, activists, and others, "a loss of control by the rank and file, encouraged by the government's policy."[199]

> *The government sees only problems and not positive aspects [in the villages]. Drug trafficking, of course it happens, but only a few people are involved…But the rest of the people are victims, because [when the police come] the people who did wrong were [already] killed, arrested, or gone.*[200]

Moreover, the Thaksin administration has done very little to address the quotidian human rights abuses of hill tribe peoples described in this report, and has slowed down existing reform and redress efforts. According to one of the 11 members of the National Human Rights

Commission of Thailand, which has called for full citizenship rights for all those born in the country, "Thai people see this as a human rights issue, but the responsible officials are not active."[201]

According to UNESCO and local NGOs, this is a problem of political will, and a lack of direction and coordination from the highest levels to the reluctant districts, to which the decentralization policies have defaulted responsibility for addressing citizenship claims. District authorities remain unsure and bogged down in the law's complexity and fearful, based on experience, of punishment for granting an incorrect status.

> *Parts of the government have been revoking citizenship, of hill tribe people primarily. There was a case of 426 people [in one village]. Some found out because they went to vote in a village election, were not on the rolls, and asked why. The excuse was that some people had obtained [citizenship] fraudulently. Okay, but [address] it on a case-by-case basis, not en masse…The Law Society has been taking cases, but this [revocation still] had a devastating effect: a teacher lost her job of 10 years, people had agricultural and other loans rescinded. Tremendous harm was done, even though individual cases have been reversed.*[202]

This is not an insurmountable legal morass; officials from the Ministry of Interior have trained NGOs in the application process and could train local officials as well. The problem lies with disincentives and a lack of commitment from the government to make headway on what one academic studying politics and economic policies in Thailand has described as a longstanding resistance in the bureaucracy to granting human rights to ethnic minorities.[203] Ethnic minority rights organizations agree:

> *The right to a voice…we can blah blah around the world, but it never changes the government policy or perspective. There's a rally in front of the government office [in Chiang Mai] today. For the last two years we've had rallies and put our demands to the government for land rights and citizenship. After the rallies, a committee was set up and it doesn't do anything, even though it includes our side and the government and the chair is the deputy prime minister.*[204]

Access to Health Care

As with Burmese migrants in Thailand, the lack of basic rights of Thai hill tribe minority members directly affects their access to health care and increases their vulnerability to HIV/AIDS and other preventable diseases. Women and girls who are not citizens cannot access the 30-baht plan and must pay for services. Their impoverishment, due to the diminished opportunities afforded by their gender and minority ethnicity, makes such payment difficult, if not impossible. Moreover, their resort, by necessity, to employment in exploitative conditions further diminishes their access to health care and increases their risk of illness. If these women are sexually abused or exploited, they face a direct risk of HIV infection and other serious health consequences, such as other sexually transmitted diseases, unintended pregnancy, physical injury, and psychological trauma, all of which may go untreated.

While Thai HIV/AIDS policies and educational programs may have had broad reach and impact among Thais, hill tribe communities are excluded from many of the benefits because of limitations on language, cultural appropriateness, and access to preventive services. Thanks to NGO efforts, some public education efforts on HIV/AIDS awareness and prevention are taking place in the remote hill tribe communities.[205] A scaled-up and comprehensive effort is necessary, however, one that only the government is in a position, in terms of resources and public health infrastructure, to provide. Thai HIV programs must reach all people resident in Thailand if HIV spread is to be contained, and those in need of preventive services and AIDS care and treatment should be able to access them. The systematic failure to reach vulnerable communities is not only a failure of human rights — it is a virtual assurance that HIV/AIDS will continue to be a problem for all the people in Thailand, including the Thais.

As with HIV and access to health care, so with trafficking. Discrimination, lack of citizens' rights, and all the missed opportunities and benefits that follow, are significant factors in hill tribe women's and girls' continued vulnerability to trafficking, despite the anecdotal success of some anti-trafficking efforts. Their poverty in the midst of the relative prosperity of their Thai neighbors is another root cause of this vulnerability — and their poverty is currently enforced by the lack of political will in Thailand to grant them the basic rights and benefits of citizenship. Moreover, the government's failure to investigate, identify, and prosecute smugglers, traffickers, exploitative employers, and the police who are complicit with them grants impunity to those who take advantage of the denial of legal status to hill tribe women and girls to pursue gravely injurious and discriminatory practices against them.

Background to Project Findings

The Burmese in Thailand

Burmese Migrant Workers

The largest category of Burmese in Thailand is migrant

workers. The numbers of Burmese in Thailand are not known with precision; it is generally estimated that there are more than one million Burmese migrants and refugees in Thailand, with refugees accounting for only a small percentage of this population (see box below, "Burmese Asylum Seekers and Refugees"). A study by Refugees International and the Open Society Institute found that although many Burmese migrant workers expressed their reasons for migration in economic terms, like the recognized political dissidents and the refugees living in camps along the Thai-Burma border, most have experienced persecution and abuse in Burma that made them vulnerable to poverty and flight. Indeed, interviews conducted for the study revealed experiences of forced relocation and confiscation of land, property, and livestock; forced labor; taxation and loss of livelihood; and war and political oppression in Burma.[206] The violence and chaos in Burma also result in migrants' toleration of human rights abuses in Thailand, fearing their deportation back home as even more threatening.[207]

Since the 1990s, Thailand has utilized a temporary foreign migrant worker registration system permitting employers to register and thus legalize the foreign migrant workers in their employ as guest workers for one year (see additional discussion in the Law and Policy section, p.45). Annually, as the end of each registration has neared, businesses have pressed for another year, and the government has gradually expanded the provinces and sectors in which employers have been allowed to legally employ migrant workers.[208] Thailand's worker registration fee is 4,450 baht ($111), generally paid by employers who deduct some of the fee or the entire amount from the migrants' wages. Of this sum, 1,200 baht ($30) per year purchases coverage under the government's 30-baht health program, under which the cost of health care is limited to 30 baht (75 cents) per visit (see description in the Law and Policy section, p.45).

Most migrant workers are not registered with the government, however, and the numbers of registered workers have been declining, with 568,249 registered in 2001, 409,339 in 2002, and 353,274 at the beginning of 2003; indeed, the number of registered migrants declined to 110,000 in August–September 2003.[209] Migrant workers' organizations and others suggest that this decline was due to the fact that migrants, who typically pay the registration fee, have found that registration has not provided them with better working conditions, nor has it protected them from extortion by local police, in part because many employers hold worker registration documents.[210] In addition, most registered workers do not know about the 30-baht plan or its reduced cost, or do not use the health program because of language and communication barriers, inability to leave the workplace freely, perception of discriminatory practices by Thai staff, and fear of harassment and demands for bribes when traveling from worksites to clinics and hospitals.[211] For unregistered and undocumented migrants, these factors are exacerbated by their illegal status, which further impedes their ability to seek or negotiate care.[212]

The families of registered migrant workers are not covered by their temporary legal status and thus are subject to arrest and deportation and are not eligible to receive subsidized care under the 30-baht plan. Moreover, children born in Thailand of these parents are not given Thai nationality and thus are stateless within Thailand.[213] As with hill tribe children, they cannot receive official school certificates; moreover, in practice these children are denied the proof of their place of birth they need to register at Thai schools.[214] In 2003, the Thai government stated that the approximately 120,000 migrant children born in Thailand were "a potential security threat."[215]

Deportation

Deportations to the Thai-Burma border take place daily, but recently the Thai government has begun to systematically deport Burmese migrant workers back to Burma.

Burmese Asylum Seekers and Refugees

Currently there are approximately 120,000 Burmese living in nine official refugee camps along the Thai-Burma border, consisting mainly of ethnic Karen and Karenni who have fled the conflict in Burma. The Thai government is not a party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol and thus does not officially grant asylum or refugee status to persons who meet the definitions of a refugee or asylum seeker. The Thai government and the United Nations High Commissioner for Refugees (UNHCR) have designated 1,600 asylum seekers as "persons of concern," and, to a fluctuating degree, the Thai government allows the UNHCR to protect these persons and monitor the camps.[219] The government extends "persons of concern" status only to individuals directly fleeing fighting. On January 1, 2004, the Thai government pressured the UNHCR to suspend its screening process for newly arriving Burmese asylum seekers.[220] In addition, under what is referred to as the "harmonization" process, the Thai government is attempting to relocate all Burmese refugees from the urban areas into the camps along the borders and has expressed its intention to do so with all Burmese in Thailand.[221] The Thaksin administration's refugee policy is widely attributed to its desire to forge ever-closer economic relations with Burma.[222]

In 2003, the Thai government deported up to 10,000 Burmese people each month via "informal" methods,[216] arresting Burmese for being in the country without legal status and returning them to the border in Mae Sot, but not directly to the Burmese government. Some are able to bribe their way out of deportation, while others are forced to cross over to the Burma side.[217] In addition, under a June 2003 agreement with the SPDC, the Thai government has formally been deporting 400 undocumented Burmese per month directly to a military-run holding center since August 2003.[218] These individuals are subject to criminal penalties and detention (see the Burma Background section, p.19).

Project Findings

Burmese Migrant Women and Girls in Thailand[223]

Because of the locales of the fieldwork, PHR findings are based on interviews with organizations and individuals with experience of three migration — and potential trafficking — routes: 1) from various places in Burma to Mae Sot; 2) from Shan State in Burma and along the northern border to the towns and cities of the upper north in Thailand, including Fang, Chiang Rai, and Chiang Mai; and 3) from the border communities in Thailand to Bangkok.[224] It is testimony, however, to the variety and ever-changing nature of the migration experience, shaped by push and pull factors including current government policy with regard to the enforcement of immigration laws, that some of the migration and trafficking narratives documented in this report overlap into more than one category.

Leaving Burma—Antecedents to Migration

Pre-Departure Stage

> *The harsh and deteriorating conditions of economic, social, and political life in Burma are at the root of Burmese people's desire to seek better lives by leaving their homeland. A group of Burmese women put it simply:*
>
> *Life in Burma now is impossible. Both the Burmese armies, police and local armies, are always taking something from us. We have no freedom to work, grow rice, or move around. There are no medicines and no doctors. No schools. Nothing…We would like the Thai government to talk honestly about Burma and stop making business deals with [the SPDC].*[225]

Respondents reported consistent motifs of migrants taking known risks in going to Thailand and doing so to escape conditions of poverty and/or terror in Burma, seek a livelihood to send money home, or, less frequently, pursue educational opportunities. One NGO that runs two crisis support centers told of a woman whose sister went to work in Thailand as a sex worker and died there of HIV. The younger sister then went to do the same thing, because she did not know how else to support the family in Burma. "People take these risks. They don't know what else to do. If they have to die, they die."[226]

In some areas in Shan and Kachin States, ethnic minority populations are being forced to relocate when their land is being taken for population resettlement for the Wa ethnic group (allies of the ruling regime) and for Chinese immigrants who can pay resettlement fees.[227] As a result, in areas in Shan State, for example, where forced population transfers have been documented,[228] economic life has become particularly challenging. One NGO volunteer reported to PHR about asking Shan, who said they can't work because they no longer have rice or buffalo to sell, why they don't sell khao soy (a typical Shan noodle dish):

> *Who would we sell to? There are no more Tai Yai [Shan] villages. The military have their own food vendors.*
>
> *Twenty military or a whole company will come and steal the harvest. The military asks them to grow opium and taxes them like they did with the rice, at a fixed weight whether there's a good or bad crop, so they have to buy from others to pay. No one can survive.*[229]

Others were forced to flee to Thailand because of political and/or security concerns. One Burman woman from a politically active family came from Rangoon. Her father was a leader in the National League for Democracy and was jailed for his activities several years ago. After his arrest, soldiers and police from both military intelligence and nonuniformed services came to their house frequently, usually late at night. Her mother became concerned for her daughter's safety and was very afraid of the raids. Finally, the mother took her children and fled to Thailand.[230] Another woman came from Shan State with her three children (ages 6, 9, and 10) after her husband was beaten to death by an SPDC soldier, and she had no other source of income.[231]

Many go to Thailand to search for work, because of the lack of opportunities to earn sufficient income in Burma. At the same time, high demand for labor in border area factories in the Mae Sot area and in citrus orchards in the north, as well as work in domestic service, construction, farms, shops and markets, food service, and commercial sex venues in Thai towns and cities, continue to draw migrants.[232]

One example is a young woman from a large urban Mon family whose father became ill when she was 15

years old; he could no longer work and support the family. She decided to go to Thailand, as she had heard from others in the community that she could find work there. Through contacts from her neighborhood, she left home and immediately got a job in a sewing factory. She worked for two years, and was able to send some money to her family. She said that it was very hard work and long hours, but she also expressed some pride in helping her family. Her 14-year-old sister came to join her at the factory, but found the work too difficult.[233]

Most Burmese ultimately want to return home. For now, many will go back and forth if they can, given that Burma's political, social, and economic crisis continues.

