



FAIR LABOR  
ASSOCIATION®

*Improving Workers' Lives Worldwide*



## **TRIPLE DISCRIMINATION: WOMAN, PREGNANT, AND MIGRANT**

*Preventing Pregnancy Discrimination  
among Temporary Migrant Workers:*  
Lessons from Malaysia, Taiwan, and Thailand

**MARCH 2018**

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The **Fair Labor Association** promotes and protects workers' rights and improves workplace conditions through collaboration between business, civil society, and colleges and universities. The FLA conducts transparent and independent monitoring to ensure that rigorous labor standards are upheld wherever FLA affiliates source their products, identifies root causes of non-compliances, and proposes solutions to workplace problems. The FLA is headquartered in Washington, D.C., and maintains offices in Geneva and Shanghai.

## EXECUTIVE SUMMARY

**In countries where the local workforce is insufficient to meet the employment demand** in garment and footwear factories, employers rely heavily on temporary migrant workers to fulfill their production needs. According to the United Nations, women now comprise fully half of the 244 million migrants that work abroad.<sup>1</sup> Migrant workers are often more vulnerable to discrimination and harm as compared to local workers, because they almost always lack the same legal and social protections. In the ready-made garment sector, these workers are typically young and female, and may work in a country for several years, confronting discriminatory workplace practices beyond those experienced by local workers.

This precarious status can lead to many forms of discrimination. For example, female migrant workers routinely suffer from pregnancy

discrimination due to inequitable laws, or poor implementation of existing laws and regulations. Migrant workers may be subjected to mandatory pregnancy testing in their home country as part of the application process for a job overseas. Discrimination prior to employment may be overlooked by brands focusing their due diligence efforts on current conditions in factories.

Depending on their destination, they may also be subject to pregnancy testing as a condition for continued employment throughout their contract period. While this type of pregnancy discrimination is legal in some countries, such as in Thailand and Malaysia, and banned in others, such as in Taiwan, pregnancy testing has been commonly associated with forced deportation, and loss of employment and income among women migrant workers.



## FLA BENCHMARKS ADDRESSING TREATMENT OF PREGNANT WORKERS

### ND.5 PREGNANCY TESTING

**ND.5.1** Employers shall not use pregnancy tests or the use of contraception as a condition of hiring or of continued employment.

**ND.5.2** Employers shall not require pregnancy testing of female workers, except as required by national law.

**ND.5.2.1** In such cases, employers shall not use (the results of) such tests as a condition of hiring or continued employment.

**ND.5.3** If not provided by law, employers must provide protection to workers who allege discrimination as a condition in hiring or continued employment based on pregnancy tests or the use of contraception.

### ND.6 MARRIAGE OR PREGNANCY DISCRIMINATION

**ND.6.1** Employers shall not threaten female workers with dismissal or any other employment decision that negatively affects their employment status in

order to prevent them from getting married or becoming pregnant.

**ND.6.2** If not provided by law, employers must provide protection to workers who allege discrimination in the form of threat of dismissal or any other employment decision that negatively affects their employment status based their intention to get married or become pregnant.

### ND.7 PREGNANCY AND EMPLOYMENT STATUS

**ND.7.1** Employers shall not, on the basis of a woman's pregnancy, make any employment decisions that negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages.

**ND.7.2** If not provided by law, employers must provide protection to workers who allege discrimination in the form of employment decisions that negatively affect their employment status based on pregnancy.

In many destination countries for migrant workers, government policies, particularly related to immigration control, deliberately curtail migrants' rights, complicating efforts to eliminate discrimination even by brands that seek to do so. This study found that for brands sourcing from Taiwan, Thailand, and Malaysia, some form of pregnancy or maternity discrimination is unavoidable if their suppliers employ migrant workers. While the severity of the impact on workers varied widely in each of the countries, the result, at least in the case of Malaysia and to a lesser extent Taiwan, is a significant negative impact on women migrant workers who become pregnant or deliver a child.

## TRIPLE DISCRIMINATION: WOMAN, PREGNANT, AND MIGRANT

Preventing pregnancy discrimination among temporary migrant workers is challenging to solve because unlike citizens, they face three levels of discrimination: as a woman, as a pregnant person, and as a migrant worker.

Some brands have already taken steps to address discrimination against women migrant workers. Brands affiliated with the FLA make a commitment to not discriminate against women who want to become pregnant, or who are pregnant. The FLA Workplace Code of Conduct and benchmarks specifically address pregnancy and maternity discrimination.

A major complication arises when the provisions in the code are not inscribed into, or stand in direct contradiction to, national laws and regulations. The FLA's code addresses this complication by requiring companies to "comply with all relevant and applicable laws and regulations of the country" and "apply the highest standard" in cases where "differences or conflicts in standards arise." For instance, in the case of pregnancy testing, while the code provides an exemption if the testing is required by national law, it also clarifies that in "such cases, employers shall not use (the results of) such tests as a condition of hiring or continued employment," in effect, requiring employers to apply the highest standard.

## MALAYSIA

### Key findings

Among the three countries studied, Malaysia has the most restrictive legal environment for female migrant workers. Pregnancy testing is required prior to departure from their home country, and on a yearly basis thereafter. If a migrant worker is found to be pregnant, she will be deported and at her own expense.

### Recommendations

Brands should be aware of this restrictive and discriminatory legal environment before choosing to source from Malaysia. If they are already sourcing from Malaysia, then they should train suppliers and their sourcing staff regarding the discriminatory nature of these requirements and most importantly ameliorate the impact for affected workers, such as by establishing a fund for deported workers and instituting priority hiring for deported workers who may be able to return.

The government of Malaysia should fulfill its commitment as a signatory to the Convention on the Elimination of

All Forms of Discrimination against Women (CEDAW) particularly by modifying and repealing laws and regulations allowing pregnancy discrimination among temporary migrant workers. Specifically, Malaysia should:

- prohibit pregnancy testing at the point of recruitment and during employment
- prohibit dismissal and deportation on the grounds of pregnancy
- extend maternity leave with pay or comparable social benefits
- provide access to pre- and post-natal care
- provide access to residency rights and health care to children of migrants born in Malaysia

Malaysia should also ratify and fully implement the Maternity Convention and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).



However, employers do not always have the ultimate decision when it comes to hiring and dismissing a worker — in the case of migrant workers, most governments reserve that right. Unlike citizens, temporary migrant workers need a work permit from the government to take and keep a job and are not automatically accorded the right to work and access the labor market. An employer in such a situation faces a difficult dilemma: complying with national laws and regulations means abrogating the FLA code. For migrants in this situation, however, the situation is even more difficult as many abandon their rights to maternity by having an unwanted abortion or delaying pregnancy plans to keep access to jobs and avoid costly deportation.

## RECOMMENDATIONS

A country's legal and regulatory regime, and widely accepted employment practices, may pose great challenges for brands attempting

to source responsibly from that country. The report makes a set of recommendations for the governments of Malaysia, Thailand, and Taiwan; and for the brands sourcing from those countries.

The recommendations (see boxes) address what needs to be done to more effectively prevent pregnancy discrimination and protect the rights of temporary migrant workers in these specific countries.

In the medium- to long-term, brands should advocate for strong non-discrimination protections for women and migrant workers in countries where they source, and also in the origin countries of their workers. Laws and regulations allowing migrants to be pregnant but not to keep their children with them are especially problematic. Providing access to a set of complementary rights is critical, foremost among them is a sensible immigration policy that

## TAIWAN

### Key findings

Since 2002, Taiwan has instituted progressive laws banning pregnancy testing at the point of recruitment, during employment, and prohibiting employers from terminating the contract and deporting a migrant worker who becomes pregnant. Taiwan also briefs migrant workers on their rights immediately upon arrival, maintains a 24-hour hotline for complaints and assistance, and funds shelters managed by non-governmental organizations to protect workers who have left abusive employers.

Although already a significant improvement from how other destination countries treat temporary migrant workers in the region, pregnancy discrimination persists. In practice, few migrants have taken advantage of the maternity benefits and even fewer have utilized the grievance system. A key regulatory loophole remains: children born to low-skilled temporary migrant workers are not eligible for health care or for any type of documentation that would allow them to stay in Taiwan. Essentially caught in a regulatory environment that allows for pregnancy but not motherhood, migrant workers may choose an

abortion, go home to give birth, or give birth in Taiwan (and thus live with an undocumented child), or abandon their baby.

