

Humanitarian response towards Burmese migrant workers

by Pia Oberoi

The human rights imperative that should underpin all humanitarian response was denied to large numbers of people in the tsunami crisis in South and South-East Asia.

Across the globe 'irregular' or 'undocumented' migrants can be found working as domestic servants, farm labourers or street cleaners, doing jobs commonly viewed as dirty, demeaning or dangerous. Prior to the tsunami, Burmese migrant workers in the coastal areas of Thailand were employed in various low-skilled sectors, including construction, fisheries

and tourism. In practice, and to a certain extent in policy, the response of the Thai authorities towards the Burmese migrant workers affected by the tsunami was discriminatory and violated their fundamental human rights.

Estimates of the numbers of Burmese migrant workers in Thailand killed as a result of the tsunami

range from 700 to 2,500, out of a total estimated population of over 120,000 Burmese working in four southern Thai provinces most affected by the devastation. Accurate figures for the numbers of injured or missing Burmese are also elusive, with some reports putting the numbers of missing as high as 4,000. A joint assessment mission carried out by International Organization for Migration (IOM), the World Bank and UN agencies in January concluded that at least 7,000 Burmese migrant workers and their dependants were affected by the tsunami in Thailand. The confusion is mainly due to the

fact that many thousands of the migrant workers living and working in Thailand are unregistered and therefore excluded from official statistics. In addition many identity documents and work permits were washed out to sea.

Discrimination in assistance provision

In the chaotic aftermath of the tsunami, many Burmese migrant workers found that they were last in the queue to receive emergency humanitarian aid – if they were eligible at all. Announcements were made by the Thai authorities that only those migrant workers who were able to prove that they were regularly present in the country would be eligible to receive humanitarian aid. NGOs reported in January 2005 that whole communities of irregular migrants were hiding in the hills, many of them injured and weak from hunger. Irregular migrants were unable to access even emergency health care through the Thai public health system and most had to rely on the charity of local NGOs for food and other assistance.

Hundreds and possibly thousands of Burmese migrants were forcibly returned by the authorities to Burma

Humanitarian response is premised on the imperative of meeting human needs and restoring human dignity within a framework of non-discrimination. The response to the needs of the Burmese migrant workers neither met their needs nor restored their dignity. International human rights law establishes the principle that all human beings, regardless of their legal status, are entitled to respect for their fundamental rights, including economic and social rights. In relation to the ability of Burmese migrants to access emergency healthcare following the tsunami, for instance, Article 12 of the International Covenant on Economic, Social and Cultural Rights¹, of which Thailand is a State Party, recognises the right of everyone to the highest attainable standard of physical and mental health.

In addition to being denied humanitarian aid, Burmese migrant workers faced other forms of discrimination

and abuse in the aftermath of the tsunami. With industry devastated in the coastal areas, many migrant workers were simply abandoned by their employers, making it difficult for them to replace work permits lost to the wave. Media reports of criminal activity allegedly perpetrated by migrants led the Thai authorities to arrest and detain, often arbitrarily, several hundred Burmese migrants. Hundreds and possibly thousands of Burmese migrants were forcibly returned by the authorities to Burma, where some may be at risk of serious human rights violations. Their irregular status means that few, if any, migrant workers would dare to report abuses suffered at the hands either of employers or local law enforcement authorities.

The fact remains that, while it is the sovereign prerogative of Thailand to control its borders, even migrant workers who lack the legal right to remain in their country of employment are entitled to respect for their fundamental rights. Arbitrary arrest and detention, and detention in inadequate conditions, are in violation of Articles 9(1) and 10 of the International Covenant on Civil and Political Rights², to which Thailand is also a State Party. Equally fundamentally, the Thai government

is obliged under customary international law not to return any person to a situation where they would be likely to suffer serious human rights violations including torture.

Protecting the human rights of all migrants

The tsunami crisis brought to the public eye some endemic problems faced by migrant workers in Thailand, such as their abusive treatment by local authorities and employers. It also raised questions of how the humanitarian response was conducted by national and local authorities in the region as a whole. From Sri Lanka to Indonesia via Thailand and India, reports have emerged of discrimination in the delivery of humanitarian aid to vulnerable groups in great need.³

Migrant workers' vulnerability is compounded when migrants are in an irregular situation, and even

further still when these irregular migrants are women, children, elderly or ill. Yet countries around the world regularly operate discriminatory policies towards irregular migrants. Very few countries have legislative requirements, or even administrative policies, that provide protection to migrants who are in an irregular situation on their territory.

In particular it should be mentioned that only 29 countries in the world are party to the one international human rights instrument that is specifically dedicated to protecting the fundamental human rights of migrants, regardless of their migratory status. This is the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), which came into force in July 2003.⁴

The ICMW and other core human rights treaties that apply equally to migrants are important tools for the protection of the rights of migrants, not least because they act as a counterbalance to the emphasis on control and containment that has, to date, characterised much of the debate on migration. Recognition that all migrants are human beings with inherent human rights is key to ensuring that in the context of a humanitarian response they will not be forgotten, discriminated against or subjected to abuse.

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TAG (Tsunami Action Group) is a group of NGOs and community-based organisations concerned for the situation of Burmese migrant workers affected by the tsunami. See: www.saydanatsunami.org or email: tagmigrants@yahoo.com

1. www.unhchr.ch/html/menu3/b/a_ceschr.htm
 2. www.ohchr.org/english/law/ccpr.htm
 3. See for example Human Rights Watch, 'End caste bias in tsunami relief', 14 January 2005 <http://hrw.org/english/docs/2005/01/14/india10019.htm>; Amnesty International, 'Indonesia – Human rights are paramount in the relief and reconstruction effort', 18 January 2005 <http://news.amnesty.org/index/ENGASA210032005>
 4. www.ilo.org/public/english/employment/skills/recomm/instr/un_9.htm