> *Burma is our home, where our family is, where our lives are…We come back to Thailand because Burma is still a place where we cannot provide for our families; that has not changed just because we left for a while. When the money we earned runs out, we come back to earn more. Sometimes we come back earlier because we need money to pay off the military so our families will be safe from forced labor, conscription, or rape.*[234]

Migration from Burma to Thailand

Travel/Transit

Cross-border migration from Burma to Thailand is best understood in the context of the large numbers of Burmese heading to Thailand as refugees, asylum seekers, or voluntary, irregular migrants, with stories of trafficking being far less frequent in the PHR study. A theme that clearly came across was that the more information and ability to tap into an existing social network that an individual had seeking to leave Burma, the safer she would be. An NGO that provides workplace trainings and runs a drop-in center for women migrants in Mae Sot told PHR:

> There are four ways that women come to Thailand and find work [in factories in Mae Sot]:
>
> 1. A friend asks the owner, and they call to Burma and say you can come;
> 2. People without contacts or knowledge arrive at the market or bus station. This is the more difficult or dangerous way. They look for friends from the same village to stay in a room with;
> 3. Sometimes they pay a broker;
> 4. The owner pays the broker, so the worker doesn't get paid for three months. They get into debt, so the [other] women [workers] help each other out with money.[235]

Often crossing the border involves simply crossing a river or taking a bus. For example, an 18-year-old Chin woman from Rangoon went to Thailand to continue her education. She was ready to make the journey to Thailand alone, but her family was afraid for her. An uncle went with her, and they traveled by public bus from Rangoon to Myawaddy (the Burmese border town directly across the narrow Moie River from Mae Sot). She left her uncle in Myawaddy and crossed the river with some other Burmese by boat.[236]

Several NGO workers active with migrant populations spoke about the importance of smuggling, or paid brokerage, for migration from Burma to Thailand. In the Shan State–Fang district Thailand border areas, large numbers of new migrants arrive every month from Burma into Thailand, particularly to work in the large citrus groves producing orange juice for export, and they generally have to pay brokers and/or smugglers who have contacts with the police.[237] Once across, motorcycle rides from established river/mountain crossing sites — which can cut through fields and avoid the checkpoints on the main roads — can cost up to 1,500 baht ($38) just to take migrants a few kilometers into Thailand and onto paved roads.[238]

One NGO worker stressed the dangers of traveling without smugglers or brokers. He described a client his organization was assisting, a 15-year-old Pa-O boy who was the sole survivor of an incident that occurred in early 2004 in Shan State, about 10 kilometers inside Burma. In this case, six migrants, including the 15-year-old, were attempting to cross into Thailand without using an agent. They unknowingly entered a minefield, and five of the six were killed in a subsequent landmine explosion.[239]

Trafficking

In the context of migration from Burma to Thailand, most often for work, trafficking does occur. Trafficking situations often begin with the decision to migrate to Thailand, and then deteriorate into trafficking as the migrant is afraid, vulnerable to exploitation, and easily intimidated and deceived. Usually she does not realize her situation until she arrives at her destination. A crisis support center worker said:

> *We see a lot of housekeeper cases; women know [what they will be doing] and want this job, even though it's low-paying, because they'll have a place to live and food — but without ID there's threats and lots of cheating…They agree to work as maids, and think they will get paid, and don't know that the agent [who brokered the job] took [three months of] the salary. There were two girls, 18 and 20 years old. This is typical, that after three to four months the trafficker will move them to another house, on the same terms, so the women never get paid. They*

escaped somehow and got in touch with us.[240]

In the interviews conducted by PHR, this form of trafficking was apparently common along the northern route. The Shan and other minority peoples from Shan State are particularly vulnerable to trafficking from Burma because, in contrast to the situation with the Karen and Karenni people who come through Mae Sot, there are no formal refugee camps for the Shans in Thailand. Many of these recent arrivals are driven out because of forced relocations from areas around Kengtung, near to the Thailand crossing at Mae Sai. In one of the targeted areas, the Shan population has reportedly decreased from roughly 12,000 to 3,000, and they are becoming an ethnic minority in a traditional Shan homeland.[241] Children may be especially vulnerable in this context of displacement. One NGO recently documented a trafficking case from Burma into Fang District, Chiang Mai Province:

> *A 13-year-old girl, an orphan, was staying with her grandmother and 3-year-old brother in Murng Sen, Shan State. A Shan woman came and told her that she had relatives in Mae Sai and offered to take her to them. She was afraid her grandmother wouldn't let her go, so she sneaked away with the woman, taking her brother. In Mae Sai she was sold for 4,000 baht ($100) to the headman of a nearby village as a domestic worker. She had to work very hard — clean a very big house all by herself — and she was beaten. A Shan woman who visited the headman's house heard the girl's story and managed to trace some of her relatives in the [unofficial internally displaced persons camp in Burma near the Thai border[242]]; they arranged to pay "compensation" to the headman and take her there. The girl has no idea what happened to her brother, but thinks he must have been sold to someone.*[243]

Migration Within Thailand

Travel/Transit

The Thai-Burma border is porous, minimally guarded, and easily crossed on foot or by boat. Traveling from the border areas deeper into Thailand, to major towns and cities of Thailand proper is, however, much more difficult. The paved roads on which cars, trucks, and buses can pass are limited, as are the rail and air routes, and these are heavily monitored and guarded, with multiple checkpoints and border patrols. This situation makes entering Thailand relatively easy for Burmese, and moving within Thailand very difficult because of the risk of deportation. While bribes can facilitate crossing checkpoints, they are expensive and often beyond the means of newly arrived Burmese. Thus, many smugglers and traffickers can take advantage of Burmese who want to go from border areas into Thailand proper, especially to cities like Chiang Mai or Bangkok, where the wages are higher.[244]

Migrants and trafficked persons leaving Mae Sot pay agents depending on the route: walking through the forest from Mae Sot to Khlong Lan "on the jungle roads" for 4,000 to 5,000 baht ($100–$167) to avoid the checkpoints and take the bus or walk the rest of the route; 10,000 to 15,000 baht ($250–$375) for the major highway routes, where bribes will need to be paid; or in between for some combination of walking and being driven.[245] The forest route is especially dangerous for those in transit — who are preyed on by gangs, subject to natural dangers, and fearful of the forestry police — and for the agent as well, but many Burmese are ignorant of this.[246] Many brokers or traffickers who are paid by the employers will take a potential worker three times — twice on the highway and lastly through the forest — before deeming her unlucky, charging three months' salary to the employer for the highway route and a premium, four to six months' salary, for the third time.[247] Some migrants sell property or borrow the money to pay the agent; some agree to work until the debt is paid off but may not know the terms. For example:

> *One group was told when they arrived at the factory that they would be locked in for a year without pay because the owner had paid 10,000 baht per worker to the broker. One man escaped and was arrested and sent back to Mae Sot and then to Burma and then crossed back on a day pass to Mae Sot [and told the NGO this]....We do not know what happened to the others — the man did not speak or read Thai, so he did not know where the factory is.*[248]

In this way, as in the case of migration from Burma into Thailand, unsafe migration deteriorates into trafficking.

Trafficking of Burmese Girls

PHR interviews revealed that the trafficking of Burmese children takes place mostly within Thailand, primarily to Bangkok or other cities for flower selling, begging in "gangs," or domestic service. For example, one 11-year-old Muslim girl went with her religious teacher, who had promised her free lessons, from Mae Sot to Ranong and then to Bangkok, where she was sent to a flower seller to live in his family's house and work for him, earning 500 to 600 baht ($12–$15) per day. There conditions were good, but eventually the teacher came again, took her money saying it was for her mother, and left her with another family who treated her badly. After seven to eight months, the girl and the entire family were arrested and taken to the detention center in Mae Sot. There an agent paid 500 to 1000 baht ($12–$25) for her and several others to immigration officials, and eventually she

ended up working for this woman, delivering food and assisting in trafficking activities. Almost a year later, she was reunited with her mother, who had found out about her whereabouts from the teacher, and they were assisted by a community watch and an NGO with resources to pay transport and checkpoints to return to their home in Burma. Neither the teacher nor the second trafficker were ever arrested.[249]

The NGO World Vision Thailand runs an anti-trafficking and victims' assistance outreach program employing five Burmese field staff ("Frontline Social Networkers"). Established in 2001, the program works in Mae Sot, Mae Sai, and Ranong, and since 2002 has assisted 68 trafficking cases, primarily in Mae Sot.[250] The great majority have been children and young adults trafficked within Thailand and from the border to the interior of the country, from very poor families who sent the children to work and earn money for the family.

> *Mostly [the traffickers] are well known to the parents and to the local community. If the child trafficked is from a Muslim family, the trafficker is a Muslim. If the victim is Karen, the trafficker is usually a Karen. Like that. The traffickers come to the home, speak with the parents, they are from the same community so they understand each other.*[251]

Trafficking for sexual purposes appears not to be a prominent part of this internal trafficking, at least not initially:

> *We have heard of a few cases. Usually they are not trafficked to Bangkok for this reason, but it may happen later, from selling something or from domestic work, that they end up later in prostitution. Mostly this is the older girls, 14 or 15 years, but some are younger.*[252]

Exploitation in Thailand

Many volunteers and staff with NGOs who work with Burmese migrant women in Thailand underscored that female migrants and trafficked women face "exactly the same" issues in terms of exploitation at their destination, which includes the common occurrence of sexual abuse, debt bondage, and the transfer of debts to new employers, as well as concerns over personal physical security, harsh living conditions, and lack of access to health care.[253]

PHR interviewed Burmese women and NGO staff who primarily described conditions in factories and the sex industry. In addition, it should be noted that workers in other sectors, in particular domestic service, also endure extremely exploitative conditions (see box).

Factories

NGO staff working with Burmese migrants reported highly exploitative factory work in Thailand. Many factories moved within Thailand to Mae Sot and the western border with Burma in the mid-1990s. A Burmese community leader told PHR that since 2000 there are many more factories and a greater supply of Burmese because of the deterioration of the economy in Burma. These factories make products (mostly garments) for American companies, among others.[255] With so many migrants available, workers are treated worse than at factories elsewhere in Thailand and receive lower salaries.[256] The majority (75 to 85 percent) of these migrant factory workers are women; staff from several Burmese community NGOs said that this is due to the fact that factory owners find women to be "quiet and compliant" and easier than men to control.[257]

The work is hard, and conditions are harsh. A work day lasts from 8 a.m. to 9 p.m., with one day off per month, usually the day after payday. Workers earn 50 to 80 baht ($1.50–$2.00) per day; the minimum wage for Mae Sot as of January 2004 is 135 baht ($3.30) per day. Employers claim that they pay less because they provide accommodations, but from the workers' wages they deduct for the work permit (300–500 baht, or

Domestic Servitude in Bangkok[254]

One woman told this story:

She finished high school in Burma and during the summer went to Thailand to earn money to pay for university…She then worked in factory in Mae Sot. It was low season, not enough work, and a police officer came and offered her a higher paying job working as a domestic nearby. She got on a van to go to Tak City and got carsick on the winding roads and asked the driver for medicine. He gave her one that made her fall asleep. When she woke up, she did not know where she was and asked and was told "Bangkok." She was praying not to be sold into sex work. She was sold into domestic service.

She was never paid. She was not given enough to eat, but a domestic at a neighbor's house would give her food. The Thai staff at the house were paid. After one year she asked her employer for permission to leave, and he said "No." Her friend next door encouraged her to leave. She was afraid to, because she heard bad stories about people getting arrested and abused in custody, especially women. After two years, she learned enough Thai and some English. She told her employer she wanted to leave, and he said, "How will you pay to go home?" She said her friend would lend her the money. He asked where she would go, and when she wrote down an address in English in Mae Sot that she had memorized, he was afraid she would report him — he did not realize she knew English — and so he drove her himself to the address in Mae Sot.

$7–$12) and 500 baht ($12) per month for shelter and food.[258]

Most workers are single and live at the factories; those with families must find their own accommodations and usually rent houses nearby. Rooms rent for from 500 baht ($12.50) in an unsafe and noisy area to 2,000 baht ($50) per month, so as a result "there is a struggle for existence."[259] Some workers rent a small plot of land for 100 to 200 baht ($2.50–$5.00) per month and build a hut, but these homes are dangerously susceptible to raids by police.[260] Migrants are frequently beaten by groups of Thai teenagers when they venture outside; there are at least 20 cases of rape or murder per year in Mae Sot — and all of these crimes go unpunished.[261] Workers may feel safer on the grounds of the factory, but often they are confined there. One NGO worker observed that the women "are not human being[s] — they can only go to the verandah [of the factory] — it is not a jail, they are not arrested, but they look like prisoners."[262] The women who worked at one particular factory had to communicate with others through a gate in order to get out letters to their families.

Conditions of work are also dangerous. At dye factories, workers have no masks and inhale particulates; at doll factories, they paint with toxic chemicals and are not provided with gloves; at stainless steel plate factories, a very noisy environment leads to hearing problems. Sometimes owners install a mild electric current running through factory tables to periodically shock workers awake.[263]

It is very widely reported that workers are given only a copy of their work permit and that most migrant factory workers never see the original. The original is technically required to make a health care visit under the 30-baht plan, as well as to show to police to prove temporary legal status in Thailand. Meanwhile, the workers' pay is docked every month for the registration fee, but they may never know when they have it paid off. In addition, because taxes are linked to the number of workers factories employ, some factories register only half their workers, and if a worker leaves, factory owners alter the working papers for a new worker, leaving the [new] worker undocumented and without legal protection.[264]

Physical insecurity was identified by women's NGOs as one of Burmese women migrants' chief concerns. Women are frequently subject to sexual harassment and abuse by the male members of factory owners' families and by the (Thai) factory assistants and security guards who work at the factory. In a typical story, one woman raped by an assistant had the incident reported to the wife of the factory owner in Bangkok, and the worker was fired.[265] At another factory, the women were continually harassed by the guard when they went out to buy food:

> *The Thai gateman asked the women for 5 baht [for permission] to go out to the other side of the road to the market. When the women protested that 5 baht was what they had to spend there, they were sexually touched. One woman ran away with the buttons of her blouse open. Another woman collected all the money [from the others] and asked what they wanted [from the market] and climbed over the gate by standing on the others' shoulders. She was sent to the factory owner for doing that. I'm not sure if she got fired or not.*[266]

Commercial Sex Venues[267]

Some Burmese migrant women reported to PHR highly exploitative conditions and close ties between commercial sex venue owners and the Thai authorities. One woman who lived next door to a brothel in Mae Sot described some of the conditions as follows: Clients were charged 500 baht per hour (about $13), of which the women were supposed to receive 50 percent. Each woman had to pay the owner 1,900 baht ($47) per month. If the woman was sick and could not work (including during menstruation), she was fined 500 baht ($12.50) for each client who asked for her; a woman who was sick could be fined over 4000 baht (close to $100) in a day. The women also had to pay 500 baht ($12.50) per month each to the police: "These are not traffic police, they are more powerful…same as immigration."[268]

Stories of the five women currently at this house were told to PHR by this neighbor. Three had been raped by previous employers when they were in domestic service or restaurant work; one had been abandoned by her husband and left without resources; the fifth came to Mae Sot with her husband who had a job in a factory but could not support the family. This last woman had been at the house for four years and now lived with HIV. The house owner was aware of her status, and she continued to work. As recounted to PHR, the prior sexual abuse combined with being unable to earn enough money to survive in other occupations facilitated the transition into sex work for the three women who were sexually assaulted, the shame and stigma attached to sexual violence reinforcing its psychological impact.