### Recommendations

Brands should be aware of this restrictive and discriminatory legal environment for migrant women who choose to have a baby. They should work with their suppliers to ensure that workers are educated on their rights under Taiwan's laws and understand the potential consequences. If a worker is deported with her child, brands should seek ways to ameliorate the impact for affected workers such as by establishing a fund for deported workers and instituting priority hiring for deported workers who may be able to return. Brands should advocate for regulations that protect not just the right to pregnancy but also the right to maternity.

The government of Taiwan should provide access to residency rights and health care for children of temporary migrants born in Taiwan. It should also work towards improving migrant's access to maternity and other social benefits including pre and postnatal care and in strengthening the grievance mechanism.

grants temporary migrants the option to live with their children at the country of destination.

However, amending national rules and regulations take time. Companies serious about addressing pregnancy discrimination cannot afford to wait for a time-consuming legal or policy change. In countries where the legal environment does not allow a brand or its suppliers to avoid discrimination, brands should consider the below recommendations:

- 1. Ensure that grievance mechanisms are functioning** and that migrant women workers are aware of the legal environment in the destination country and the requirements for pregnancy testing.
- 2. Conduct additional due diligence around recruitment practices.** Brands should prioritize working with suppliers whose recruiters follow ethical recruitment practices, such as training workers on discrimination risks in the destination country, avoiding pregnancy testing where not required by law, and supporting workers who have experienced discrimination.
- 3. Include additional questions in factory audits** designed to discover pregnancy discrimination.
- 4. Create innovative redress mechanisms** that would allow suppliers and factories to apply international standards now without violating local norms. One idea is to create a fund to compensate deported migrants with an amount comparable to what locals would receive in terms of maternity and other benefits. This fund could also be used to ensure that deported migrants do not end up paying for other expenses related to their return, including the airfare and the levy.
- 5. Support existing civil society initiatives** especially in countries where rules and regulations are already in place to protect migrant workers but implementation is lax. Companies could assist in maintaining shelters and ensuring that migrants receive appropriate legal advice and aid so that they can make informed decisions.
- 6. For brands considering a supplier from a country with discriminatory practices, weigh the benefits of selecting another sourcing destination.**

## THAILAND

### Key findings

Unlike other destination countries for migrant workers, in Thailand pregnant migrant workers from Myanmar, Laos, and Cambodia are eligible for pre-and post-natal care, and their babies are also eligible to stay in Thailand, access medical care, and later, to attend local schools. Migrant female workers are subject to a pregnancy test, however, when they apply for a work permit. According to officials, the test is for medical reasons related to administration of another drug that protects migrant workers from disease – and the results of the test are not used to exclude pregnant workers. This assertion of non-discrimination by the government was confirmed in interviews with migrant women, however, they did cite instances of pregnancy discrimination at the employer level in Mae Sot, a town along the Thai-Myanmar border and a popular entry point for undocumented migrants.

### Recommendations

Brands should be aware of the potential violation of rights for their workers upon recruitment or entry into Thailand. Because the pregnancy test is related to a public health issue, brands may explore working with health officials to determine the actual necessity of the testing, particularly for workers who reside in the country on a long-term basis.

The government of Thailand should investigate the medical necessity of administering drugs that require pregnancy testing for temporary migrant workers. The government must also aim to drastically improve migrants' access to residency, health, and other social benefits particularly among the undocumented and those living in border communities where implementation of existing regulations is lax, such as in Mae Sot.



## ***I. INTRODUCTION***

**In countries where the local workforce is insufficient to meet the employment demand** in garment and footwear factories, employers rely heavily on temporary migrant workers to fulfill their production needs. According to the United Nations, women now comprise fully half of the 244 million migrants that work abroad. Migrant workers are often more vulnerable to discrimination and harm as compared to local workers, because they almost always lack the same legal and social protections. In the ready-made garment sector, these workers are typically young and female, and may work in a country for several years, confronting discriminatory workplace practices beyond those experienced by local workers.

Female migrant workers routinely suffer from pregnancy discrimination due to inadequate laws and poor implementation of existing legislation. For instance, many migrants are subjected to mandatory pregnancy testing beginning in their country of origin as part of the process of applying for a job overseas, then continuing regularly throughout their employment, if they are hired. While legal in some countries, such as in Thailand and Malaysia, and banned in others, such as in Taiwan, pregnancy testing has been commonly associated with forced deportation and loss of employment and income among women migrant workers. Mandatory pregnancy testing and maternity discrimination, combined with



lack of access to contraception and routine medical care, may also lead to migrants risking unsafe abortion.

This study explores the nature and extent of pregnancy discrimination by methodically mapping the treatment women migrant workers receive at all stages of the migration cycle — at departure, while at the destination, and upon return. Using the experiences of factory workers in Taiwan, Malaysia, and Thailand as case studies, it will highlight how pregnancy discrimination shapes various aspects of women migrants' employment, including hiring and firing practices, the nature of pay and job assignments, and access to fringe benefits, such as leave and health insurance.

The study specifically focuses on migrant workers on temporary contracts<sup>2</sup> taking low- and mid-skilled jobs, and draws on the insights from in-depth interviews with 47 experts and practitioners from Malaysia, Taiwan, and Thailand, including government officials, employers, academics, and officials of international and migrant organizations. The report also incorporates results from focus group discussions with 69 female migrant workers from Myanmar, the Philippines, Indonesia, and Nepal in four key destinations in the region — Taipei, Penang, Bangkok, and Mae Sot — as well as survey responses of 18 companies affiliated with the Fair Labor Association (FLA) that source from factories

that hire migrant workers in Southeast Asia. Both the in-depth interviews and focus group discussions were conducted on site in June and July 2017. Lastly, the study also includes a review of the academic and policy literature.

Divided into six parts, the first part sets the context by giving an overview of the international human rights legal framework within which practices of pregnancy discrimination operate. It will clarify what constitutes pregnancy discrimination, and explore the legal protections provided — or not — to migrant workers by current international and national laws and regulations. Section two discusses efforts among multinational corporations (MNC) to fill the gaps where current laws and regulations fall short, focusing specifically on the adoption of codes of conduct to monitor their supply chain, and examining the limitations of this approach in preventing pregnancy discrimination among migrant workers. The third, fourth, and fifth sections explore closely how three governments in Asia — in Malaysia, Taiwan, and Thailand — address pregnancy discrimination among migrant workers in the manufacturing sector, both on paper and in practice, and the lessons other countries can learn from their experiences. The report ends with a set of recommendations on how to more effectively prevent pregnancy discrimination among temporary migrant workers in the short, medium, and long term.

## ***II. WHAT IS PREGNANCY DISCRIMINATION?***

The United States Equal Employment Opportunities Commission defines pregnancy discrimination as “treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.”<sup>3</sup>

Discrimination can happen at all stages of employment, from the point of recruitment, while employed, and upon termination of employment. Figure 1 below identifies the different types of pregnancy discrimination a worker could face at each stage.



FIGURE 1: Types of Pregnancy Discrimination



Source: Author's rendition

At the recruitment stage, employers may directly refuse to hire a pregnant applicant or an applicant who could be pregnant or intends to become pregnant. The discrimination could also be less direct by screening out applicants who could be pregnant, such as married applicants and those with children, or as blatant as requiring the passing of a pregnancy test as a condition for hiring. There could also be instances where workers are required to sign work contracts or statements that require the use of contraception or stipulate the termination of employment or the taking of leave without pay if the employee eventually marries, becomes pregnant, and engages in childbirth or childcare activities.

Pregnancy discrimination could also happen during employment when workers are required to undergo periodic pregnancy testing as a condition for continued employment, or treated differently from other employees who are temporarily disabled by denying their access to lighter duty and alternative assignments. Migrant workers returning from pregnancy-related leave can also be denied the same or similar job and/or the same pay rate.

Lastly, employers may terminate an employee who has become pregnant or intends to be pregnant or marry, as well as those who began to engage in childcare activities. Discrimination could also happen when employers withhold maternity and other benefits, including pay.

In short, pregnancy discrimination covers a wide range of practices that put women who are pregnant, intend to become pregnant, or could be pregnant, at risk of losing access to their jobs.

### ***III. AN EXAMINATION OF THE LEGAL FRAMEWORK ON PREVENTING PREGNANCY DISCRIMINATION: Progress and Constraints at the International and National Levels***

#### **A. INTERNATIONAL INSTRUMENTS: PROGRESS**

States currently operate within an international human rights legal framework that includes international instruments to combat various forms of discrimination, of which three are particularly relevant to the issue of pregnancy discrimination among temporary migrant workers: (1) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); (2) the Maternity Convention and (3) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

The CEDAW and the Maternity Convention have specific provisions against pregnancy discrimination, although they do not specifically mention migrant workers, while the ICRMW focuses exclusively on discrimination against migrant workers and their families but does not explicitly mention pregnancy discrimination.

