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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on the human rights of migrants; the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences.

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/23, 17/12, 17/1, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **proposal by the Minister of Labour to introduce a regulation to deport pregnant migrant workers from Thailand.**

According to the information received:

On 26 June 2012, Labour Minister Padermchai Sasomsap announced a plan to develop regulations which would require that women migrant workers who are three to four months pregnant stop work for several months and return to their home countries to give birth.

Reportedly, the regulations have been proposed with a view to combatting human trafficking and exploitative child labour, and to avoiding assigning inappropriate work to pregnant workers which could be harmful to their health.

A working group under the Labour Ministry's Department of Labour Protection and Welfare has two months to draft regulations for the implementation of this proposal.

It is reported that many pregnant migrant women currently in Thailand, the vast majority of whom come from neighbouring countries including Myanmar, Cambodia and Laos, fear that they will lose their jobs and be deported if this regulation is adopted and enforced. Moreover, many workers are uncertain

about their ability to reclaim their jobs upon returning to Thailand, and are concerned about the possibility of additional expenses incurred related to travel and recruitment fees.

Furthermore, some migrant women may be compelled to seek unsafe abortions as their only option to stay employed, exposing them to serious health risks, including risk of death.

We would like to express our concerns about the implications of such regulations, which may have severe human rights consequences for pregnant migrant women.

We are highly concerned about the discriminatory effect this law would have on pregnant migrant women.

In this context, we wish to remind your Excellency's Government of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which it ratified on 9 August 1985, particularly article 2 which further specifies that States should eliminate discrimination against women.

International human rights law further provides that women are entitled to the same employment opportunities as men and cannot be dismissed from employment due to pregnancy. Specifically, article 11 of CEDAW requires that State parties prohibit discrimination in the workplace on the basis of marriage, pregnancy and maternity, and introduce paid maternity leave without loss of benefits or career opportunities, and encourage provision of supporting social services to allow parents to combine family obligations with work responsibilities. Related to pregnancy, article 11(2) of CEDAW forbids employers to terminate female employees on the basis of pregnancy or maternity leave, declaring that discrimination based on pregnancy is discrimination based on sex. This is reiterated in CEDAW General Recommendation No. 26 on Women Migrant Workers, which addresses discrimination faced by this vulnerable group, including in the area of employment. This recommendation provides that States parties "should repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of ... pregnancy or maternity status" (para 24(a)).

The discriminatory effect of this proposed regulation may leave pregnant migrant women with no choice but to seek an abortion in order to remain employed. Given the limited access by women to contraception in general, as noted by the CEDAW committee in its review of Thailand (CEDAW/C/THA/CO/5, para. 39) migrant women, who often lack access to adequate reproductive health services, including contraception, may be forced to seek unsafe abortions. Unsafe abortions can result in reproductive, sexual, physical, psychological and health-related long-term harm to women.

In this regard, we make reference to Commission on Human Rights Resolution 2005/41 on the Elimination of Violence against Women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on

matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We are further concerned that this law implies mandatory pregnancy testing, which directly contravenes international human rights law. The CEDAW Committee, in its General Recommendation 24, has explicitly denounced mandatory pregnancy testing to be a form of coercion “that violate[s] women’s rights to informed consent and dignity.” Similarly, the Human Rights Committee, in its General Comment No. 28, has held that requiring women workers to take pregnancy tests as a condition of employment violates their rights to privacy and other rights protected by article 17 of the International Covenant on Civil and Political Rights (ICCPR). Similarly, mandatory pregnancy testing is a violation of articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Committee on Economic, Social and Cultural Rights has condemned mandatory pregnancy testing as a violation of women’s right to work, which includes the right to freely choose one’s work and the right to just and favourable conditions of work.

Mandatory pregnancy testing further violates the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, in particular principle 2 dedicated to eradicating discrimination in employment, as stated by the Committee of Experts on the Application of Conventions and Recommendations

A further concern regarding the implications of these regulations would be their impact on migrant families. Requiring pregnant migrant women to return to their home countries to give birth, may contribute to the splitting up of families, forcing stable couples in Thailand to stay apart for a considerable period of time. This may lead to further vulnerabilities, especially when children are left behind if a mother decides to return to work in Thailand, or for those children perhaps living in Thailand who might not be able to accompany their pregnant mothers back to their home country during the birth period.

In this context, we would like to refer your Excellency’s Government to article 16 (3) of the Universal Declaration of Human Rights which states that “the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State”. Allow us also to draw your Excellency’s Government’s attention to articles 2, 17, 23 and 24 of the ICCPR, ratified by the Government of Thailand on 29 October 1996. We wish to refer particularly to article 23 which provides that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” We would also like to mention the ILO Recommendation (N°151) concerning Migrant Workers whose article 13 provides that “all possible measures should

be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible”.

We further note that migrant women impacted by these proposed regulations would be discriminated against not only on the basis of their sex, but also due to their status as non-citizens. In this context, we remind your Excellency’s Governments of its obligation under the ICCPR to ensure that citizens and non-citizens are not discriminated against.

In this respect we would like to draw your Excellency’s attention to General Assembly resolution 63/132 which in para. 7 “calls upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers”.

Moreover, although we recognise the power of States to admit or deny the entry of foreigners, in its General Comment XV, the Human Rights Committee has noted that “in certain circumstances, an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.” Given the fact that the proposed regulations would deprive pregnant migrant women of their employment and separate them from their families, this would meet this threshold.

We further note that this proposal was reportedly introduced as a response to combat human trafficking. There are also allegations that it has been proposed as a measure to combat child labour. However, in our view, the proposed regulations would have little impact on combatting human trafficking or child labour, but would serve to further stigmatise and discriminate against women migrant workers. Meaningful anti-trafficking measures rather should focus on protecting victims of trafficking, and properly prosecuting offenders, among others. In particular, we refer you to the recent report on Thailand of the Special Rapporteur on trafficking in persons, especially women and children, which outlines numerous recommended actions, in line with a human rights approach (A/HRC/20/18/Add.2). Implementation of these recommendations would be more effective in combatting trafficking within a human rights framework than adopting regulations to deport pregnant migrant workers.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of pregnant migrant workers in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. How do the proposed regulations conform to international human rights legal obligations undertaken by Thailand?
3. How does your Excellency's Government intend to ensure that migrant women are not discriminated against as a result of their being pregnant?
4. Please explain the rationale of the proposal and provide evidence that this proposed measure would contribute to reducing the incidence of trafficking in persons in Thailand, or reduce child labour?
5. Please provide information on the implementation of the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, on combating human trafficking in Thailand. Please provide details as to which recommendations have been implemented and share any challenges in the implementation of her recommendations.
6. Please provide details on how Thailand is planning to strengthen migrant women's access to programmes and services aimed at providing effective access for women to contraceptives and health-care information and services?
7. Please provide information on whether Thailand is considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of pregnant migrant workers are respected.

Please accept, Excellency, the assurances of our highest consideration.

François Crépeau
Special Rapporteur on the human rights of migrants

Kamala Chandrakirana
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Joy Ezeilo
Special Rapporteur on trafficking in persons, especially women and children

Rashida Manjoo
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