Another woman, a 24-year-old trafficked to Mae Sot from Mon State in Burma, described the situation at a house near the market:

> *As soon as she arrived, she was badly beaten, and for the next few days she was beaten and verbally abused ("Those were very bad days."). There were six others in the house — five Burmese and one Karen, all of whom had been there for eight months [or longer]. The others offered her some support, though they had*

come to think that this was "normal life." The Muslim woman [who brought her to the brothel] was paid 10,500 baht ($263), which, with food, medicine, and housing costs, became part of her ongoing debt. The house owner kept a record [of the debts] on the wall. In her time in the house, no one ever received money. The promised date for arranged transport back to Burma was constantly delayed. The others in the house taught her how to use birth control, which was supplied by the house owner but added to her debt…[She and another in the house were allowed to attend a health workshop given by NGO workers where she learned about condoms for the first time.] Clients often did not want to use condoms, and though the women were able to refuse sex with a client, they were "fined" 500 baht [the cost for the client].[269]

Thai Official Complicity in Sexual Exploitation

The same woman told PHR that the house owner gave money to the police every week, and there were never any "problems."[270] The neighbor of the other Mae Sot brothel recounted that the women's greatest fear is "working for free," that is, providing sexual services for Thai police and soldiers. Sometimes the soldiers took the women away from the house for many hours.[271]

The situation at a Mae Sot restaurant where sex was sold was similar and also involved regular interactions with Thai authorities. The owner was a colonel in Thai Immigration. According to the respondent, many higher ranking officers visited from Bangkok and wanted "good food and good women."…"They want different nationalities [not Thai]." The restaurant had the reputation for offering sex with virgins: 8,000 baht ($200) for *pakin pwin* (Burmese for "to open the package") and 5,000 baht ($125) "if she is not beautiful."[272]

Other respondents told PHR that immigration officials trafficked women detained in the Immigration Detention Center (IDC) in Mae Sot, where women are brought from all over Thailand for deportation, into commercial sex venues.[273] Police also sold women into debt bondage in commercial sex venues from detention at the Mae Sot police station.[274]

Inability to Access Health Care in Thailand

PHR interviews revealed that access to basic health care is greatly lacking for Burmese migrants in Thailand, especially with regard to reproductive health. Lack of condom access was also a recurring theme; NGO workers noted a lack of condom access despite international donor aid that is meant to establish these services for migrants in Thailand.

In addition, because conditions in Burma are abject, many go to Thailand in poor health to begin with. When asked about the state of health of Burmese who migrate to Thailand, a group of women said:

In Burma we never had enough to eat. When we are sick, we just get better or die. Babies don't get immunizations. We are afraid and worried all the time. When we first come to Thailand, we are weak and sometimes our malaria comes back. We don't know anything about how to go to a doctor here.[275]

Fear of arrest, and actual arrest, at the increasing number of security checkpoints is also a barrier for individuals seeking care, in Mae Sot in particular because of its proximity to the border. Patients being transported to the hospital by NGO workers have been detained by police and had to be "bailed out" with a bribe paid by health care providers.[276] One physician attributed low rates of women receiving clinic-based antenatal care who return for delivery (30–40 percent) to issues of access including security issues, costs of transport, and, for some, the travel distances involved.[277]

Factory Workers

NGOs working with Burmese migrant factory workers report poor health care. It is very difficult for workers to get sick leave; they "work until they fall down."[278] In factories, PHR learned that because men and women frequently live together in coed housing, there are often short-term relationships leading to unintended pregnancies;[279] women are also raped by Thais, as mentioned above. If women become pregnant, they lose their jobs — not only in factories, but in all other sectors as well.

Pregnant migrants are often fired from jobs, especially construction sites. Access to reproductive services is very limited, condom supplies have decreased, so many women choose unsafe abortion to avoid pregnancy and keep working.[280]

Often pregnant workers try to perform home abortions — with twigs or cotton sticks — and many end up with localized infections or sepsis or other complications, sometimes leading to death.[281] Many women also carry their pregnancy to term and then, unable to care for the child because of their financial or work circumstances and/or the stigma of single motherhood, abandon the child at a hospital or clinic or safe house.[282] PHR researchers observed a number of these stateless children in Mae Sot, living, for an indefinite time, at NGO-run facilities.[283]

Several health outreach projects target factories in the Mae Sot district to train factory workers to be peer educators on reproductive health, HIV, STIs, and women's empowerment.[284] The program staff need the permission of owners to have access to the factory compounds, and

some owners do not see the value of the work or will not allow time for the workers to receive training. Many NGOs report that the owners fear workers rights and relief organizations because wages are very low and conditions are poor, so they do not want to let any outside organizations inside to make observations or educate workers on their rights.[285] Community-based HIV/AIDS prevention projects face similar obstacles, which organizers additionally ascribe to the insecurity of the situation for Burmese NGOs doing grassroots health and relief work in Thailand. One reported to PHR that they were unable to hold some planned trainings and to update their data on the knowledge, attitudes, and behaviors of factory workers [286]

When workers are able to seek health services, in Mae Sot they usually go to the Mae Tao Clinic ("Dr. Cynthia's clinic"), a Burmese-run primary care facility. They will only go to Mae Sot Hospital if they are severely ill, if then:

> *They feel mistreated there, and they don't want to go. They feel they don't get complete treatment, even if they have access through the 30-baht plan. [The providers] are not sensitive, there are not enough interpreters. If you have an STI they ask, "How come you aren't using condoms?"*[287]

According to this NGO volunteer, past reports of tubal ligations performed on Burmese migrant women at Mae Sot Hospital without their consent after the birth of a child also deter women from presenting there.[288]

Commercial Sex Venues

Since the early 1990s, there have been public health services for sex workers in both Mae Sot and Chiang Mai (see the Thailand Background section, p.11, for further discussion). Women may not always be able to access these services, however. In Chiang Mai, for example, a woman reported that if women at the brothel where she was debt-bonded were sick, they would not be sent to a clinic or hospital; they simply had to arrange to buy medicine for themselves. If they became ill with HIV/AIDS, they were immediately forced to leave without care or support.[289]

Mae Sot Provincial Hospital offers a designated sex worker clinic during specific times set aside at the government-run STI clinic. According to the hospital, the women served are both Thai and Burmese and are largely based in Mae Sot. Most work in bars, pubs, restaurants, and karaokes, with few working in traditional brothel settings. While STIs are generally not common, the diagnoses most frequently made at the STI clinic are herpes lesions and HIV infection.[290] Data provided by Mae Sot Hospital to PHR detail the breakdown of sexually transmitted infections at the sex worker clinic by ethnicity and diagnosis from 2001 to 2003. Out of 104 patients seen in 2003, all were Burmese and none were covered by the 30-baht health plan. The clinic reported that 14 percent had HIV/AIDS.[291]

Mae Sot Hospital reported that attendance at the sex worker clinic has declined sharply since the Thai government began its crackdown on sex venues in 2004 as part of the "Social Order Campaign," but visits to the commercial sex venues in Mae Sot suggest no decline in the number of venues or workers.[292] A doctor at Mae Sot Hospital explained:

> *The decline is due to the recent government policies that no one should be doing this kind of work now in Thailand. They are still working in the sex business, but now they are afraid to come to a sex worker clinic. We don't know where they are going for treatment…We used to give away many free condoms every month from the government. Now we don't get many, and we can only give out a few. This is a big change for us.*[293]

Workers with one of the health outreach projects reported that sex workers who have tested positive for HIV at the health checks have been fired by their employers, who were informed of the test results by the hospital clinic without the knowledge of the patient (who herself was not informed).[294]

HIV/AIDS

The lack of access to reproductive health care services, including HIV prevention education and condoms, increases the vulnerability of Burmese women and girls to HIV infection. Moreover, for many Burmese in Thailand, HIV infection and treatment are little known or understood despite the fact that AIDS is a well-known and increasingly common cause of death. Because of a lack of access to testing, counseling, and medical care, in Burma and in Thailand, as well as fatalism about AIDS in some ethnic communities,[295] the disease is typically diagnosed when patients are already too ill or weak to work. Those working with Burmese described to PHR barriers to HIV/AIDS treatment and care from employers and sometimes in health care settings.

One worker, who leads a project in Chiang Mai that supports migrants presenting for care in hospitals and clinics with translation and advocacy, described having seen a number of HIV/AIDS cases since 2001.[296] They are usually very late presentations, and most of those with AIDS die soon after the NGO is contacted. Many have no family or relations to support them, or those relatives are fearful of HIV/AIDS and so will not claim their relatives. Employers generally abandon HIV-positive workers at the local hospital. Likewise, the hospitals do not want to take care of undocumented migrants with AIDS

and will often turn to Burmese NGOs to provide palliative care.

In the first five months of 2004, another NGO with a safe house for migrant workers assisted with three cases of AIDS in domestic service and construction workers. Their employers had refused to provide treatment or housing to these persons, and each presented to the hospital ("the employer throws them there") in a very late stage of disease, with tuberculosis and poor nutrition due to food insecurity. The NGO felt that the number of cases of AIDS was increasing and noted that virtually all of the HIV/AIDS cases they had dealt with were Shans who had worked in Thailand for many years. One worker also remarked on the attitude of hospital personnel: "The doctors speak strongly to the HIV patients: 'Do you know you have HIV, do you check your blood?'" If the patients cannot pay by some means, doctors often decrease doses or shorten treatment.[297]

Leaving Exploitative Situations and Making a Better Life in Thailand

The PHR study found that the support that Burmese-run, unregistered NGOs and (many undocumented) Burmese workers at Thai and Burmese NGOs provide Burmese women and girls in Thailand is essential. These Thai and Burmese NGOs work with trafficked persons and migrants in crisis;[298] provide primary care and HIV and reproductive health education and services;[299] engage in women's and/or migrant workers' rights advocacy and empowerment activities;[300] and run schools and spearhead birth registration programs for Burmese children.[301] It was clear, in observing the situation of the Burmese in Thailand and speaking with these groups and the individuals they assist, that the NGOs' work is necessary (but not sufficient, in terms of scale) to their communities, given the problems they face and the lack of support and services from employers and the Thai government.

> *Our main problem is freedom of movement. We can't organize. If given that space, we could [build capacity]…with space and support we could do more than we are doing, get more volunteers do more work …The Thai hospitals ask us to do more. There are a lot of people like [the Crisis Support Center Manager] who speak Tai Yai and perfect Thai, but they are not citizens and have to go make a living somewhere else, not in the community.*[302]

Suppression of Advocates

Unfortunately, the active corruption and abuse Burmese women and girls suffer at the hands of those who have control of them, as described throughout this section, also extend to organizations and their volunteers and staff. In particular, authorities have recently been directed by the government to vigorously enforce the section of the immigration law against "harboring" undocumented migrants, announcing by loudspeaker in Mae Sot a 20,000 baht ($500) penalty[303] and recently imposing jail time for violators.[304] Landlords, employers, and shopkeepers, as well as NGO workers, have been threatened with this provision by neighbors and police; homelessness of migrants has increased; NGOs have had their situations made unstable by nervous landlords; and Burmese vendors and others who depend on the income generated from migrant workers' spending have been negatively affected.[305] The vagueness of the prohibition has allowed for much official abuse. For example:

> *There were two women living together, one had a work permit and one didn't. They were raided by the police and taken into custody. The one without the permit was let go after two to three days. The one with the permit was charged with harboring and spent two and a half months in jail and was fined 5000 baht ($125). The police demanded money [from her], searched her vagina for money, and cut her [long] hair [to humiliate her]. She had to go to hospital for bodily injury from the search.*[306]

This situation, in addition to widespread discrimination and prejudice against Burmese in Thailand,[307] is particularly relevant in the context of HIV/AIDS to organizations providing health care, advocacy for migrants in crisis, outreach to women in commercial sex venues, and anti-trafficking prevention and intervention efforts. These endeavors often depend (as the work of World Vision Thailand, described above, demonstrates) on the collaboration of volunteers, workers, and community members of the various Burmese ethnic communities. It should be noted that this work would be challenging under the best of circumstances:

> *When we find [trafficking victims], we usually bring them to health checks. Many of them have been abused. Some have many injuries, bruises, they have cigarette burns on their arms, like that. Our people find them in Bangkok, and we try to bring them back here, to reunite with their families. Sometimes the families have gone back to Burma, or they have been arrested, moved away, so it is very difficult.*[308]

> *The police might intervene [in trafficking cases identified by a community watch in Mae Sot]. But they don't investigate.*[309]

> *Following up with those [who have stayed in the crisis support center] who go back is very difficult. They don't want anyone to know…even working as a housemaid they don't want anyone to know they*

were in Thailand because it is illegal going out and coming back…Women don't even tell [us] their real names.[310]

It is clear from the testimony collected that a range of policy reforms are required to reduce the vulnerabilities of Burmese migrant women and girls to HIV/AIDS and/or trafficking within Thailand, until the day comes when they can, as many would like to do, return home to opportunities for a safe and viable life in Burma.

Why we are here is because it is not democratic there — tell this to the international community.[311]

NOTES

[156] "Minorities in Public Life," 9 (600,000–700,000). Lertcharaoenchok Y. "Searching for Identity." *Step by Step*, *the UN Inter-Agency Project Newsletter*. 2001;5:1,4 (1 million). [Hereinafter "Searching for Identity."] The population figure varies between different Thai agencies and may include highland residents or ethnic minorities who are not hill tribes; many of the highland villages continue to be very remote.

[157] "Minorities in Public Life," 7.

[158] "Minorities in Public Life," 7.

[159] "Minorities in Public Life."

[160] "Minorities in Public Life," 23. Trafficking in amphetamines is the current focus of the government; this "war on drugs" has been the pretext for harassment of hill tribe communities by police. Sakboon M. "Special Report: Tribal Prejudice." *The Nation* (Chiang Mai, Thailand). June 11, 2003. Available at: http://www.burmatoday.net.

[161] "Minorities in Public Life."

[162] For a succinct and clear discussion of the complicated Thai citizenship scheme and its evolution, see "Searching for Identity." For an analysis of children's status, see Saisoonthorn PK. "Children with Problems of Proving Rights to Thai Nationality." *Thailand Human Rights Journal*. 2003;1:51–58. [Hereinafter "Children with Problems of Proving Rights."]

[163] "Minorities in Public Life"; US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[164] "Searching for Identity."

[165] This is the case unless it can be proved that the parents were born inside Thailand and the child was born inside Thailand before February 26, 1992. Thus, children with the same parents but born at different times may have different citizenship status. "Children with Problems of Proving Rights," 50–52.

[166] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[167] In one infamous case, this devolution of responsibility led to the revocation of citizenship for 1,243 border district residents. "Children with Problems of Proving Rights," 52; "Citizenship Probe to Conclude Next Month." *The Nation* (Thailand). April 1, 2004. Available at: www.nationmultimedia.com.

[168] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[169] "Minorities in Public Life" 25.

[170] Phonklieng A. "Hill Tribe Women of Thailand: Where to Turn Now?" *The Courier*. 1999;173:51–53.

[171] United Nations Development Programme. *Thailand Human Development Report 2003*. Bangkok: UNDP. 2003:75–76. The subject of the report is community empowerment and human development.

[172] Phonklieng A. "Hill Tribe Women of Thailand: Where to Turn Now?" *The Courier*. 1999;173:51–53.

[173] Phonklieng A. "Hill Tribe Women of Thailand: Where to Turn Now?" *The Courier*. 1999;173:51–53.