Within CEDAW, maternity is construed as having a clear social function that must be upheld for the benefit of the society. The Convention's text begins with an explicit recognition of the "social significance of maternity" noting further that "the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole." Signatory states must therefore adopt "special measures" to "protect maternity" and these measures "shall not be considered discriminatory."<sup>4</sup>

More specifically, states are expected to ensure women's "effective right to work" by prohibiting "dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status." States are also expected to "introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances" as well as to "provide special protection during pregnancy in types of work proved to be harmful" to the woman. CEDAW also requires that states offer social services, especially child-care facilities that allow individuals to combine family responsibilities with work and participation in public life.<sup>5</sup>

The Maternity Convention also protects against pregnancy discrimination but contains even more specific provisions than CEDAW. For instance, the Maternity Convention explicitly prohibits pregnancy testing for women applying for employment, unless the type of work is "prohibited or restricted for pregnant or nursing women" or when the work presents "a recognized or significant risk to the health of the woman and child." However, these special restrictions cannot be arbitrarily set by employers and have to be inscribed in national laws or regulations. The Convention also prescribes at least 14 weeks of maternity leave, including a period of six weeks compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.<sup>6</sup>



The Maternity Convention also includes specific provisions that ensure that women receive cash and medical benefits to meet their financial and health needs during the maternity leave. It further requires provision of “cash benefits” at a “level, which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.” If the cash benefits are paid based on wage, the amount “shall not be less than two-thirds of the woman’s previous earnings.” The Convention also requires the provision of medical benefits that include “prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.”<sup>7</sup>

Interestingly, the Maternity Convention recognizes that these additional benefits may deter employers to hire women if the cost of providing the benefits accrues only to employers. Thus, it also requires governments to provide the benefits through a “compulsory social insurance or public funds” to “protect

the situation of women in the labor market.” Under the Maternity Convention, the employer shall “not be individually liable for the direct cost” of the cash benefits unless there is an explicit agreement from the employer.<sup>8</sup>

Both CEDAW and the Maternity Convention apply to all women, and therefore, in principle, also cover migrant workers, although migrants are not explicitly mentioned within the text. As already noted, the ICMRW covers migrant workers specifically but does not have specific provisions against pregnancy discrimination. It does require signatory states to treat migrant workers on parity with nationals in terms of “remuneration and other conditions of work” including overtime, hours of work, weekly rest, holidays with pay, safety, health, and termination of the employment relationship.<sup>9</sup> Figure 2 below lists the specific provisions within the three conventions that are relevant to combatting pregnancy discrimination among temporary migrant workers.



*FIGURE 2: Key Provisions of Three Conventions Most Relevant in Preventing Pregnancy Discrimination among Migrant Workers*

## CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

### ARTICLE 11

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them

### ARTICLE 12

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

## MATERNITY CONVENTION

### ARTICLE 8

- 1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer
- 2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave

### ARTICLE 9

- 1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including — notwithstanding Article 2, paragraph 1 — access to employment.
- 2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
  - (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
  - (b) where there is a recognized or significant risk to the health of the woman and child.

## INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

### ARTICLE 25

- 1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
  - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
  - (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment.



## B. LIMITS

The extent to which the provisions in these three conventions filter down to ultimately affect the day-to-day experiences of migrant workers depends on three factors: (1) whether these conventions are eventually ratified by the countries where they live and work; (2)

whether the internationally agreed provisions enshrined in the conventions are translated into national laws and regulations and; (3) most importantly, whether the national laws and regulations governments enact include migrant workers in their coverage.

### 1. Ratification Gap: Same Core Rights, Uneven Interests

Of the three conventions, CEDAW currently enjoys the highest support among governments with 191 signatories as of September 2017. Only six countries — Iran, Somalia, Palau, Sudan, Nieu, Tonga and the Holy See — are currently not signatories to CEDAW. Taiwan, which is not a member of the United Nations due to the One China Policy,<sup>10</sup> adopted the treaty in 2007 in an unofficial capacity. Indeed, of the nine core international human rights instruments as identified by the

United Nations Office of the Commissioner of Human Rights (UNOCHR), CEDAW is second only to the Convention on the Rights of the Child in terms of the number of ratifications. (See Table 1 below).

The Maternity Convention and the ICMRW, on the other hand, have significantly less support, at just 32 and 67 signatories respectively, and are heavily skewed to a particular region or country grouping. For instance, the majority

TABLE 1: STATUS OF RATIFICATION OF THE NINE CORE HUMAN RIGHTS INSTRUMENTS, AS OF SEPTEMBER 2017

TITLE	DATE	STATUS OF RATIFICATION
International Convention on the Elimination of All Forms of Racial Discrimination	21-Dec-65	State Party (178) Signatory (5) No Action (14)
International Covenant on Civil and Political Rights	16-Dec-66	State Party (169) Signatory (6) No Action (22)
International Covenant on Economic, Social and Cultural Rights	16-Dec-66	State Party (165) Signatory (5) No Action (27)
<b>Convention on the Elimination of All Forms of Discrimination against Women</b>	18-Dec-79	State Party (189) Signatory (2) No Action (6)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10-Dec-84	State Party (162) Signatory (8) No Action (27)
Convention on the Rights of the Child	20-Nov-89	State Party (196) Signatory (1) No Action (0)
<b>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</b>	18-Dec-90	State Party (51) Signatory (16) No Action (131)
International Convention for the Protection of All Persons from Enforced Disappearance	20-Dec-06	State Party (57) Signatory (50) No Action (90)
<b>Convention on the Rights of Persons with Disabilities</b>	13-Dec-06	State Party (175) Signatory (12) No Action (11)

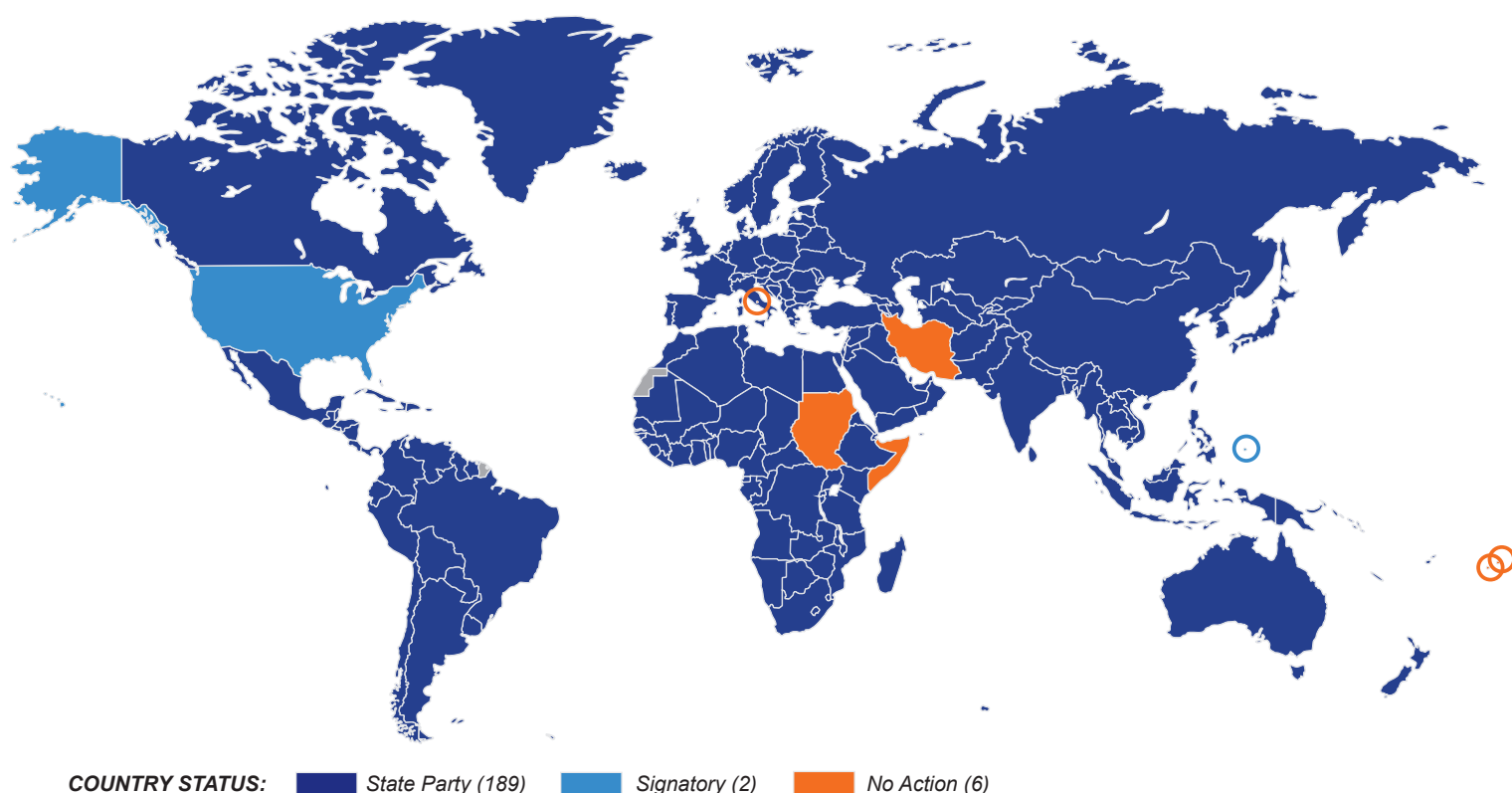
Source: United Nations Office of the High Commissioner on Human Rights

of signatories to the Maternity Convention are from Europe and Latin America and none are from Asia, while the ICMRW is mostly recognized by migrant sending countries and not destination countries, as the maps in Figures 3 and 4 highlight below.