[174] At the same time, increasingly scarce natural resources are burdened by population pressures from migrant lowlanders and highlanders from neighboring countries crossing the border to flee violence, forced from the land they were cultivating, or seeking opportunity or escape from impoverishment.

[175] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[176] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[177] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[178] Approximately 40 baht=$1(US). All dollar amounts refer to US$. Currency exchange information available at http://www.xe.com.

[179] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[180] PHR interview with David Feingold of UNESCO, March 25 2004, Bangkok, Thailand.

[181] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[182] PHR interviews with David Feingold of UNESCO, Anchalee Phonklieng of IMPECT, Philip Guest of the Population Council, Paul Cawthorne of Médecins Sans Frontières, Tom Elam of USAID, and Jane Pawadee of the International Justice Mission, March–April 2004, Bangkok, Chiang Mai, and Sansai, Thailand.

[183] PHR interview with David Feingold of UNESCO, March 25, 2004, Bangkok, Thailand.

[184] As is well known, girls' education is a particularly critical matter for ensuring their health and human rights. United Nations Children's Fund (UNICEF). *The State of the World's Children 2004: Girls, Education, and Development*. New York: UNICEF. 2003. Available at: http://www.unicef.org/files/SOWC_O4_eng.pdf. The prevention programs and efforts described below in this section speak to this.

[185] Ironically, according to IMPECT, prior to the creation of the universal health plan, members of hill tribes were able to receive subsidies for care from local welfare officials.

[186] PHR interview with David Feingold of UNESCO, March 25, 2004, Bangkok, Thailand (citing UNESCO research; see http://www.unescobkk.org/culture/trafficking); PHR interview with Judy Montriwat of New Life Center, May 18, 2004, Chiang Mai, Thailand.

[187] PHR interview with Philip Guest of the Population Council, March 28, 2004, Bangkok, Thailand.

[188] PHR interview with David Feingold of UNESCO, March 25, 2004, Bangkok, Thailand.

[189] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[190] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[191] PHR interviews with Judy Montriwat of New Life Center, March 31 and May 18, 2004, Chiang Mai, Thailand, and Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[192] PHR interviews with Judy Montriwat of New Life Center, March 31 and May 18, 2004, Chiang Mai, Thailand.

[193] Moreover, police routinely fail to follow the legal requirement of investigation within 24 hours of a rape report and escort to a shelter rather than arrest of undocumented victims.

[194] PHR interviews with Judy Montriwat of New Life Center, March 31and May 18, 2004, Chiang Mai, Thailand.

[195] PHR interviews with Judy Montriwat of New Life Center, March 31 and May 18, 2004, Chiang Mai, Thailand.

[196] PHR interviews with Patricia Green of Rahab Ministries, April 9, 2004, and Pasuk Phongpaichit of the Faculty of Economics of Chulalongkorn University, March 29, 2004, Bangkok, Thailand.

[197] These programs include radio programs developed by UNESCO in the Akha, Lahu, Shan, and other hill tribe languages; villager training; human rights and empowerment programs such as IMPECT's; and community-based programs focused on education, monitoring, and mobilization, such as those run by the Development and Education Program for Daughters and Community Centre (DEPDC) and others supported by ECPAT Thailand, both based in Chiang Rai.

[198] PHR interviews with Judy Montriwat of New Life Center, March 31 and May 18, 2004, Chiang Mai, Thailand.

[199] PHR interviews with David Feingold of UNESCO, March 25, 2004, and Tom Elam of USAID, April 8, 2004, Bangkok, Thailand.

[200] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30 and April 2, 2004, Sansai, Thailand.

[201] PHR interview with Jaran Ditapichai of the National Human Rights Commission of Thailand, May 19, 2004, Bangkok, Thailand. The three-year-old National Human Rights Commission (NHRC) has a subcommittee on ethnic minorities that has been very active. Though outspoken, well-regarded by rights groups, and considered independent, the NHRC's impact is, however, limited in the current climate of disregard for human rights and the root causes of abuses.

[202] PHR interview with David Feingold of UNESCO, March 25, 2004, Bangkok, Thailand.

[203] PHR interview with Pasuk Phongpaichit of the Faculty of Economics of Chulalongkorn University, March 29, 2004, Bangkok, Thailand.

[204] PHR interviews with Anchalee Phonklieng of IMPECT [Inter Mountain Peoples Education and Culture in Thailand Association], March 30and April 2, 2004, Sansai, Thailand.

[205] For example, UNESCO's radio programs in hill tribe languages also focus on HIV/AIDS. PHR interview with David Feingold of UNESCO, March 25, 2004, Bangkok, Thailand.

[206] Caouette TM, Pack ME. *Pushing Past the Definitions: Migration from Burma to Thailand*. Refugees International and Open Society Institute. December 2002.

[207] Caouette TM, Pack ME. *Pushing Past the Definitions: Migration from Burma to Thailand*. Refugees International and Open Society Institute. December 2002.

[208] "Thailand: New Migrant Policies." *Migration News*. Vol. 11, no. 2. April 2004.

[209] "Southeast Asia: Thailand." *Migration News*. Vol. 10, no. 4. October 2003.

[210] "Southeast Asia: Thailand." *Migration News*. Vol. 10, no. 4. October 2003.

[211] "Immigrant Workers: Facts and Figures." *Bangkok Post*. July 8, 2003.

[212] Caouette T, Archavanitkul K, Pyne HH. *Sexuality, Reproductive Health, and Violence: Experiences of Migrants from Burma to Thailand*. Nakhonprathorn, Thailand: Institute for Population and Social Research, Mahidol University. 2000. See this book for an in-depth discussion of the title subject and many testimonies from Burmese migrant women and men.

[213] Saisoonthorn PK. "Children with Problems of Proving Rights to Thai Nationality." *Thailand Human Rights Journal*. 2003;1:50.

[214] See the discussion in the Project Findings – Burmese Migrant Women and Girls in Thailand section, p. 33.

[215] *Migration News*. Volume 10, Number 3. July 2003. Available at: http://migration.ucdavis.edu/mn/archives/php.

[216] Human Rights Watch. *Out of Sight, Out of Mind: Thai Policy Toward Burmese Refugees and Migrants*. New York: Human Rights Watch. February 2004.

[217] Human Rights Watch. *Out of Sight, Out of Mind: Thai Policy Toward Burmese Refugees and Migrants*. New York: Human Rights Watch. February 2004.

[218] Human Rights Watch. *Out of Sight, Out of Mind: Thai Policy Toward Burmese Refugees and Migrants*. New York: Human Rights Watch. February 2004.

[219] Persons of concern also receive a small monthly stipend and can travel in Thailand with prior permission. An additional 4,000 Burmese have applied for this status. Pinyorat RC. "Burmese Refugees: UNHCR Barred from Giving Status." *The Nation* (Thailand). March 23, 2004. Available at: http://www.nationmultimedia.com.

[220] Human Rights Watch. *Out of Sight, Out of Mind: Thai Policy Toward Burmese Refugees and Migrants*. New York: Human Rights Watch. February 2004.

[221] Human Rights Watch. *Out of Sight, Out of Mind: Thai Policy Toward Burmese Refugees and Migrants*. New York: Human Rights Watch. February 2004.

[222] Pinyorat RC. "Burmese Refugees: UNHCR Barred From Giving Status." *The Nation* (Thailand). March 23, 2004. Available at: http://www.nationmultimedia.com. See also Kasem S. "Border Clinic Likely to Lose Staff: Refugees Face Axe in Crackdown on NGOs." *Bangkok Post*. May 16, 2004.

[223] Numerous recent studies or projects have collected the testimonies of Burmese women and girls in Thailand. For additional reading, see Beesey A. *From Myanmar to Thailand and Home Again: Return and Reintegration of Female Workers*. Bangkok: International Organization of Migration. 2004 (publication pending); Caouette TM. *Small Dreams Beyond Reach: The Lives of Migrant Children and Youth Along the Borders of China, Myanmar, and Thailand*. Save the Children (UK). May 2001; Women's Commission for Refugee Women and Children. *Fear and Hope: Displaced Burmese Women in Burma and Thailand March 2000*. New York: Women's Commission for Refugee Women and Children. November 2000. The Women's Commission, the Global Alliance Against Trafficking in Women (GAATW), and Alternative Asean Network on Burma (AltAsean) are reportedly currently conducting or completing work on Burmese migrants.

[224] Additional migration and labor contexts in which Burmese migrate and are reportedly trafficked include the southern areas of Ranong and the Thai-Burma coasts along the Andaman Sea, but these were beyond the scope of the study.

[225] PHR interview, May 10, 2004, Chiang Mai, Thailand.

[226] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[227] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[228] See for example Shan Human Rights Foundation. *Dispossessed: Forced Relocation and Extrajudicial Killings in Shan State*. Chiang Mai: Shan Human Rights Foundation. April 1998.

[229] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[230] PHR interview, May 12, 2004, Mae Sot, Thailand.

[231] She was arrested for being undocumented in Thailand and is currently in police custody. PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[232] This demand also draws traffickers to Burma and the border areas.

[233] PHR interview, May 12, 2004, Mae Sot, Thailand.

[234] PHR interview, May 10, 2004, Chiang Mai, Thailand.

[235] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot Thailand.

[236] PHR interview, May 12, 2004, Mae Sot, Thailand.

[237] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[238] PHR interview with Pippa Curwen of the Burma Relief Center, May 15, 2004, Chiang Mai, Thailand.

[239] PHR interview, May 14, 2004, Chiang Mai, Thailand.

[240] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand. PHR was also told a similar story by other respondents in Chiang Mai and Mae Sot, one of whom noted that it is typical for the police to be called by the employer to arrest the migrant, who is then deported to Mae Sot. Then a new debt-bonded person is employed in her place. PHR interview, May 13, 2004, Mae Sot, Thailand. It is notable that this is both trafficking to Thailand from Burma and within Thailand (see below for further discussion).

[241] PHR Interview with Pippa Curwen of the Burma Relief Center, May 15, 2004, Chiang Mai, Thailand.

[242] While there are no refugee camps in the Shan areas, there are some temporary settlements on the Shan side of the border, where about 2,200 internally displaced Shan civilians have been living since a major military offensive in the area in 2003.

[243] PHR interview with Pippa Curwen of the Burma Relief Center, May 15, 2004, Chiang Mai, Thailand.

[244] The minimum wage in Thailand differs by province and is highest in Bangkok. Migrant workers are typically (illegally) paid half the minimum wage. Many who seek the higher wages would prefer to stay in Mae Sot, to be near the border so they can visit family and return home for the New Year's water festival. PHR interview, May 10, 2004, Mae Sot, Thailand. (See discussion of Thai labor law in the Law and Policy section, p. 45).

[245] PHR interviews (with three different respondents), May 11, 2004, Mae Sot, Thailand.

[246] PHR interviews, May 10, 2004, and May 13, 2004, Mae Sot, Thailand.

[247] PHR interviews, May 11, 2004, and May 13, 2004, Mae Sot, Thailand.

[248] PHR interview, May 10, 2004, Mae Sot, Thailand.

[249] PHR interview, May 11, 2004, Mae Sot, Thailand.

[250] PHR interviews with World Vision Thailand field staff, May 11, 2004, Mae Sot, Thailand.

[251] PHR interview, May 11, 2004, Mae Sot, Thailand.

[252] PHR interview, May 11, 2004, Mae Sot, Thailand.

[253] PHR interview, May 15, 2004, Chiang Mai, Thailand.

[254] PHR interview, May 12, 2004, Mae Sot, Thailand.

[255] PHR interview, May 10, 2004, Mae Sot, Thailand. There are approximately 200 factories in Mae Sot; the largest have 2,000 to 3,000 workers.

[256] PHR interview, May 10, 2004, Mae Sot, Thailand.

[257] PHR interview, May 10, 2004, Mae Sot, Thailand.

[258] PHR interview, May 10, 2004, Mae Sot, Thailand. This description was shared by numerous respondents.

[259] PHR interview, May 13, 2004, Mae Sot, Thailand.

[260] As one community leader told PHR, "There is a saying: 'One Burmese, value two car tires,'" referring to the police practice in Mae Sot of burning the body of a Burmese who has been murdered by placing two tires over it and setting it on fire in the cemetery. PHR interview, May 10, 2004, Mae Sot, Thailand. This practice was also described in an unpublished manuscript (detailing systematic violations of migrant workers' rights by government officials in Tak Province, Thailand) made available to PHR by personal communication, June 20, 2004.

[261] PHR interview, May 10, 2004, Mae Sot, Thailand. An unpublished report documents 13 extrajudicial killings, 19 women and girls raped, 50 persons physically assaulted, and over 1,040 victims of extortion or theft of property by government officials, primarily between January 2001 and October 2003, in the towns of Mae Sot and Phop Phra. Manuscript made available to PHR by personal communication, June 20, 2004.

[262] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot Thailand.

[263] PHR interview, May 10, 2004, Mae Sot, Thailand.

[264] PHR interview, May 10, 2004, Mae Sot, Thailand.

[265] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot Thailand.

[266] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot Thailand.

[267] There are approximately 20 commercial sex venues in the township of Mae Sot; the majority operate as bars, restaurants, and karaokes. PHR interview, May 10, 2004, Mae Sot, Thailand.

[268] PHR interview, May 18, 2004, Mae Sot, Thailand.

[269] PHR interview, May 18, 2004, Mae Sot, Thailand.

[270] PHR interview, May 18, 2004, Mae Sot, Thailand.

[271] PHR interview, May 18, 2004, Mae Sot, Thailand.

[272] PHR interview, May 18, 2004, Mae Sot, Thailand.

[273] PHR interview, May 10, 2004, Mae Sot, Thailand.

[274] PHR interviews, May 10 and May 11, 2004, Mae Sot, Thailand.

[275] PHR interviews, May 10, 2004, Chiang Mai, Thailand.

[276] PHR interview, May 11, 2004, Mae Sot Thailand.

[277] PHR interview, May 11, 2004. This respondent explained that of those who deliver at the clinic, 70 percent have had two antenatal visits, indicating an association.

[278] PHR interview, May 10, 2004, Mae Sot, Thailand.

[279] PHR interviews, May 10, 2004, and May 12, 2004, Mae Sot, Thailand. These respondents also reported that partners frequently refuse to use condoms; some women resort to hiding birth control pills in their rice.

[280] PHR interview, May 14, 2004, Chiang Mai, Thailand.

[281] PHR interview, May 10, 2004, Mae Sot, Thailand. These reports were confirmed by PHR interviews with other respondents. See also Belton S and Maung C. "Fertility and Abortion: Burmese Women's Health on the Thai-Burma Border." *Forced Migration Review* (Oxford). 19 (January 2004):36–37.

[282] PHR interview, May 10, 2004. Most births to migrant women take place at home or in farm fields with traditional birth attendants. It is very difficult to obtain birth documentation, such as a delivery certificate, for these children; documentation is required to attend Thai schools. PHR interviews, May 10, 2004, Mae Sot, Thailand, and May 14, 2004, Chiang Mai, Thailand.

[283] It is said that every Burmese NGO worker you meet in Thailand has informally "adopted" at least one of these children.

[284] One example is the Adolescent Reproductive Health Program Outreach Project.

[285] PHR interview, May 10, 2004, Mae Sot, Thailand.

[286] PHR interview, May 11, 2004, Mae Sot, Thailand.

[287] PHR interview, May 10, 2004, Mae Sot, Thailand.

[288] PHR interview, May 12, 2004, Mae Sot, Thailand.

[289] PHR interview, May 15, 2004, Chiang Mai, Thailand.

[290] Information provided to PHR by the Mae Sot Provincial Hospital, May 2004.

[291] Data on patients presenting to Mae Sot Provincial Hospital STI Clinic with STIs, 2001–2003. Information provided to PHR by the Mae Sot Provincial Hospital, May 2004.

[292] Information provided to PHR by the Mae Sot Provincial Hospital, May 2004.

[293] PHR interview, May 11, 2004, Mae Sot, Thailand.

[294] PHR interview, May 10, 2004. This respondent and several others told PHR that this breach of privacy also happens to factory workers, a percentage of whom are (ostensibly anonymously) tested for HIV at the time of work permit issuance.

[295] This fatalism is common among the Shan, for example. PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[296] PHR interview, May 14, 2004, Chiang Mai, Thailand.

[297] PHR interview, May 14, 2004, Chiang Mai, Thailand.

[298] SWAN, the MAP Foundation, and World Vision Thailand are some of the organizations through which Burmese do this work.

[299] Some of these NGOs are Social Action for Women (SAW), the Burma Women's Union, the National Health and Education Committee/Burma Medical Association, SWAN, the Mae Tao Clinic, and the Yaung Chi Oo Worker Association.

[300] Many of the organizations incorporate a human rights perspective into their work.

[301] There are 27 Burmese-run schools for Burmese children on the Thai side of the border. PHR interview, May 11, 2004, Mae Sot, Thailand.

[302] PHR interview with Nang Hseng Noung and Nang Pi of SWAN [the Shan Women's Action Network], May 14, 2004, Chiang Mai, Thailand.

[303] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot Thailand. Commonly called the "harboring illegal immigrants" law, this is the broad prohibition against "giving residence, hiding, or helping in any way an alien to stay in the country illegally or escape arrest" in the Immigration Act, B.E. 2522 (1979).

[304] PHR interviews (two separate respondents), May, 12, 2004, Mae Sot Thailand.

[305] PHR interviews, May 12, 2004 and May 13, 2004, Mae Sot, Thailand.

[306] PHR interview, May 12, 2004, Mae Sot, Thailand.

[307] Muslims from Burma also noted their concern that Muslim children in government-run shelters and undocumented workers in detention suffer malnutrition from not having their dietary restrictions met, or in the case of children, are force-fed. PHR interviews, May 11, 2004 and May 13, 2004, Mae Sot, Thailand.

[308] PHR interview, May 11, 2004, Mae Sot, Thailand.

[309] PHR interview, May 13, 2004, Mae Sot, Thailand.

[310] PHR interview, May 12, 2004, Mae Sot, Thailand.

[311] PHR interview with Daw Htay Htay and Nyo Nyo Soe of the Burma Women's Union, May 12, 2004, Mae Sot, Thailand.

VII. LAW AND POLICY – THAILAND

Current HIV/AIDS Policy

According to the Thai government, the current five-year National Plan for Prevention and Alleviation of AIDS is in many ways a continuation of the 1997–2001 Plan.[312] There are three specific targets: reducing adult prevalence, providing access to care for people living with HIV, and giving local and regional administrations the ability to carry out prevention and alleviation work.[313] The plan states five basic strategies for achieving these goals: (1) emphasis on the important role of families, individuals, and communities; (2) health services implementing prevention and alleviation; (3) research development; (4) international cooperation; and (5) good management.[314] It is worth noting that this plan does not make any specific mention of women, gender concerns, the vulnerability of women in Thailand to HIV, or the rapid increase in the proportion of HIV infections among women.[315]

Thailand is also the recipient of $209 million over five years (2003–2008) from the Global Fund to Fight AIDS, Tuberculosis, and Malaria for HIV/AIDS education in schools and workplaces, a pilot peer-education and advocacy project targeting intravenous drug users,[316] and funding to enhance HIV and STI services for migrant and mobile (mainly farm worker) populations.[317] Collaborators include Raks Thai Foundation (CARE Thailand) and USAID; USAID and the International Office of Migration are also working with the Ministry of Public Health to provide mobile health clinics. These migrant health projects explicitly exclude anti-retroviral treatment, which is highly notable given, as documented in this report, the need for and lack of access to this treatment in this population.[318] Moreover, PHR interviews with numerous agencies involved in these projects revealed that the lack of political will and leadership from the central government, coupled with resistance at the provincial and district levels to providing services for migrants, has resulted in a delayed and patchy implementation of this project, including the provision of much-needed condoms.[319] Especially highlighted was the need for health workers who speak the Burmese and ethnic languages and understand these communities; there is, however, no registration category for these workers,[320] so the projects have relied on moonlighting workers registered to another position or have employed Thai workers exclusively.

The 30-baht Health Plan

Currently, Thailand has three different health insurance systems: the social security system, the medical welfare system for state officials, and the 30-baht health plan. The latter was introduced in April 2001, and Thailand became one of the first middle- or low-income countries to introduce universal health care coverage.[321] The name refers to the copayment of 30 baht (75 cents) subscribers pay to access covered medical services. The initiation of this program was one of Thaksin's election pledges to provide inexpensive, available health care, an issue especially appealing to lower-income, uninsured, rural populations. In large part, these promises helped to usher in his election victory in 2001.[322]

One major shortcoming is the way the program is financed, through fixed payments to hospitals based on the number of people registered there. Related to this is the issue of access. Despite its aim to provide affordable health care to underinsured Thais, a complicated registration process is involved in obtaining health access through what is known as the Gold Card. Applicants need to present an official Thai citizen identification card and/or housing registration papers in order to obtain access for each visit. In the case of children under 15, a birth certificate is required. These requirements often end up excluding the poorest segments of society, those who are living outside the district where they originally registered, undocumented migrants, refugees, and members of hill tribes from accessing the system.[323]

Individuals legally able to access the system may face further problems with the cost. Although the minimum daily wage in Bangkok was recently raised to 170 baht ($4), the comparable figure is as low as 134 baht in many rural provinces, with many individuals still earning below this figure. Especially in impoverished northeastern and central provinces in the country, there are reports of individuals unable to afford the copayment, especially those with chronic conditions requiring frequent follow-up visits. [324]

It should be noted that anti-retroviral treatment for HIV/AIDS, other than medications to prevent maternal–child transmission, is not included in the 30-baht plan, but is covered under a recently implemented separate scheme. Opinions differ as to whether this will have an exclusionary impact for Thais. Adding coverage under the 30-baht plan would impose further significant

strains on the system's already strained finances,[325] and the Thai government is making a concerted effort to distribute the treatment to Thais (see the following section). This does, however, effectively bar non-Thais, including those covered by the 30-baht plan, from receiving antiretrovirals.

Trafficking

In 1997, the Thai government passed the current law, the Prevention and Suppression of Trafficking in Women and Children Act (Trafficking Act),[326] to replace the 1928 Trafficking in Women and Girls Act.[327] The new Act, which prohibits trafficking for sexual exploitation purposes and other "illicit benefits," generally increases penalties for trafficking and expands law enforcement measures. It extends coverage to boys under 18 as well as girls;[328] defines conspiracy to commit trafficking as a crime;[329] grants the government the right to search areas or regions traffickers might use;[330] stipulates that abettors are to be punished the same as direct offenders;[331] and grants officials the right to individually detain and search those who might be trafficked or suspected of trafficking[332] and the right to bring trafficking victims immediately to court so that they can testify against traffickers — evidence that may be used later in a trial.[333] As part of the evidentiary procedures, victims of trafficking may be detained by law enforcement officials for less than an hour up to 10 days.[334] Officials are to use their judgment in providing assistance to the victims of trafficking, which may range from providing food and shelter to repatriation to their countries of origin.[335] The law does not cover adult men.

The Thai government has taken steps to collaborate with NGOs and regional governments to stop trafficking. Most important, a 1999 Memorandum of Understanding (MOU) among government agencies, the government, and NGOs outlines measures for cooperation to improve the treatment of trafficking victims. Under the MOU, trafficking victims are not to be treated as illegal immigrants, and the prosecution of traffickers is facilitated.[336] In addition to sexual exploitation, the MOU explicitly covers slavery, forced begging, and "other inhumane acts."[337] In practice, however, despite the MOU, trafficking is often understood as relating only to sexual exploitation, and law enforcement officials have been reluctant to treat trafficking victims who are found in forced labor situations, for example, in factories or domestic service, as having been trafficked. As a result, these individuals are often treated simply as illegal immigrants, detained, and deported.[338]

Regionally, the Thai government has entered into agreements with other governments in order to address trafficking. In the Mekong subregion, for example, Thailand works with Cambodia, Laos, Burma, Vietnam, and China to address trafficking both through bilateral MOUs and within the Association of Southeast Asian Nations (ASEAN), including in the ARCPPT project and the through the COMMIT process (see the Thailand Background and Burma Background sections, pp. 11 and 19, respectively).[339]

Critics allege that Thailand's enforcement of these laws and agreements is weak.[340] There have been reports that government officials, including immigration officials and military and police, are financially involved in the both the commercial sex industry and human trafficking into and out of Thailand.[341] Competency may also be an issue. There is evidence that enforcement of the 1996–1997 laws and the MOU protecting undocumented persons and organizations has been lacking because law enforcement officials are not aware of or were reluctant to pursue the protections contained in these laws and agreements.[342]

Furthermore, Thailand has not evolved sound policies on the identification of the age of victims (used to determine who falls under the more inclusive child trafficking definition and who is an adult); discovery and safe removal of victims from difficult-to-access workplaces such as factories, clandestine brothels, and private homes; and efficient, safe, and voluntary return and reunion of victims to families.[343] While government shelters for victims are generally given adequate marks for comfort and safety, the language barriers for non-Thai speakers, the lack of meaningful skills training, and the potential for stateless women to remain in state custody indefinitely were issues frequently raised in PHR interviews. One bright spot under the MOU is that NGO participants have provided various services related to support for trafficking victims, particularly those working with children, though the protection of children in state custody and of child witnesses, and the issue of appropriate care and decision making with regard to the fates of Burmese children, remain ad hoc.[344] Moreover, there is a great concern that investigation, remedial action, and prosecution by the government are sorely lacking to help children trafficked into commercial sexual exploitation.[345]

The Thai government has declared that human trafficking is a top national priority for 2004. Currently the government is engaged in a two-part "National Workshop" policy-formulation process, involving various ministries of the government and invited NGOs, in consultation with the UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region.[346] At the first workshop in May 2004, held in Chiang Rai, Deputy Prime Minister Purachai suggested that Thailand's methods in conducting the "war on drugs" could "also be applied effectively against the problem of human trafficking."[347] The second workshop will be presided over

by Thaksin in Bangkok in August; out of this process, in October 2004 the government will declare a national agenda and propose a new trafficking law with strengthened provisions for law enforcement, as well as for victim services.[348] Given the current human rights and anti-trafficking record of the Thaksin administration, it remains to be seen whether even the most commendable law will have any effect on the situation of trafficking in Thailand, as described in this report.

Labor Law and Migrants

Thailand's 1998 Labor Protection Act provides the legal basis for employer-employee relations in Thailand.[349] The Act regulates such employment issues as work hours, holidays, the minimum age for employment, sick leave, severance pay, termination of employment, and employee welfare funds. The 1975 Labor Relations Act guarantees freedom of association.[350]

In theory, provisions of the Labor Protection and Labor Relations Acts should be extended to registered foreign migrant workers, but as the US State Department has noted, "lax enforcement" has meant "little real progress in improving migrant working conditions."[351] As discussed in this report, the vast majority of workers from Burma are not registered and are, therefore, not covered by labor protections. Further, members of Thailand's hill tribes who lack proper documentation are similarly not protected by labor laws such as the minimum-wage requirements.[352]

Thailand's foreign migrant worker policy has thus far avoided granting these workers any formal legal status; instead, the government has encouraged the temporary registration of migrant workers already working illegally in the country. As noted by the international community, "The Thai government has repeatedly held…registrations without announcing a migration policy, which means uncertainty for employers, migrants, and Thai society."[353]

Most migrant workers cannot or choose not to register under the current system for several reasons. First, many occupations, such as restaurant work, are not covered by the registry in any given year. Second, migrant workers may fear deportation as illegal immigrants if they make an effort to register. Third, enforcement of labor protections is weak, even for those who are registered. Fourth, registered workers are highly dependent on their employers; if they leave an abusive employer or are dismissed from the job under which they are registered, they have only seven days to find a new employer or face deportation.[354] Finally, certain occupations — for example, domestic service — are afforded different and lesser protections than those granted by the Labor Protection Act.[355] Because registration under the current system may in practice increase vulnerability without meaningfully increasing protection, it is not a solution to the problems faced by migrants.

Insufficient Labor Protections and Remedies: The Nasawat Apparel Factory

The Thai media and labor rights NGOs frequently report on incidents that illustrate the problem of enforcement and abuse of both registered and unregistered migrant workers. In one example, in December 2003 over 200 mainly female Burmese workers (both registered and unregistered) went on strike at the Nasawat Apparel Factory Ltd. in Mae Sot. They alleged they were harassed by their employer and were paid 50 baht ($1.25) per day, less than half the minimum wage, for three years. They were subsequently fired; most were deported. In March 2004, the Labor Protection and Welfare Department in Tak Province issued an order that the employer pay the workers 16 million baht ($400,000) for their unpaid labor.[356] If and when this sum is paid, it is not clear how payments would be made to former workers who have been deported to Burma.

The Thai government is currently in the process of establishing the 2004 registry and, at the same time, negotiating regional MOUs with Burma, Laos, and Cambodia. The Thaksin administration's intent is to "regularize" migration and bring underground economies into the tax-collection process.[357] As of this writing, a two-part process had been proposed: The first stage comprises a residency registration period for all migrants, then a separate application process for work permits;[358] earlier in the year it was reported that work permit categories would include household workers and a general category of "laborers" (to be determined by local authorities).[359] The second stage requires workers to be certified as citizens by their home countries under the MOUs, which may include a requirement that all workers return home before migrating back with official documents to Thailand. It is widely believed in the Burmese, NGO, and labor communities that the second stage of the process is not viable with regard to Burma, as workers will be unwilling to give their names to the Thai government to turn over to the SPDC.[360]

Thailand has enacted specific anti-prostitution legislation, as described below.