It can be argued that, in general, combatting discrimination against women, including pregnancy-related discrimination, has drawn widespread international support among governments, but not when it comes to the more specific provisions as enshrined in the Maternity Convention. Likewise, the rights of migrant workers remain one of the most

contentious issues among governments. The ICMRW, which was drafted in 1990, or nearly three decades ago, currently has the lowest ratification among the nine core human rights instruments: much lower than the support to the International Convention for the Protection of All Persons from Enforced Disappearance and Convention on the Rights of Persons with Disabilities which were drafted 16 years later than ICMRW. For many countries, rules and regulations pertaining to non-citizens living within their borders are still seen as a purely domestic affair and remain generally outside of the purview of international negotiations.

*FIGURE 3: Status of Ratification of the Convention on the Elimination of All Forms of Discrimination against Women*

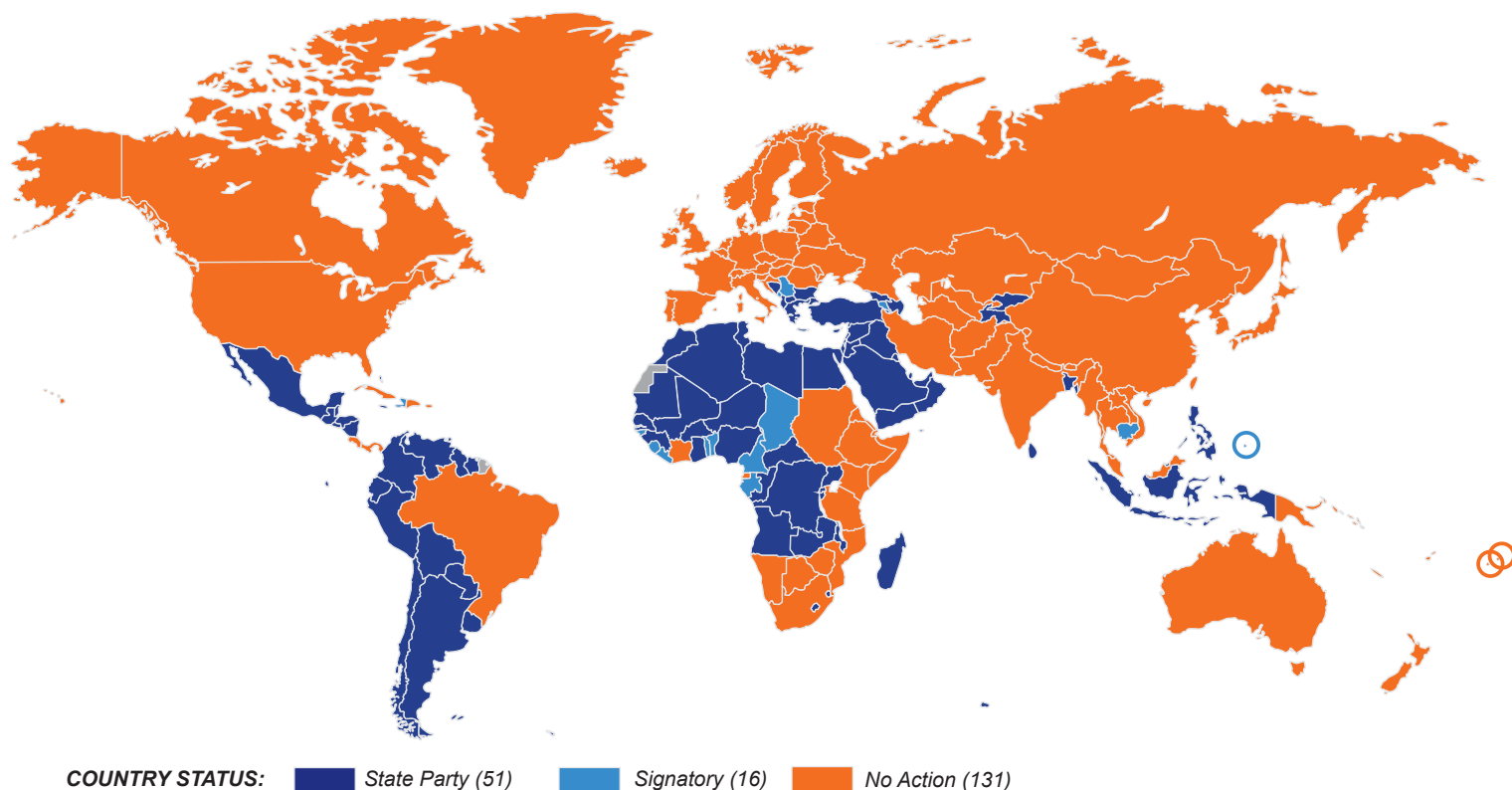


Source: United Nations Office of the High Commissioner on Human Rights

**Notes:** The indicator refers to the expression by the State of its consent to be bound by a human rights treaty under international law. A “State party” to a treaty is a State that has expressed its consent, by an act of ratification, accession or succession, and where the treaty has entered into force (or a State about to become a party after formal reception by the United Nations Secretariat of the State’s decision to be a party). A “Signatory” to a treaty is a State that provided a preliminary endorsement of the instrument and its intent to examine the treaty domestically and consider ratifying it. “No action” means that a State did not express its consent.

\*For a complete list of countries, please visit [indicators.ohchr.org](https://indicators.ohchr.org) and select the treaty from the drop-down menu.

FIGURE 4: Status of Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families



Source: United Nations Office of the High Commissioner on Human Rights

\*For a complete list of countries, please visit [indicators.ohchr.org](https://indicators.ohchr.org) and select the treaty from the drop-down menu.

## 2. Translation Gap: Turning an International Treaty into National Laws and Regulations

Even in countries where the conventions are eventually signed and then ratified, the next hurdle is the translation of the conventions' provisions into national laws and regulations. International treaties are rarely self-executing. A convention will have domestic legal effect only once it is implemented through some form of effective legal action usually by enacting legislation or administrative action at the national and/or federal level. As Box 1 below shows in the case of Malaysia, unless countries that are signatories to CEDAW enact the provisions of the Convention into national laws and regulations, there is very little

recourse at the national level to file redress against discriminatory practices.

There has been some progress in turning the provisions of the CEDAW and the Maternity Convention into rules and regulations, at least on two areas: maternity leave and cash benefits. A 2017 report by the International Labour Organization (ILO) suggests a "gradual global shift towards maternity leave periods that meet or exceed the ILO standard of 14 weeks." The majority of countries now provide leave duration in line with the Maternity Convention and no country has cut maternity

## BOX 1: CEDAW In Malaysia

International treaties are rarely self-executing. A case involving a teacher fired in Malaysia due to pregnancy highlights the importance of enacting legislation or administrative action at the national and/or federal level in order to protect victims of discrimination.

In a 2012 landmark decision involving the case of *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 MLJ 832, the High Court of Malaysia referred to article 1 of CEDAW on the definition of “discrimination against women” and article 11(1)(b) of CEDAW specifically eliminating discrimination on employment. According to the High Court, CEDAW had the force of law and was binding on Malaysia.