Child Labor

The legal minimum age for employment in Thailand is 15 years, and Thailand's Labor Protection Act permits children between the ages of 15 and 18 to work under limited circumstances in some categories of nonhazardous work.[361] (Other protections against child sexual exploitation and forced labor are described in more detail in the next section.) According to the US State Department, Thailand's enforcement of child labor laws is "not rigorous."[362]

In addition, as indicated above, under Section 22 of the Act, certain types of work (related to agriculture, sea fishing, and work in the home) have different protections from those contained in the Labor Protections Act; these differences include minimum age requirements.[363] The US State Department cited a 2002 survey by Thailand's National Statistics Office, which noted that 10,728 children were employed in domestic service in Thailand.[364] Indeed, according to the US State Department, NGOs report that child domestic workers were predominantly illegal migrants from Thailand's poorer neighboring countries, their status increasing their vulnerability to exploitation.[365]

Prostitution

The 1996 Prostitution Prevention and Suppression Act (Prostitution Act)[366] repealed Thailand's earlier law on prostitution, the 1960 Suppression of Prostitution Act,[367] which had penalized sex workers, pimps, and brothel owners, but not clients, and did not explicitly exempt persons forced into prostitution from punishment. Under the new Prostitution Act, commercial sex remains illegal, but the penalty for those convicted as prostitutes has been reduced to a fine not exceeding 1,000 baht ($25).[368]

The new Act was intended particularly to punish those involved in the commercial sexual exploitation of minors: the clients of a child prostitute under the age of 18, as well as the "procurers" of children and owners of brothels where children are found, are deemed to have committed an offense punishable by imprisonment;[369] parents or guardians who collaborate in the prostitution of a child under the age of 18 commit an offence punishable by a fine and revocation of guardianship.[370] In addition, those involved in forcing others into prostitution face imprisonment terms of 10 to 20 years and high fines.[371]

As noted earlier in this report, the decline in numbers of young children in the sex industry in Thailand has been widely attributed to the current government's enforcement of this law as part of its "Social Order Campaign" aimed at protection of youth, restoring order, and closing commercial sex venues.[372] This is a highly laudable achievement. Some suggest that this campaign has also created additional risks of harm for women and girls. As related to PHR researchers numerous times, police routinely use the anti-prostitution law for their own benefit, threatening sex workers with arrest, demanding sex without payment — or condom use — and extorting bribes from commercial sex venue owners in return for nonenforcement. Under the aegis of the current campaign, the police conduct periodic raids on well-known venues for the purposes of intimidation. These crackdowns have potentially resulted in an increase in streetwalking, the most dangerous form of sex work,[373] as well as in the debt bondage of Thai sex workers who seek work overseas[374] or of those workers who are arrested and subsequently "bribed out" by venue owners, only to add to their debt or start the debt cycle over again.

Ethnic Minority Citizenship

Thai citizenship law and current policy with regard to the hill tribes is discussed in an earlier section of this report (see Background to Findings: The Hill Tribes in Thailand, p. 27, and Project Findings: Hill Tribe Women and Girls in Thailand, p. 28).

Although the provisions of the Thai constitution are applicable to all ethnic minorities, those who have not been granted citizenship, despite their families' having been settled in Thailand for several generations, are not guaranteed basic rights under the constitution. These rights include freedom of speech (Section 39), association (Section 45), and movement (Section 36); freedom to form a political party (Section 47); the right to 12 years of free, compulsory education (Section 43); and the right to public health service (Section 52), all of which are guaranteed for the Thai people.[375]

The government is currently consulting with human rights activists to draft a community rights law, as required by Article 46 of the constitution, which may address some of the issues noted in this report concerning the rights of hill tribe peoples with regard to development schemes that affect their communities.[376]

NOTES

[312] Details available at: http://www.aidsthai.org/aidsenglish/national_plan.html; see also Avert.org. *HIV & AIDS in Thailand*. Available at: http://www.avert.org/aidsthai.htm.

[313] Avert.org. *HIV & AIDS in Thailand*. Available at: http://www.avert.org/aidsthai.htm.

[314] Avert.org. *HIV & AIDS in Thailand*. Available at: http://www.avert.org/aidsthai.htm.

[315] Notably, neither the World Health Organization's goals and strategies for the region for 2002–2006 nor the United Nations Development Programme's Report on the Thai National Consultation on HIV/AIDS and Human Rights make such mention. WHO, *HIV/AIDS Strategic Framework for WHO South-East Asia Region 2002–2006*., November 2002:6; United Nations Development Programme (UNDP), *Report of the Thai National Consultation on HIV/AIDS and Human Rights*. March 2004.

[316] The agreement has yet to be signed as of this writing. Details available at: http://www.theglobalfund.org/search/portfolio.aspx?countryID=THA.

[317] Details available at http://www.theglobalfund.org/search/ portfolio.aspx?countryID=THA.

[318] This exclusion is even more striking given that availability of the Thai-manufactured drug (GPO-VIR) does not appear to be an issue: it was recently reported that Thailand has an "oversupply" and thus plans to distribute anti-retrovirals to Burma, Laos, and Cambodia. "Thailand to Share Anti-AIDS Drugs." United Press International. May 25, 2004. Available at: http://six.pairlist.net/pipermail/burmanet/20040525/000457.html.

[319] PHR interviews, March 23, 2004, Bangkok, Thailand; April 3, 2004, Chiang Mai, Thailand; April 8, 2004, Bangkok, Thailand; May 11, 2004, Mae Sot, Thailand; May 14, 2004, Chiang Mai, Thailand; PHR telephone conversation, May 18, 2004, Chiang Mai, Thailand.

[320] There is no such national category, though apparently some work permits in this category were given by local authorities in some locales in the past. PHR interview, May 8, 2004, Mae Sot, Thailand.

[321] Towse H. "Global Snapshots: Thailand: The 30-Baht Health Plan." *Student BMJ* 11(2003):208.

[322] Montlake S. "Developing Nations Watch Thailand's Bold Healthcare Plan." *Christian Science Monitor*. August 14, 2002.

[323] Towse H, "Global Snapshots," and National Health Security Office, *Khoo Mue Bat Thong* (Gold Card Handbook), Nonthaburi. Available at: http://www.nhso.go.th/new/cgi-bin/LetterNew/File/DecCard30.pdf. (See also the Project Findings – Burmese Migrant Women and Girls in Thailand, p.33).

[324] Jongudomsuk P, Kiatthanaphan K, Thammatuch-aree J. "Current Practice of Copayment in Universal Coverage Policy." *Journal of Health Science* 12(2003):387–98.

[325] Montlake S. "Developing Nations Watch Thailand's Bold Healthcare Plan." *Christian Science Monitor*. August 14, 2002; see also Kitajima T, Kobayashi Y, Chaipah W, Sato H, Chadbunchachai W, Thuennadee R. "Costs of Medical Services for Patients with HIV/AIDS in Khon Kaen, Thailand." *AIDS 2003*; 17(16):2375–81.

[326] Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997). Government Gazette Vol. 114, Chapter 72A, dated November 18, 1997.

[327] Trafficking in Women and Girls Act B.E. 2471 (1928).

[328] Section 4. Prevention and Suppression of Trafficking in Women and Children Act (definition of "child").

[329] Section 7. Prevention and Suppression of Trafficking in Women and Children Act.

[330] Section 8. Prevention and Suppression of Trafficking in Women and Children Act.

[331] Section 6. Prevention and Suppression of Trafficking in Women and Children Act.

[332] Section 9. Prevention and Suppression of Trafficking in Women and Children Act.

[333] Sections 9–12. Prevention and Suppression of Trafficking in Women and Children Act.

[334] Section 10. Prevention and Suppression of Trafficking in Women and Children Act.

[335] Section 11. Prevention and Suppression of Trafficking in Women and Children Act.

[336] Memorandum of Understanding on Common Guidelines of Practices Among Concerned Agencies for Operation in Cases Where Women and Children Are Victims of Human Trafficking, B.E. 2542 (1999). For a legal analysis of the MOU, see Anti-Slavery International. *Human Traffic, Human Rights: Redefining Victim Protection*. London, UK: ASI, 2002.

[337] Anti-Slavery International. *Human Traffic, Human Rights: Redefining Victim Protection*. London, UK: ASI, 2002.

[338] Anti-Slavery International. *Human Traffic, Human Rights: Redefining Victim Protection*. London, UK: ASI, 2002.

[339] See ASEAN's overview on Thailand's efforts to combat human trafficking. Available at: http://www.aseansec.org/14984.htm.

[340] See for example Rho, *The Conscription of Asian Sex Slaves*, 119; and US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[341] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004. Fifty police were arrested in early 2004 for being involved in the sex industry.

[342] Anti-Slavery International. *Human Traffic, Human Rights: Redefining Victim Protection*. London, UK: ASI, 2002.

[343] PHR interview with Ben Svasti of TRAFCORD [Coordination Unit Anti-Trafficking Operations Northern Thailand], March 31, 2004, Chiang Mai, Thailand.

[344] Roundtable at the US Consul's Office, March 31, 2004, Chiang Mai, Thailand.

[345] PHR interview with Jane Pawadee of the International Justice Mission, April 2, 2004, Chiang Mai, Thailand.

[346] United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region. "UN Responds to Thai Government Action Meeting on Human Trafficking." May 13, 2004. Available at: http://www.no-trafficking.org/News/news.html.

[347] "HE Deputy Prime Minister Prof. Purachai Piemsombun's Special Lecture on 1st Workshop on Human Trafficking in Thailand." May 13, 2004. Chiang Rai, Thailand. Copy made available to PHR, May 20, 2004.

[348] PHR interview with Police Lieutenant Colonel Apichat Suriboonya, May 19, 2004, Bangkok, Thailand.

[349] Labor Protection Act 1998 (B.E. 2541). Royal Thai Government Gazette (English translation). 1998, Vol. 52, No. 3, p.43.

[350] Labor Relations Act 1975 (B.E. 2518).

[351] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[352] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[353] Martin P. *Thailand: Improving the Management of Foreign Workers*. Bangkok: The International Labour Office and the International Office for Migration. January 2004.

[354] This requirement may change under the 2004 registration. Reportedly, registered workers who want to change employers will be able to do so if they inform the Labor Department and the new employer is registered; they will not automatically lose their status if they stop working. Personal communication with Jackie Pollock of MAP Foundation, June 19, 2004.

[355] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[356] See Seng N. "Compensation Set for Burmese Workers." *The Irrawaddy*. April 6, 2004. As of this writing, employer payment is still pending. See also Action Network for Migrants. Nasawat "Apparel Factory, Mae Sot." Information Release No. 2. December 19, 2003.

[357] Charoensuthiphan P. "Ministry's Plans for Alien Workers Get Cabinet Nod." *Bangkok Post*. May 6, 2004.

[358] Personal communication with Jackie Pollock of MAP Foundation, June 19, 2004.

[359] PHR interview with Jackie Pollock of MAP Foundation, March 31, 2004, Chiang Mai, Thailand.

[360] PHR interview with Jackie Pollock of MAP Foundation, March 31, 2004, Chiang Mai, Thailand; PHR interview, May 10, 2004, Mae Sot, Thailand. Other issues were cited, including the cost of obtaining a passport in Burma and the difficulty for those from certain areas targeted by the military in the "four cuts campaign" who may not have identification. Those whose names are not verified by their country of citizenship will be stateless in Thailand.

[361] Labor Protection Act of 1998, Sections 44–52. The Labor Protection Act raised the minimum employment age from 13 to 15.

[362] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[363] For a brief description of the different age clauses for these occupations, see Meesit C. "Thailand: National Study on the Employment Relationship." International Labor Organization. Paper from the Meeting of Experts for Workers Needing Protection. 2001. Available at: http://www.ilo.org/public/english/dialogue/ifpdial/downloads/wpnr/thailand.pdf.

[364] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[365] US Department of State. *Thailand, Country Reports on Human Rights Practices 2003*. Washington, D.C.: Bureau of Democracy, Human Rights, and Labor. 2004.

[366] Prostitution Prevention and Suppression Act B.E. 2539 (1996), Government Gazette Vol. 113, Part 54a, dated 22nd October B.E. 2539 (1996).

[367] Suppression of Prostitution Act B.E. 2503 (1960).

[368] Section 5. Prostitution Prevention and Suppression Act.

[369] Sections 8–11. Prostitution Prevention and Suppression Act.

[370] Section 10. Prostitution Prevention and Suppression Act.

[371] Section 12. Prostitution Prevention and Suppression Act.

[372] Srivalo P. "Prostitution Clampdown Heads for the North." *The Nation* (Thailand). January 8, 2004. Available at http://www.nationmultimedia.com.

[373] PHR interviews with Philip Guest of the Population Council, March 28, 2004, Bangkok, Thailand, and Paul Cawthorne of Médecins Sans Frontières, April 7, 2004, Bangkok, Thailand.

[374] Phanayanggoor P. "Pimps, Agents Profit From Shorter Hours." *Bangkok Post*. April 5, 2004.

[375] "Inclusion of Minorities in Public Life, in Laos, Thailand, and Vietnam." Paper prepared by Vatthana Pholsena. Asia Research Institute, National University of Singapore. May 5, 2003. At 12.

[376] "Work Starts on Rights Bill." *Bangkok Post*. May 6, 2004.

VIII. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW

Thailand has ratified several international human rights instruments that legally obligate the government to protect the rights of those who live in Thailand, including migrants and ethnic minorities. These include the International Covenant on Economic, Social, and Cultural Rights (ICESCR),[377] the International Covenant on Civil and Political Rights (ICCPR),[378] the Convention on the Elimination of Discrimination Against Women (CEDAW),[379] and the Convention of the Rights of the Child (CRC).[380] The Universal Declaration of Human Rights,[381] the foundation for the ICCPR and the ICESCR, stresses the principal of nondistinction of rights:

> *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.*
>
> *Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty.*[382]

The Vienna Declaration reiterates the universality and holistic nature of human rights, and the obligation of governments to promote and protect all rights:

> *All human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural, and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.*[383]

Among the relevant provisions for this study contained in the ICCPR and ICESCR, the ICCPR includes the right to be free from slavery and forced labor, the right to liberty and security, freedom of movement, equality before the law, and privacy and equality within marriage. It prohibits all forms of discrimination in the enjoyment of these rights, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. In addition, the ICESCR includes the right to work, to just and favorable conditions of work, to an adequate standard of living, to the highest attainable standard of health, to education, and to take part in cultural life. It prohibits all forms of discrimination in the enjoyment of these rights. CEDAW specifically obligates governments to take appropriate measures to ensure women's equality, including legislation to stop trafficking of women and exploitation of women in prostitution.[384]

The Convention of the Rights of the Child (CRC)

The CRC, ratified by Thailand in 1992, sets minimum standards for the protection of children's rights under the principles of nondiscrimination, the best interest of the child, the child's survival and development, and the views of the child. Concerning child trafficking, the CRC requires states party to "undertake to protect the child from all forms of sexual exploitation and sexual abuse" and mandates states party to "take all appropriate national, bilateral, and multilateral measures to prevent the abduction, the sale of, or traffic in children for any purpose or in any form." Article 7 requires that a child "shall be registered immediately after birth" and requires that states party "ensure the implementation of these rights…in particular where the child would otherwise be stateless."