In 2014, however, the Court of Appeal overturned this decision in the case of *AirAsia Bhd v Rafizah Shima bt Mohamed Aris* [2014] 5 MLJ. The Court held that “CEDAW did not have the force of law in Malaysia because the convention was not enacted into any Malaysian legislation.” It noted further that the “the provisions of the international obligations in CEDAW did not have any binding effect without express incorporation into domestic law by an act of Parliament following ratification of CEDAW.”<sup>11</sup>

*Source: Combined third to fifth periodic reports of states parties due in 2012 submitted by the Government of Malaysia to the Committee on the Elimination of Discrimination against Women, October 17, 2016*

leave duration since 1994. Only two of 185 countries and territories included in the study provide no statutory cash benefits during maternity leave, while more than 100 countries now provide benefits through social security, reducing employers’ liability.<sup>12</sup>

But prominent gaps remain, however, particularly on two fronts. First, there are still discriminatory practices that have not been widely addressed via legislation. For instance, pregnancy testing, which arguably is one of the more blatant forms of pregnancy discrimination, is not explicitly prohibited in

the majority of countries. According to the ILO, among the 141 countries for which information is available, about a third, or 47 countries, set out explicit or implicit provisions banning pregnancy tests, but an overwhelming majority of these countries are from Europe and Latin America, and none are from the two regions with the largest destinations for temporary migrants: the Middle East and Asia-Pacific.<sup>13</sup>

Second, countries may introduce the needed laws and regulations to abide by their international obligations yet at the same time exclude certain groups of people from coverage. For instance, according to the ILO, although more countries provide maternity leave today than ever, many still exclude specific categories of workers, particularly “workers in self-employment; domestic workers; agricultural workers; non-standard workers (part-time, temporary, or casual workers); women in small and medium-sized enterprises (SMEs), and migrant workers.”

It is important to note that even if there is no exclusion of migrant workers per se, they may easily fall into other often excluded categories, as many migrants are also temporary workers and a significant number work in SME’s and in the agriculture and domestic work sectors.

The Committee on the Elimination of Discrimination against Women, a body of independent experts that officially monitors the implementation of the CEDAW, recognized this issue and noted that women migrant workers are “at risk of abuse and discrimination” particularly those “in low-paid jobs... who may never acquire eligibility for permanent stay or citizenship.” The Committee noted that low-paid migrant workers “may not enjoy the protection of the law of the countries concerned, at either de jure or de facto levels.” In 2008, it issued a set of recommendations elaborating on the





circumstances that contribute to migrant workers' "specific vulnerability," further noting "discrimination may be especially acute in relation to pregnancy." The Committee writes:

*Women migrant workers may face mandatory pregnancy tests followed by deportation if the test is positive; coercive abortion or lack of access to safe reproductive health and abortion services, when the health of the mother is at risk, or even following sexual assault; absence of, or inadequate, maternity leave and benefits and absence of affordable obstetric care, resulting in serious health risks. Women migrant workers may also face dismissal from employment upon detection of pregnancy, sometimes resulting in irregular immigration status and deportation.<sup>14</sup>*

A case in point is Singapore, a key destination of migrant workers in the Asia-Pacific region, which explicitly discriminates against pregnant migrant workers and their children, despite

being a party to CEDAW. Singapore prohibits low and semi-skilled migrant workers from getting pregnant or delivering a child in Singapore. Although a key exception to this rule is given to migrant workers who are already married to a Singaporean citizen or permanent resident, it is important to note that Singapore also prohibits migrant workers from marrying a citizen or permanent resident in or outside Singapore without first getting an approval from the government.<sup>15</sup> Essentially, Singapore makes it harder, if not impossible, for low and semi-skilled migrant workers to exercise their rights to maternity.

Although Singapore signed CEDAW, it also issued a 'reservation'<sup>16</sup> specifically against Article 11, the section that prohibits pregnancy discrimination. Singapore explains that Article 11 is "unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation." Some countries have objected to the reservation made by Singapore and questioned its commitment to the goals of the CEDAW. The government of the Netherlands, for instance, argued that Singapore's reservation on Article 11 "seeks to limit the responsibilities of the reserving State under the Convention by invoking the general principles of its national law ... therefore may raise doubts as to the commitment of this State to the object and purpose of the Convention and, moreover, contribute to undermining the basis of international treaty law."<sup>17</sup>

The case of Singapore highlights the difficulty in protecting temporary migrant workers. Although governments in migrant destination countries, like Singapore, are already in a position to extend protection against discrimination to their own nationals, as evidenced by the nearly unanimous ratification of CEDAW, they are not necessarily willing to extend the same rights to migrant workers, particularly those who are low-skilled and low-paid.

## IV. FILLING THE PROTECTION GAP: THE ROLE OF EMPLOYERS AND CODES OF CONDUCTS

### A. CODES OF CONDUCT

For companies operating in countries where national laws and regulations that meet international standards on protection of women are either not adopted or not implemented, the solution is often to ensure that the company and its suppliers abide by a set of labor standards, or code of conduct, that references international conventions and/or industry best practices. Indeed, many companies have promulgated their own codes of conduct, in collaboration with their peers in the industry, and alongside non-governmental organizations.

The Fair Labor Association (FLA) leads one such multi-stakeholder effort. The FLA's code of conduct is comprehensive, covering various types of discrimination at all stages of employment, and it does not make a distinction between local workers and migrant workers — meaning all standards should apply equally regardless of immigration status. The code explicitly prohibits pregnancy testing, or the use of contraception by the worker, as a condition for hiring and continued employment. It also requires employers to “abide by national laws and regulations benefitting pregnant workers and new mothers,” including:<sup>18</sup>

- providing maternity leave and other benefits;
- prohibitions regarding night work,
- temporary reassignments away from work stations and work environments that may pose a risk to the health of pregnant women and their unborn children or new mothers and their newborn children,
- temporary adjustment of working hours during and after pregnancy, and
- provision of breast-feeding breaks and facilities.

The FLA Code further guards against discrimination against workers who intend to become pregnant or could be pregnant. For instance, under the FLA's code, employers cannot discriminate based on marital status or threaten female workers who intend to marry or become pregnant with dismissal, or any other employment decision that would negatively affect their employment status. (See Figure 5 below)





## FLA CODE OF CONDUCT AND BENCHMARKS

### ND.4 MARITAL DISCRIMINATION

**ND.4.1** Employers shall not discriminate on the basis of marital status.

**ND.4.2** If not provided by law, employers must provide protection to workers who allege discrimination based on marital status.

### ND.5 PREGNANCY TESTING

**ND.5.1** Employers shall not use pregnancy tests or the use of contraception as a condition of hiring or of continued employment.

**ND.5.2** Employers shall not require pregnancy testing of female workers, except as required by national law.

**ND.5.2.1** In such cases, employers shall not use (the results of) such tests as a condition of hiring or continued employment.

**ND.5.3** If not provided by law, employers must provide protection to workers who allege discrimination as a condition in hiring or continued employment based on pregnancy tests or the use of contraception.

### ND.6 MARRIAGE OR PREGNANCY DISCRIMINATION

**ND.6.1** Employers shall not threaten female workers with dismissal or any other employment decision that negatively affects their employment status in order to prevent them from getting married or becoming pregnant.

**ND.6.2** If not provided by law, employers must provide protection to workers who allege discrimination in the form of threat of dismissal or any other employment decision that negatively affects their employment status based their intention to get married or become pregnant.

### ND.7 PREGNANCY AND EMPLOYMENT STATUS

**ND.7.1** Employers shall not, on the basis of a woman's pregnancy, make any employment decisions that negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages.

**ND.7.2** If not provided by law, employers must provide protection to workers who allege discrimination in the form of employment decisions that negatively affect their employment status based on pregnancy.

### ND.8 PROTECTION AND ACCOMMODATION OF PREGNANT WORKERS AND NEW MOTHERS

**ND.8.1** Employers shall abide by all protective provisions in national laws and regulations benefitting pregnant workers and new mothers, including provisions concerning maternity leave and other benefits; prohibitions regarding night work, temporary reassignments away from work stations and work environments that may pose a risk to the health of pregnant women and their unborn children or new mothers and their new born children, temporary adjustment of working hours during and after pregnancy, and the provision of breast-feeding breaks and facilities.

**ND.8.1.1** Where such legal protective provisions are lacking, employers shall take reasonable measures to ensure the safety and health of pregnant women and their unborn children.

**ND.8.1.2** Such measures shall be taken in a manner that shall not unreasonably affect the employment status, including compensation of pregnant women.

**ND.8.2** If not provided by law, employers must provide protection to workers who allege discrimination with regard to implementation of provisions protecting and accommodating pregnant workers and new mothers.