Thailand has made reservations to the CRC concerning its protections against child statelessness. Thailand imposed reservations on Article 7 concerning a child's right to acquire a nationality and on Article 22 concerning protections for refugee children.[385] Thailand has not signed or ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.

International Protocol on Trafficking

In 2000, the UN General Assembly adopted the Convention Against Transnational Organized Crime, which contains a protocol on trafficking in persons.[386] This protocol reflects the first international consensus on the definition of trafficking.[387]

As defined in the protocol, trafficking in persons is:

> *The recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal or organs.*[388]

The protocol states that consent of the trafficking victim to exploitation is irrelevant where any of the means specified in the definition were used. According to the protocol, children under 18 cannot give valid consent, so any recruitment, transporting, harboring, or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used.[389] The protocol contains provisions mandating assistance to and protection of victims of trafficking.[390] It requires states to take prevention measures, including measures to alleviate the underlying factors that make persons vulnerable to trafficking, such as poverty and lack of equal opportunity.[391]

Although Thailand signed the protocol in 2001 and has acceded to the Convention Against Transnational Organized Crime, at the time of this writing it has not yet ratified the trafficking protocol.[392]

International Labor Protections of Migrants and Minority Groups

Thailand has ratified 13 International Labor Organization (ILO) conventions to date. These include the Employment Policy Convention[393] and the Abolition of Forced Labor Convention,[394] which require Thailand to grant protection to all workers under Thai labor law, regardless of the workers' legal status. Thailand has not, however, ratified ILO Convention 111 on racial discrimination and sexual harassment.

The ILO contains two main conventions relating to child labor: the Minimum Age Convention, 1973 (No. 138),[395] and the Worst Forms of Child Labour Convention, 1999 (No. 182).[396] Thailand ratified the ILO's Worst Forms of Child Labor Convention in 2001, and the government has stated that it intends to ratify the Minimum Age Convention in the future.[397]

Thailand is not a party to the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries, which notes that states party must ensure that "members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population."[398] NGOs, however, have lobbied the government to accede to this convention. In addition, NGOs have urged Thailand to create a comprehensive policy to protect migrants and to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was created to mandate nondiscrimination with respect to these populations.[399]

Discrimination Based on National or Ethnic Origin

Thailand acceded to the International Convention on the Elimination of Race Discrimination (CERD)[400] in 2003. The convention defines "racial discrimination" as

> *any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.*[401]

Thailand issued a "general interpretive declaration" that noted that it has no obligation to interpret and apply the provisions of the convention beyond the confines of the constitution and the laws of the Kingdom of Thailand.[402]

CERD General Recommendation XXV, which focuses on the gender-related dimensions of CERD, states that race discrimination may have consequences that only or predominantly effect women.[403]

Refugees

Thailand has not signed or ratified the Convention Relating to the Status of Refugees, nor has it signed the 1967 Refugee protocol.[404] Nevertheless, these protocols guarantee the right to life and security of person of each refugee.[405]

Based on the findings discussed in this report with regard to the trafficking, unsafe migration, exploitative labor, and sexual exploitation of hill tribe and Burmese migrant women and girls, Thailand is clearly in violation of many of its obligations under international human rights law.

NOTES

[377] Thailand acceded to the ICESCR in 1999. International Covenant on Economic, Social, and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.

[378] Thailand acceded to the ICCPR in 1997. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

[379] Thailand acceded to CEDAW in 1985. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

[380] Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

[381] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

[382] Universal Declaration of Human Rights, Article 2.

[383] World Conference on Human Rights, Vienna, June 14–25, 1993. Vienna Declaration and Programme of Action, para 5. Available at: http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument.

[384] CEDAW, article 6. The expert committee charged with monitoring the adherence of states party to CEDAW has promulgated a number of authoritative interpretations and elaborations of the obligations under the convention. Several of these "General Recommendations" are relevant to the issues of exploitation of women and to their vulnerability to HIV/AIDS, including General Recommendation Nos. 12 and 19 on Violence Against Women, General Recommendation No. 15 on Women and AIDS, General Recommendation No. 21 Regarding Equality in Marriage and Family Relations, and General Recommendation No. 24 on Women and Health. Available at: http://www.un.org/womenwatch/daw/cedaw.

[385] For Thailand's reservations, see http://www.hri.ca/fortherecord1999/documentation/reservations/crc.htm#declarations.

[386] Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 3, adopted Nov. 15, 2000 (entered into force Dec. 25, 2003). [Hereinafter "Trafficking Protocol."]

[387] For a detailed discussion and analysis of the protocol, see International Human Rights Law Group. *The Annotated Guide to the Complete UN Trafficking Protocol*. 2002. Available at: http://www.hrlawgroup.org/resources/content/Traff_AnnoProtocol.pdf.

[388] Trafficking Protocol, art. 3(a).

[389] Trafficking Protocol, art. 3 (c, d).

[390] Trafficking Protocol, art. 6.

[391] Trafficking Protocol, art. 9(4).

[392] For a list of signatures and ratifications, see http://www.unodc.org/unodc/crime_cicp_signatures_trafficking.html.

[393] Employment Policy Convention (ILO No. 122), 569 U.N.T.S. 65, entered into force July 9, 1965. Thailand ratified it in 1969.

[394] Abolition of Forced Labour Convention (ILO No. 105), 320 U.N.T.S. 291, entered into force January 17, 1959. Thailand ratified it in 1969.

[395] Convention No. 138 concerning Minimum Age for Admission to Employment. Adopted on June 26, 1973, by the General Conference of the International Labour Organisation. Entered into force on June 19, 1976.

[396] Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), 38 I.L.M. 1207 (1999), entered into force November 19, 2000.

[397] See the Thai Ministry of Finance's description of labor laws; available at: http://www.mof.go.th/investthai/index_sec4.htm.

[398] Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force September 5, 1991. Quotation is from article 2(a).

[399] See for example Asian Human Rights Commission. Thailand Urgent Appeal. July 3, 2003. Available at: http://www.ahrchk.net/ua/mainfile.php/2003/477/. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003.

[400] International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, entered into force January 4, 1969.

[401] International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, entered into force January 4, 1969. Article 1.

[402] See http://www.bayefsky.com/./html/thailand_t2_cerd.php.

[403] CERD General Recommendation XXV (Fifty-sixth session, 2000): Gender-Related Dimensions of Race Discrimination, A/55/18 (2000) 152 at para.2.

[404] United Nations Treaty Collection. *Protocol Relating to the Status of Refugees*. Available at: http://www.unhchr.ch/html/menu3/b/treaty5.htm. (1951)

[405] Office of the High Commissioner for Human Rights. *Protocol Relating to the Status of Refugees (1967)*. Available at: http:// www.unhchr.ch/html/menu3/b/o_p_ref.htm.

IX. LAW AND POLICY – UNITED STATES

Thailand

The United States government is pursuing a number of objectives vis-à-vis the Thaksin administration in the areas of human trafficking, development aid, and free trade. Cooperation on international terrorism has been at the forefront of the US agenda in recent years, but the United States also seeks to promote human rights. President Bush highlighted child sexual exploitation and trafficking into the sex industry as priority concerns in a speech to the United Nations General Assembly on September 23, 2003.[406] Moreover, in its 2003–2004 human rights report, the US Department of State singled out trafficking in persons and the condition of Burmese refugees and other ethnic minority groups within Thailand.[407] Secretary of State Colin Powell has also raised the issue of thousands of extrajudicial executions by Thai police related to the anti-narcotics campaign. [408]

Application of US Trafficking Law and Policy

In 2003 Congress reauthorized the Trafficking in Persons Act and strengthened considerably the provisions with regard to the requirements for meeting minimum standards. In addition, the new law authorized the creation of a "watch list" of problem countries, to assess whether countries on Tiers II or III had made additional efforts to meet minimum standards during the previous year.[409] Assessing a country's performance in meeting minimum standards on combating trafficking can be a significant diplomatic tool in pressing for improvements. A country relegated to Tier III, for example, loses certain types of nonhumanitarian US foreign assistance.

Thailand's continued placement on Tier II, notwithstanding its poor performance in the area of law enforcement, has been a matter of concern to Congress.[410] The State Department's inclusion of Thailand on the Tier II Watch List in the June 2004 Trafficking in Persons (TIP) report offers a welcome opportunity to bring heightened scrutiny to Thailand's trafficking record. The language in the report, however, suggests that such scrutiny may be limited to Thailand's approach to the trafficking of Cambodian street children.[411] Meanwhile, it was noted that only one of 18 police officers charged with facilitating trafficking in 2003 was prosecuted and convicted. The midyear report required for watch list countries should also include a review of Thailand's performance with regard to police corruption and complicity, the accountability of traffickers, prevention activities (including accelerated citizenship registration efforts), and victim services.

Overall, the US government's public comments on Thailand's trafficking record have been less condemning than the Thai government's record warrants. In the 2004 report, the State Department noted mildly — exactly as it had in 2003 — that "Thailand does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so."[412] The report's discussion of prosecution states that the "Thai government's law enforcement efforts show some progress…However, as in previous years, the law was used sparingly in 2003. Some police and prosecutors seem to be unfamiliar with its provisions and therefore do not use it." Thai government statistics show that in 2003 there were 211 trafficking-related arrests, 86 prosecutions, and 20 convictions. The lack of specific information on these enforcement actions against traffickers invites skepticism, given the comment that "most sentences in trafficking cases were light" and the report's call for simply a "reduction" in corruption in the police, immigration authorities, and judiciary.[413] PHR interviews for this study suggest that traffickers, including police themselves, enjoy virtual impunity from prosecution.

US Anti-Trafficking Funding

The US government has provided significant resources to Thailand to address the issue of trafficking in recent years. These resources include law enforcement–related technical assistance to the Thai government, and monies to a number of Thai and international NGOs, primarily for work in investigations and victim services and, to a lesser degree, for education and prevention activities, such as assisting with citizenship applications for hill tribes.[414]

The Bush administration's anti-trafficking position exists in the context of its strong opposition to sex work. A directive issued by President Bush in December 2002 "states that prostitution is inherently harmful to men, women, and children, and directly links it as contributing to trafficking in persons."[415] An unclassified cable from the director of the State Department's Office of Trafficking in Persons, John Miller, to US diplomatic and consular posts around the world offers additional guidance on the implementation of this policy: "As long as foreign ngo's [sic] are receiving USG [US government]

funding, they cannot use these or other funds to lobby for, promote, or advocate the legalization or regulation of prostitution as a legitimate form of work."[416] This clearly impedes the ability of anti-trafficking organizations to collaborate with those representing or working with sex workers, groups that are able to reach those who are most vulnerable and at risk.

HIV/AIDS

The US government services its programs in Thailand through an Asian regional office in Bangkok. HIV/AIDS assistance was provided last year to two nongovernmental organizations, Family Health International and the International HIV/AIDS Alliance. These organizations provide services to Thai agencies in the areas of care and support services for people with AIDS, harm reduction for injecting drug users, awareness and prevention on the Thai-Cambodian border, HIV prevention activities in schools, case management and integration of HIV/AIDS into family planning, and reproductive health activities.[417]

It should be noted that the "promoting prostitution" restriction on Thai anti-trafficking organizations, in concert with a similar limitation in the Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("the global AIDS bill"),[418] has had, according to PHR interviews, the effect of discouraging such organizations from doing any HIV/AIDS prevention or treatment or other public health research on sex work in Thailand, despite the primacy of the sex industry in Thailand's HIV/AIDS epidemic.[419]

Defense and Trade

Thailand is a major strategic and military ally of the United States. In 2004, Thailand received approximately $5 million in military assistance, sales, training, and excess defense materiel. The US government also provided approximately $380,000 in anti-narcotics assistance and has requested that Congress triple that amount in 2005.[420]

In October 2003, President Bush announced that the United States will negotiate a free trade agreement (FTA) with Thailand, and a letter of intent to begin negotiations was sent in February 2004. These talks were scheduled to begin in Hawaii on June 28, 2004.[421] Thai and American AIDS treatment activists, and international NGOs such as Médecins Sans Frontières,[422] have expressed concern that the agreement will have a deleterious impact on Thailand's ability to produce or import generic drugs for HIV/AIDS. Features of the US-Singapore FTA, the model for the Thai agreement, include a five-year term of data exclusivity, the extension of drug company patents beyond 20 years, and limitations on a country's ability to grant government permission for production of a patented medicine by generic competitors (compulsory licensing).[423] Currently, the Thai government's Pharmaceutical Organization produces one of the cheapest reliable generic AIDS medications, GPO-VIR, which it distributes to Thais with HIV/AIDS.[424]

Burma

The US has imposed broad sanctions on Burma as a result of the ruling regime's suppression of the democracy movement. Most recently, to strengthen existing sanctions in response to the government's arrest of opposition leader Aung San Suu Kyi in May 2003, new US sanctions came into effect in August 2003 under the Burmese Freedom and Democracy Act.[425] The United States bans imports from Burma, the export of financial services to Burma, and virtually all remittances to Burma and has frozen the assets of certain Burmese financial institutions and extended visa restrictions on Burmese officials. These sanctions were extended for another year in May 2004 after the SPDC barred pro-democracy and ethnic groups from the constitutional convention (see the Burma Background section, p.19).[426]

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[406] Available at: http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html.

[407] "Supporting Human Rights and Democracy: The U.S. Record 2003–2004." United States Department of State. Released May 17, 2004. Available at: http://www.state.gov/g/drl/rls/shrd/2003/.

[408] "Supporting Human Rights and Democracy: The U.S. Record 2003–2004." United States Department of State. Released May 17, 2004. Available at: http://www.state.gov/g/drl/rls/shrd/2003/.