FIGURE 5: FLA Code of Conduct and Benchmarks

## B. TRIPLE DISCRIMINATION: WOMAN, PREGNANT, AND MIGRANT

A major complication arises when the provisions in the code are not inscribed into, or worse, stand in direct contradiction to, national laws and regulations. The FLA's code currently solves this complication by requiring

companies to do two things: (1) "comply with all relevant and applicable laws and regulations of the country" and; (2) "apply the highest standard" in cases where "differences or conflicts in standards arise."



This solution is perhaps more relevant in protecting citizens working within the supply chain of FLA affiliates, and does not always adequately protect temporary migrant workers who do not enjoy the same labor and residency rights as native workers. The code assumes that employers have the option of meeting the highest standard. In many destination countries, however, government policies, particularly related to immigration control, deliberately curtail migrants' rights, complicating efforts to eliminate discrimination even by well-meaning employers.

For instance, in the case of pregnancy testing, the FLA provides an exemption if the testing is required by national law. However, it also clarifies that in “such cases, employers shall not use (the results of) such tests as a condition of hiring or continued employment,” in effect, requiring employers to apply the highest standard as enshrined in the Maternity Convention. However, employers do not always have the ultimate decision when it comes to hiring and dismissing a worker — in the

case of migrant workers, most governments reserve that right. And this is particularly true for temporary migrant workers, who, unlike citizens, need a work permit from the government to take and keep a job and are not automatically accorded the right to work and access the labor market.

As will be discussed at length later in the case study of Malaysia, an employer in such a situation faces a difficult dilemma: complying with national laws and regulations means abrogating the FLA code. For migrants in this situation, however, the situation is even more difficult as many abandon their rights to maternity by having an unwanted abortion or delaying pregnancy plans to keep access to jobs and avoid costly deportation.

In short, preventing pregnancy discrimination among temporary migrant workers is a much more complicated challenge to solve because unlike citizens, they face three levels of discrimination and not just two: as a woman, as a pregnant person, and as a migrant worker.

## V. MALAYSIA: LEGALIZED DISCRIMINATION

Among the three countries closely examined in this report, only the Malaysian government has systematically allowed pregnancy discrimination at all stages of employment — during recruitment, while employed, and upon termination — essentially placing temporary migrants in the most vulnerable position possible.<sup>19</sup> This section discusses the discriminatory rules and procedures the government has instituted on paper, and how these measures translate in practice, specifically, the perverse incentives they create among employers and migrants alike.

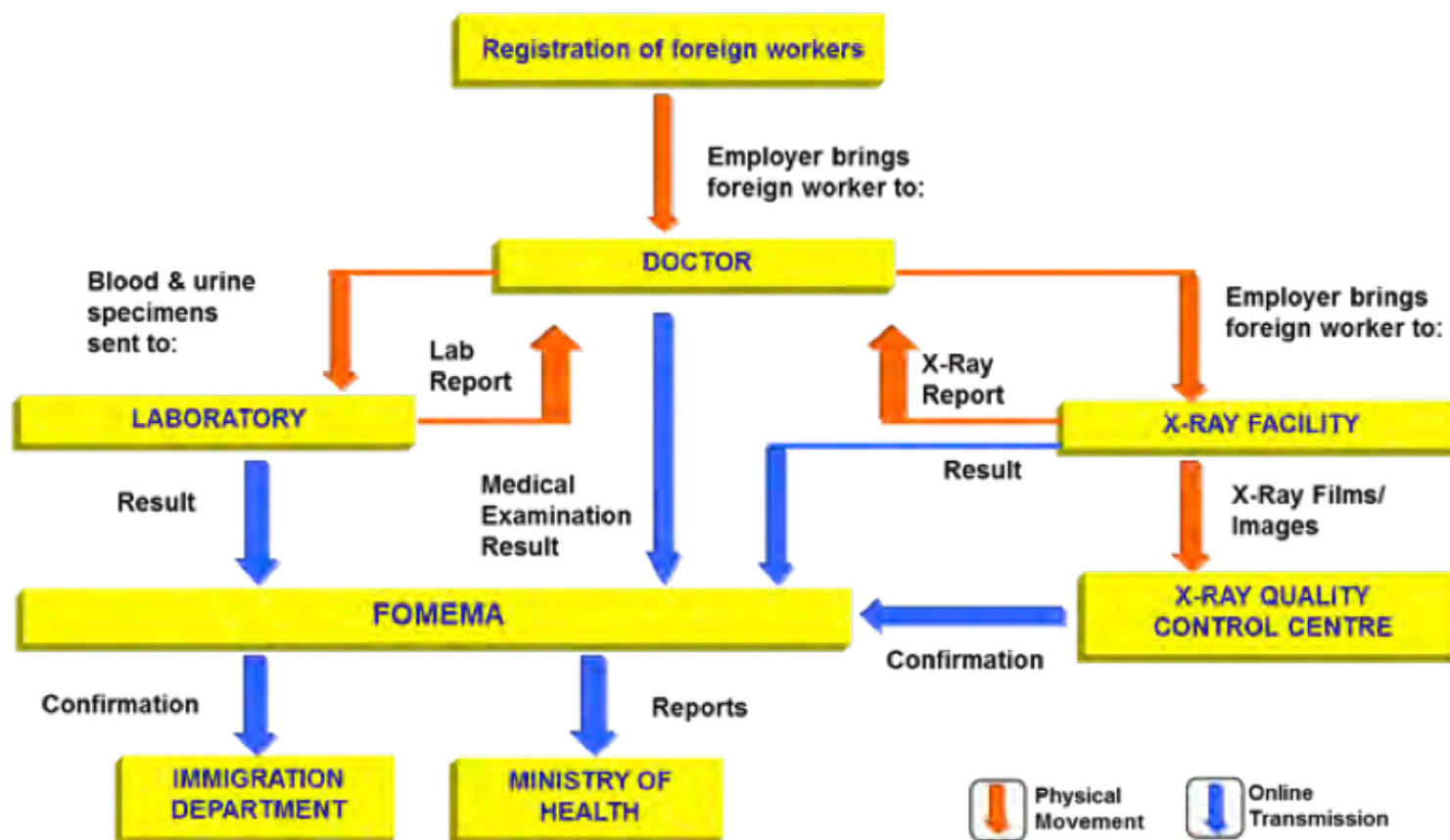
### A. PREGNANCY DISCRIMINATION ON PAPER: EXPLICIT DISCRIMINATION

Malaysia is the largest destination for migrant workers in Southeast Asia. It is a hub for export manufacturing, but because of its relatively small population, it relies heavily on

migrant laborers to fill jobs, particularly in the manufacturing sector. There are an estimated two million documented migrant workers and another estimated two million undocumented



FIGURE 6: Medical Screening Process for Temporary Migrant Workers in Malaysia Working in Selected Industries



Source: Foreign Workers Medical Examination Monitoring Agency

migrants working in Malaysia<sup>20</sup>. In terms of manufacturing, around 300,000 workers are employed in Malaysia's electronics industry, of whom 70 to 80 percent are women. The textiles and garment industry employs more than 68,000 workers.

Malaysian government regulations require temporary migrant workers in certain sectors, including manufacturing, to pass a pregnancy test as a condition for receiving and keeping a work permit. The tests are conducted twice during recruitment — once while still at the country of origin and again within 30 days of arriving in Malaysia — and annually during the first three years of employment. A migrant worker who failed the pregnancy test is not

eligible to receive and keep a work permit and is subjected to immediate deportation.

A private firm, the Foreign Workers Medical Examination Monitoring Agency (FOMEMA), oversees the administration of the pregnancy test, which is part of a comprehensive health and medical screening procedure that also checks migrant workers for the presence of a wide range of diseases including psychiatric illness, HIV, hepatitis B, syphilis, malaria, cancer, leprosy, kidney disease, diabetes, tuberculosis, as well as recreational drug use, such as opiates and marijuana.

FOMEMA administers more than one million medical examinations annually using an

extensive panel of accredited medical service providers throughout Malaysia. More than 4,000 registered clinics, X-ray centers and medical laboratories conduct the physical examinations, X-ray and laboratory tests the government requires. The screening procedure is highly centralized and relies on electronic transmission of medical results directly to the government and without consultation with the employer, as Figure 6 below shows. FOMEMA transmits the certification of the medical status to the Immigration Department typically within 10 working days from the date of examination.

According to FOMEMA, the electronic transmission of information prevents “tampering of medical reports by employers or agents” and thus ensures the “integrity of the health-screening system.” Indeed, the whole system is designed to be tamperproof. For instance, FOMEMA requires doctors and X-ray centers to only accept an original passport as proof of the worker’s identity. According to FOMEMA, it has “detected attempts” by what it calls “irresponsible parties/employers using substitutes to undergo the medical examination on behalf of unhealthy workers.” The medical information is also stored in a centralized database immediately accessible to government authorities.<sup>21</sup>

## 1. Beyond Pregnancy Discrimination: Immigration Control

It is important to pause and recognize that the practice of pregnancy discrimination in Malaysia occurs within the context of a highly regulated system of strict immigration control aimed at ensuring that the hiring of low-skilled migrant workers remains a temporary measure to fill the needs of the industry and not a permanent solution. It is within the context of the temporary nature of their stay that the Malaysian government, employers, and even some migrants themselves, have justified a system that denies migrants’ right to maternity. Combatting pregnancy discrimination requires understanding how the immigration system contributes to, and supports, the discriminatory practices that migrants face.

### TOOLS OF CONTROL: PERMITS, QUOTAS AND LEVIES

The Government of Malaysia prescribes rules that essentially discourage employers from hiring migrant workers by imposing a system that puts limits on the sectors that can hire

migrant workers, the countries from which migrants can be recruited, the actual number of migrant workers each company may hire every year, the age of the migrant worker, and the total number of years each migrant can work in Malaysia.<sup>22</sup>

- **Permitted Sectors and Nationalities:** At present, only six employment sectors are permitted to recruit migrant workers: manufacturing, construction, agriculture, plantation, services, and domestic work. Companies within these sectors can only recruit from 15 countries — Indonesia, Nepal, Myanmar, India, Vietnam, Philippines, Pakistan, Thailand, Cambodia, Sri Lanka, Laos, Turkmenistan, Uzbekistan, Kazakhstan, and Bangladesh — with a few additional exceptions. Female workers from the Philippines are only allowed to work as domestic workers and not in the five other sectors. Likewise, workers from India and male workers from Indonesia are not allowed in the manufacturing sector while Bangladeshis can only work in the plantation sector.

- **Quotas and Levies:** Employers in the permitted sectors that are interested in hiring migrant workers must apply for a quota from the Immigration Department. In this process, employers undergo an interview and must present evidence for why the company needs migrant workers. The quota is awarded based on the company's real-time requirement. Once a quota application is approved, employers must pay a levy for every worker they intend to hire and the rate depends on the sector where the employer belongs: RM1850 (US\$437) in the manufacturing, construction, and services sectors, and RM 640 (US\$151) in the plantation and agriculture sectors. When migrants do not finish the contract, such as in the case of pregnancy, employers forfeit the levy.

- **Limits on Age and Length of Stay:** The government also imposes an age limit of between 18 and 45 years, and a total length of employment not exceeding 10 years, further emphasizing that a migrant's stay in Malaysia must be temporary.

The government has instituted further measures to discourage and prevent migrants from establishing legal or social roots in Malaysia. Low-skilled temporary migrant workers are not allowed to bring their family, nor are they allowed to marry a Malaysian or a citizen of another country, throughout the duration of their work permit. Another limiting factor for migrants is that they are prohibited from changing employers or changing their employment sector while in Malaysia.

## B. PREGNANCY DISCRIMINATION IN PRACTICE: HIGH STAKES, DIRE OPTIONS

Employers and migrants alike have invested time, money, and other resources to take part in the government's labor migration system, and they have every incentive to abide by the system and not lose access to the labor market

### 1. High stakes

The stakes are high for the companies, which must invest time and money to meet the levy and other government requirements to hire and keep migrant workers on their payrolls. An in-depth interview with an employer in Penang suggests that companies in Malaysia spend between 12 and 18 months preparing to recruit from overseas, including collecting and providing the documentation required not just in Malaysia, but also in the countries of origin, which also have their own sets of rules and regulations employers must meet. Every migrant worker who is unable to finish a contract, such as due to pregnancy, represents

a clear loss to a company and the cost goes beyond just losing the levy but also the time and resources already allocated to recruiting the worker.<sup>23</sup>

The stakes are even higher for the migrants themselves who have also invested tremendous resources in financing their migration to Malaysia. Focus group discussions with Nepalese, Indonesian, Burmese, and Filipino migrants working in factories in Penang conducted to inform this report suggest that migrants pay recruitment fees ranging between two and six months' worth of

expected salary. Many migrants pay these fees in installments once in Malaysia.<sup>24</sup> As Hermie Camba, a former migrant turned human rights activist, laments, many migrant workers are left with “almost nothing” during the first year of their employment in Malaysia as they struggle to pay recruitment fees through salary deduction.<sup>25</sup> Upon arrival in Malaysia, there is also an initial training phase when migrants earn a fraction of their expected salary thus further exacerbating the burden of paying the recruitment fees.<sup>26</sup>

It is important to note that the migrant makes the financial investment typically with the support of her entire family. Recruitment agencies at a workers’ origin would typically meet with family members to get assurance that they would bear the repatriation costs if the migrant fails to finish a contract.<sup>27</sup> Migration for work is rarely an individual

decision but is almost always a family affair. There is tremendous pressure on migrant workers to finish their contracts and not get deported. The contract represents not just the migrant’s obligation to the employer and to the agency, but even more importantly, to family members who helped financed the move.

Deportation also entails the opportunity cost from lost remittances. Migrants work abroad to support families at home that depend on them for daily subsistence. Interviews with Burmese, Nepalese, and Indonesian migrants suggest that many migrants send nearly all their salary home, an average of 700 Malaysian Ringgit (US\$165) per month, or nearly 80 percent of their income.<sup>28</sup> The deportation of the migrant worker essentially means that families in the countries of origin lose access to an important source of financial support.

## 2. Dire Options

In such a constricted legal environment, the only practical option for employers when a migrant worker gets pregnant is to abide by Malaysian regulations. As an employer interviewed for this report puts it simply: “We cannot go against government law.”<sup>29</sup>

Some employers have provided preference in recruiting return migrants who have been deported due to pregnancy.<sup>30</sup> Before the medical screening process was made fully automatic, employers had an option to look the other way and not report a pregnant migrant to the authorities. But now, that option is not possible since, as already noted, pregnancy test results are transmitted directly from the clinic to Malaysian immigration authorities.<sup>31</sup>

Like their employers, migrants caught in a system that legitimizes pregnancy







discrimination have one practical option: don't get pregnant. As an employer notes: "Migrants need to plan. If they want to support their family, they need to plan how many years they want to work in Malaysia and when they want to go back to get married. The majority of the ladies in our factory plan."<sup>32</sup>

Focus group discussions with migrants suggest that many have plans not to get pregnant. One Burmese migrant explains her situation through a translator: "I know I have to marry because I have no brother and sister. But I don't have a boyfriend yet. My father and mother are finding a husband for me right now and if they cannot find one for me, I have no choice but to wait until I finish my contract and get home. Once home, I can get married and then get pregnant."<sup>33</sup> And indeed, many migrants choose to wait, putting their plans for pregnancy on hold to keep their job.<sup>34</sup>

In this environment, where the pressure to not be deported is strong, even pregnancy

testing may be viewed positively by migrant workers. Some migrants interviewed for this report have no objection to pregnancy testing. One migrant from Indonesia explains: I came here to Malaysia to work and getting pregnant would only create problems for me. So, it is better. The rule in a way helps me. It is ok to get checked."<sup>35</sup> Another migrant from the Philippines asks: "Aren't we all looking for money? If you are looking for money, you need to learn how to follow the rules. Rules are rules. You need to finish the contract."<sup>36</sup>

Migrants from more conservative backgrounds also question why pregnancy testing is a problem in the first place. For instance, some of the Nepalese and Burmese migrants interviewed for this report came from remote villages far from city centers. In these villages, premarital and extra-marital sex is socially unacceptable. From their perspective, pregnancy testing is a non-issue because they are not supposed to have sex in the first place.<sup>37</sup>

As one Burmese migrant explains: In my hometown, I have a boyfriend but we cannot have sex because Myanmar is a very strict country. I live in a very strict village. Our hands cannot even touch. Even in the same house, brothers and sisters cannot stay in one room. You need to get married first and only then you can have a baby."<sup>38</sup> A migrant from Nepal reflects the same views: "In Nepal, if you get pregnant before getting married, the police will put you in jail...You cannot have sex before getting married. It is illegal."<sup>39</sup>

The enormous shame associated with premarital and extra-marital sex is perhaps one of the reasons why pregnancy discrimination rarely surfaces as an issue in company audits of factories. The reality, however, is that not all migrants in Malaysia abstain from sex, and with contraception not covered in their medical insurance, some do get pregnant.