[409] Tier status is based on the 2000 Trafficking Victims Protection Act, which sets forth three standards: Tier I are those countries whose governments fully comply with the Act's minimum standards. Tier II are countries whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Tier III are those countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so. A country on the watch list is subjected to an interim evaluation and report, in February 2005 for this year's list. If Thailand is found not to have made significant improvements, it could be demoted to Tier III.

[410] See, for example, congressional hearings held by the House International Relations Committee, June 19, 2002. Available at: http://wwwa.house.gov/international_relations/107/full107.htm. For criticism of the TIP criteria and tier assignments, see also letters sent from Human Rights Watch to Secretary Powell, June 2002 and June 2003. Available at: http://www.hrw.org/press/2002/06/powell-ltr.htm, and at: http://www.hrw.org/press/2003/06/us062703ltr.htm.

[411] "Trafficking in Persons Report," United States Department of State, June 2004. Available at: http://www.state.gov/documents/organization/33614.pdf.

[412] "Trafficking in Persons Report," United States Department of State, June 2003. Available at: http://www.state.gov/documents/organization/21555.pdf; "Trafficking in Persons Report," United States Department of State, June 2004. Available at: http://www.state.gov/documents/organization/33614.pdf.

[413] "Trafficking in Persons Report," United States Department of State, June 2004. Available at: http://www.state.gov/documents/organization/33614.pdf.

[414] Funds provided totaled $2,130,967 in FY03 (includes $233,000 for FY04 activities). "Overview of US Government FY03 Trafficking in Persons (TIP) Programs in Thailand." Document provided to PHR by Timothy Scherer of the US Embassy, March 24, 2004, Bangkok Thailand.

[415] 11/14/03 unclassified cable, 03111434401 State 317645 New Guidelines for Anti-trafficking in Persons.

[416] 11/14/03 unclassified cable, 03111434401 State 317645 New Guidelines for Anti-trafficking in Persons.

[417] See http://www.usaid.gov/our_work/global_health/aids/countries/ane/thailand.html.

[418] HR 1298. Available at: http://thebody.com/govt/global_aids.html. Although it does not apply to Thailand, this legislation funds many international research organizations that also work there.

[419] PHR interviews with Carol Jenkins, March 29, 2004, Bangkok, Thailand, and Philip Guest of the Population Council, March 28, 2004, Bangkok, Thailand.

[420] Available at: http://www.usaid.gov/our_work/global_health/aids/countries/ane/thailand.html.

[421] "US Talks Set to Start Next Month." *Bangkok Post,* May 8, 2004; Chantanusornsiri W. "US May Bring Up GMO Issue." *Bangkok Post.* June 9, 2004. Available at: http://www.biothai.org/cgi-bin/content/news/show.pl?0226.

[422] PHR interview with Paul Cawthorne of Médecins Sans Frontières, April 2004, Bangkok, Thailand.

[423] Health Gap, Thai Network of People Living with HIV/AIDS. "Thai and US AIDS Activists Against Bilateral Trade Deal. Access to Affordable Generic Medicines in Jeopardy." Press Statement. October 19, 2003. Available at: http://www.healthgap.org/press_releases/03/101902_HGAP_PR_APEC_THAI_FTA.html.

[424] Couldry A. "Fight the US Free Trade Agreement." Centre for Research on Globalisation, March 28, 2004. The cost of GPO-VIR is approximately $25–$30 per month.

[425] See The White House Statement on Burmese Democracy Act. Office of the Press Secretary. July 28, 2003. Available at: http://www.whitehouse.gov/news/releases/2003/07/20030728-8.html.

[426] "Bush Administration Extends Sanctions Against Myanmar." The Associated Press. May 21, 2004.

X. CONCLUSION AND EXPANDED RECOMMENDATIONS

Conclusion

This report describes the policy failures of the government of Thailand, despite a program widely hailed as a model of HIV prevention for the region, to protect and promote the rights of hill tribe and Burmese women and girls and to take measures to reduce their vulnerability to human rights violations, which in turn increase their risk of HIV. Most egregiously, PHR findings show that the Thai government's abdication of responsibility for uncorrupted and nondiscriminatory law enforcement and human rights protection has permitted ongoing violations of human rights, including those by authorities themselves, which have reinforced the patterns of exploitation and multiplied the harms experienced by Burmese and hill tribe women and girls. This permission for impunity compounds the government's failure to reach and to protect vulnerable communities and is not only a failure of human rights, but a virtual assurance that HIV/AIDS will continue to be a problem for Thailand.

Therefore, Physicians for Human Rights urges the government of Thailand, the United States government, Burma's State Peace and Development Council, and international agencies to act on the following recommendations, with the long-term goal of improving the health and human rights of all persons living in Thailand.

Expanded Recommendations

The Government of Thailand

Justice and Law Enforcement

- The government of Thailand must investigate, prosecute, and punish those who commit crimes, including human trafficking, against any individuals, including migrants of any legal status. The government of Thailand must investigate, prosecute, and punish the collusion or involvement of members of the Thai police and immigration and military intelligence agencies in human trafficking, other crimes (including crimes against migrants), and exploitative labor practices. This action must include genuine and immediate efforts to eradicate the endemic corruption that allows human traffickers and smugglers to operate with impunity and to the financial benefit of both rank-and-file and commanding law enforcement officials.
- The government of Thailand must investigate, prosecute, and punish members of the Thai police who extort, threaten, exploit, and sexually assault sex workers on the false premise of enforcing the anti-prostitution law.
- The government of Thailand should ensure that the innovative One-Stop Crisis Centers for female victims of sexual assault and other crimes of violence are located in hospitals in all districts and that NGO-run hotlines and comprehensive support services, including interpretation and translation, are funded to assist undocumented migrants, sex workers, and others who are frequently subject to violence by authorities and so may consequently fear to report crimes, pursue legal redress, or seek assistance for their injuries unaccompanied.
- The government of Thailand should accord due regard to the human rights of trafficked persons, in accordance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights,[427] paying special attention that measures for the identification, protection, and support of trafficked children accord with the best interests of the child. At a minimum this means that the government of Thailand must:
    - move with alacrity to identify trafficked persons, especially children, and remove them expeditiously from exploitative situations in a manner that protects their safety and that of others;
    - cease the involuntary repatriation (refoulement) of Burmese persons. Children whose parents live in Thailand should be reunited with them and not returned to Burma. The potential for the safe return to Burma of willing trafficked persons would be greatly increased by the hiring and training of Burmese (ethnic minority) social workers or the creation of a network of volunteers to accompany victims through the post-exploitation process and the location of their families;

- in conducting or collaborating in anti-trafficking interventions, make every effort to ensure that no adult is removed involuntarily from her place of work. This should include working with community NGOs to identify both child and adult victims, developing appropriate and reliable methods of age determination, and taking steps to monitor and assure compliance with the same standards by NGOs conducting anti-trafficking work. Mistaken identifications should not result in the arrest, holding in custody, or deportation of any person involuntarily removed;
- act quickly to pass victim and witness protection legislation and residency visa provisions for trafficking victims;
- ensure that interpreting and translation services, where necessary for the trafficked person, are provided at all steps of the process, from removal through shelter and subsequently;
- provide for the immediate and long-term medical and mental health needs of trafficked persons, including voluntary testing and counseling for HIV, treatment of injuries and illnesses, access to reproductive health services and information, counseling and treatment for substance abuse, and psychological counseling;
- provide meaningful assistance for integration or reintegration of victims, with due accord to both the safety of and development of sustainable livelihood for the trafficked person and with the expressed consent of each individual.

- The government of Thailand should direct police and other security agents to immediately cease the harassment of NGO volunteers and workers who are providing services to trafficked persons, vulnerable migrants, and Burmese refugees in Thailand. This includes restrictions of movement, demands for bribes, physical abuse and threats of arrest, detention, and deportation. The government of Thailand should enter into an MOU with NGOs working on cases of forced labor, similar to the anti-trafficking MOU, to protect NGOs providing vital services to exploited workers.
- The government of Thailand should desist from using the penalties for "harboring illegal migrants" to harass legal migrants and shopkeepers, homeowners, and others providing goods and services to Burmese individuals and organizations.
- The government of Thailand should ratify the Trafficking Protocol of the Convention Against Transnational Organized Crime.

Health Services and Medical Care

- The government of Thailand should rapidly move to implement comprehensive health services and HIV/AIDS programs for Burmese migrants and members of hill tribes, in particular women and girls. It is essential to expand HIV prevention, voluntary testing and counseling services, and condom availability and to make anti-retroviral therapy available equally to foreign resident migrants and members of hill tribes as well as to Thais. The government of Thailand must ensure access to family planning, reproductive health services, and prenatal care. Further, translation of all relevant information and interpretation for health care services must be made available in the migrants' native languages.
- The government of Thailand should commit to the revitalization of the free condom distribution program and to ensuring access to comprehensive and accessible health services for sex workers at the local district level.
- The government of Thailand should ensure that all persons resident in Thailand, including stateless children, migrant workers, and sex workers, who are diagnosed with HIV infection are provided protection from discrimination, access to social and health services, and protection from the unwanted disclosure of their status to employers or others.

Labor and Migration

- As soon as possible or no later than the next round of registration, the government of Thailand should expand the migrant worker registry to:
  - include all categories of jobs primarily done by migrants, particularly in those sectors prone to exploitation;
  - create a category of "assistant health worker" to permit the registration of hospital interpreters, outreach workers, and others providing critical services to health care providers serving migrant populations;
  - create a category of "assistant education workers" for workers at schools run by Burmese communities for their children;
  - allow workers to register with or without a specific employer and allow a reasonable time period to change employers;
  - provide access to the 30-baht health plan for the family members of registered workers.
- The Ministry of Labor should enforce the labor protections of Thai law equally for all workers and retain

and train a workforce adequate to increase routine inspections of factories and other workplaces. The Ministry of Labor should collaborate with NGOs to strengthen complaint mechanisms, including hotlines, and make available legal services, safe houses, and other assistance for migrant workers.

- The Ministry of Labor should ensure that employers register all eligible workers in their employ, deduct from their pay no more than the cost of the work permit, and furnish workers with an original copy of the permit and all other worker documentation. The Ministry of Labor should ensure that information about the registration process, labor protections, the complaint process, and workers' rights is available in migrants' native languages and is widely circulated.
- The Ministry of Labor should overturn the regulation requiring pregnancy screening in the registration health exam and protect registered workers from dismissal by employers based on pregnancy.
- The Ministries of Labor and Public Health should work together to provide information in the appropriate languages explaining enrollment in the 30-baht health plan and access to health care services.
- The government of Thailand should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention Relating to the Status of Refugees.

Statelessness and Citizenship

- The government of Thailand should act immediately to confer full citizenship on members of hill tribes born in Thailand and take measures to ensure their full enjoyment of this status, including registry of marriages and births, land rights, and representation and participation at the village and district levels.
- The government of Thailand should ensure that all children born in Thailand are registered at birth and receive a birth certificate, regardless of their nationality.
- The government of Thailand should ensure that no child is prevented from attending Thai schools and that all children receive a diploma upon graduation.
- The government of Thailand should accede to the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169).

The United States Government

HIV/AIDS

- USAID should pressure the government of Thailand to provide leadership to ensure rapid implementation of funded programs for HIV/AIDS prevention and other health care provision for mobile and migrant populations. USAID should further act to ensure coordination, coverage, sustainability and quality of these services, including through direct involvement by its regional mission and by increasing funding to NGOs serving these populations.
- The United States government should not include any provisions in its free trade agreement with Thailand that affect Thailand's ability to manufacture or import generic drugs for the treatment of HIV/AIDS.

Anti-trafficking

- The United States government should maintain Thailand's Tier II Watch List status until it implements a comprehensive anti-trafficking plan. The United States government should explicitly condition promotion to Tier II status on the appropriate treatment of and assistance to Burmese persons. In particular, Thailand must end the impunity of traffickers and the enabling corruption of its police, immigration, and other authorities. The United States government should strongly and publicly pressure Thailand to follow through on its stated commitment to anti-trafficking prevention, prosecution, protection, and reintegration.
- The United States government should expand the scope of its funding for NGOs currently engaged in community-based models addressing the root causes of trafficking, such as citizenship, to include gender and ethnic discrimination and lack of viable economic and educational opportunities. The United States government should increase funding for prevention, monitoring, and assistance by grassroots groups working to detect trafficking and remedy exploitation, including community watches, groups working with sex workers, and ethnic networks. The United States government should also support nongovernmental organizations that collect evidence of trafficking that can be used to assist victims and encourage accountability for those who commit crimes against them, including public officials.

Burma

- Having recognized, through the renewal of sanctions, the continued importance of refusing to financially support the Burmese regime, the United States government should pressure Thailand to prioritize democratic reform and human rights in its relations with Burma.
- The United States government should pressure the government of Thailand to take immediate steps to improve the treatment of Burmese migrants in Thailand, whose

beneficial presence to the Thai economy is in large part owed to conditions in Burma and whose remittances support families harmed by the militarization of the country. The United States government should pressure Thailand to support the International Labor Organization's efforts to end forced labor in Burma, a human rights violation that pushes many migrants to Thailand.

- The United States government should increase pressure on Thailand and other countries in ASEAN to promote change in Burma and to deny the 2006 chairmanship of ASEAN to the SPDC, unless substantive progress toward democratization has occurred.

The State Peace and Development Council of Burma (SPDC)

Justice

- The SPDC must immediately take steps to reverse the militarization of Burma and its reign of terror and to hold accountable those responsible for rape, forced relocation, forced porterage, and other human rights abuses, which continue to force Burma's people to flee their homeland and seek refuge in other countries. In particular, the SPDC policies of forced labor and population transfers and the seizure of ethnic lands, assets, and livelihoods in ethnic minority areas must cease immediately. The SPDC must cease and desist from war crimes and crimes against humanity in ethnic conflict zones, including the use of rape as a tool of ethnic terror against the Shan and Karen ethnic minorities, and punish those responsible.

The Political Process

- The SPDC should begin substantive tripartite dialogue with the 1990 election winners and the leadership of the ethnic nationalities to move toward true national reconciliation and the voluntary return of Burma's people to their homeland.

Migration

- The SPDC should reverse its policy of limiting the freedom of movement of young women by prohibiting unaccompanied travel out of Burma.
- The SPDC should cease the harassment, arrest, and penalization of migrants as they leave from and return to Burma.

International Organizations

- International donors, including UNAIDS, the Global Fund for AIDS, Malaria, and Tuberculosis, and the International Organization for Migration should pressure the government of Thailand to rapidly move forward with the implementation of funded programs for HIV/AIDS prevention and other health care provision for mobile and migrant populations. Donors should further act to ensure coordination, coverage, sustainability, and quality of these services.

NOTES

[427] *Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights.* An Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1)