**TABLE 2: DEPORTATION COST TO MIGRANTS, IN MALAYSIAN RINGGIT**

FEE	RATE PER MONTH	NUMBER OF MONTHS REMAINING IN THE CONTRACT		
		8	5	3
Contract fee	118	944	550	354
Levy fee	154	1,232	770	462
Airfare	400	400	400	400
<b>TOTAL COST</b>		<b>2,576</b>	<b>1,720</b>	<b>1,216</b>

Source: Focus group discussions with migrant workers convened by author in Penang, Malaysia, July 6, 2017

For these migrants, the available options are limited: either keep the baby and go home, or abort the baby and stay; if neither is an option, migrants have no other option but to leave their legally permitted employment and work in the informal sector.

## **ANOTHER OPTION: KEEP THE BABY AND GO HOME**

Employers interviewed for this study stated that when faced with a pregnant migrant worker, their first task is to find out who the father is. As one employer explains: “If the father is Malaysian, then the outcome could be different. There is a possibility of staying. But if the father is not Malaysian, then she will be deported immediately.”<sup>40</sup>

The deportation process is quick as employers work to ensure that migrants leave Malaysia before the work permit expires to avoid additional problems with the government. Interviews with migrants confirm that this happens: “Once you get pregnant, and your employer finds out, you will get deported immediately.”<sup>41</sup>

The pregnant employee who chooses to continue her pregnancy would also have to break her contract with her employer and buy out the remaining months at the rate of around 110 ringgit (US\$26) per month. Migrants are

also expected to pay for their plane ticket and the fine at a prorated charge of US\$154 per month. The total cost of going home would depend on how many more months are left in the migrant’s contract. As Table 2 below shows, the cost is prohibitively expensive, ranging from 1200 (US\$283) to 2500 (US\$591) ringgit, or between one and three months’ worth of salary.

## **ANOTHER OPTION: ABORT THE BABY AND STAY**

For those for whom going home is not an option, for financial and other reasons, another alternative is to abort the pregnancy. Although abortion is illegal in Malaysia, migrants interviewed for this report confirm that abortion facilities exist in the black market, and at a lesser cost than breaking a contract: between 200 (US\$47) to 500 (US\$118) ringgit. The pressure not to return home is particularly high among nationalities that have lost access to the Malaysian labor market. For instance, up until 2007, employers could recruit female migrants from the Philippines, but the rules have since changed (as noted earlier). Migrants interviewed for this report told stories of friends and relatives who couldn’t return to Malaysia after breaking their contracts. “They wanted to return but couldn’t. Now they are ‘homesick’ for Malaysia, not the Philippines.” Thus, for those who managed to stay, going back is the least attractive option.<sup>42</sup>

## **RUNNING OUT OF OPTIONS: KEEP THE BABY AND “RUN AWAY”**

The most difficult situation occurs when the pregnant worker wants to keep the baby but also for financial or contractual reasons cannot choose to go home. In this case, the only remaining option is to leave

their current employer, enter the informal sector and join the estimated 650,000 undocumented migrants in Malaysia. As one migrant asks: “If you don’t have money to pay for an abortion or to break your contract, and you cannot go home, then what else can you do? You have no choice but to run away.”<sup>43</sup>

## ***VI. TAIWAN: ALLOWING PREGNANCY BUT NOT MOTHERHOOD***

Unlike Malaysia, Taiwan took the opposite route and since 2002 has instituted progressive laws and regulations aimed at protecting temporary migrant workers from pregnancy discrimination. The sweeping regulations changed many aspects of migrant’s day-to-day experience, but they failed to fully eliminate pregnancy discrimination among migrant workers in Taiwan.

### **A. PREGNANCY DISCRIMINATION ON PAPER**

Like Malaysia, Taiwan used to require pregnancy testing at various stages of migrant’s employment: at the country of origin, immediately after arrival, at the six-month mark, and annually for the first five years of employment. In 2002, Taiwan banned pregnancy testing once the migrant reached Taiwan, but still allowed testing at the country of origin. By 2016, Taiwan closed that loophole and began to also prohibit pregnancy testing by recruiters at the country of origin.<sup>44</sup>

Taiwanese regulations prohibit employers from terminating the contract and deporting a migrant worker who becomes pregnant. Migrants working in industries covered by the Labor Standards Act, such as the manufacturing and construction industries, also have additional protection under the law, including the right to ask the employer

to reassign her to lighter duty or alternative assignments and to receive free prenatal care through the national health insurance system. In cases where the migrant worker is unable to perform her job due to pregnancy, the employer is required to give advance notice of termination and provide severance pay in accordance with the Labor Standards Act.<sup>45</sup>

### **MONITORING AND IMPLEMENTATION**

Taiwan also instituted a mechanism for reporting pregnancy discrimination. It briefs migrant workers on their rights immediately upon arrival, maintains a 24-hour hotline for complaints and assistance, and funds shelters managed by non-governmental organizations to protect workers who have left abusive employers. Each city or municipality also operates a “Foreign Workers Consultation Service Center” which provides counseling

services and processes complaints against employers as well as recruitment agencies.<sup>46</sup>

The government works with origin countries to implement the pregnancy test ban at the country of origin. If a worker complains that the recruitment agent at the country of origin conducted a pregnancy test, the Ministry of Labor would ask their government counterparts at the origin to investigate the complaint and provide evidence that could lead to the cancellation of the recruitment agent's certification in Taiwan. Currently, the Ministry of Labor certifies the agencies at origin and only those with updated certification can send workers to Taiwan.<sup>47</sup>

## **SWEEPING CHANGES: PRESSURES FROM WITHIN AND OUTSIDE TAIWAN**

The adoption of these sweeping regulations can be attributed to the active advocacy of migrant rights groups as well as the progress of women's rights groups in achieving gender equality within Taiwan. Pregnancy discrimination as an issue first received

national attention in 1987, when a Taiwan national was fired due to pregnancy. At that time, the practice was widespread and not illegal. This landmark case sparked the women's rights movement to campaign for a change in law and, in 2002, or nearly 15 years later, led to the passing of the Gender Equality Act. The Act did not make any distinctions between migrant and local workers, and thus provides the basis for the regulations protecting temporary migrant workers.<sup>48</sup>

The pressure to eliminate pregnancy discrimination also comes from outside of Taiwan. As a government with no official representation in the United Nations due to its territorial conflict with China, Taiwan has always been more sensitive to criticism from within the international community, especially from a key ally such as the United States. For Taiwan, adopting internationally recognized labor practices is viewed as an important part of its efforts to be a part of the international community. Taiwan abides by international law to cement its status as a sovereign state, although in practice, it could not be subjected to it.

## **B. PREGNANCY DISCRIMINATION IN PRACTICE**

The non-government stakeholders interviewed for this report believe that the changes in the regulations, although already a significant improvement from how other destination countries treat temporary migrant workers in the region, are still not enough to eliminate pregnancy discrimination in Taiwan. This is mainly because very few migrants have taken advantage of the maternity benefits and even fewer have utilized the grievance system.

### **1. No complaints, no babies, no problem?**

Pei-Chia Lan, a migration expert and professor at the National Taiwan University, doubts that the new rules have effectively addressed pregnancy discrimination. She explains: "The tricky thing is, if you look at the new

law and policies, it seems that pregnancy discrimination no longer exists. Migrants are theoretically entitled to maternity leave. But you should ask government officials how many have enjoyed these benefits. I really doubt it."<sup>49</sup>



Practitioners such as Lennon Wong, Director of the Serve the People Association, made a similar point that the “framework of the law may give protection, but in practice, it does not.” Wong asserts that even local workers are not protected because of societal norms. For Wong, “Those who dare to apply for benefits work mostly in the government.”<sup>50</sup>

The facts seem to support this assertion: less than two percent of the workforce applies for maternity benefits according to results of a nationwide survey the government conducted in 2016.<sup>51</sup> As one stakeholder interviewed for this report noted: “If you are a reasonable person working in Taiwan, you will be very careful not to get pregnant. In case it happens, there are some measures in place.”<sup>52</sup>

Indeed, a key indicator of the effectiveness of the regulations is the extent to which migrant workers have given birth in Taiwan. Unfortunately, the government does not have

data to provide this critical information. A government official interviewed for this report explains that the information is not “registered in the database as such.”<sup>53</sup> All stakeholders interviewed for this report, government and non-government representatives alike, agree, however, that very few migrants choose to give birth in Taiwan.

Even fewer migrants are filing complaints. Between 2014 and 2016, for instance, only three cases of pregnancy discrimination among temporary migrant workers have been filed through the grievance system.<sup>54</sup> A few more complaints were received through the 24-hour government hotline but they rarely result in an actual case. For instance, in 2016, 32 of the cases handled by the hotline were related to pregnancy discrimination, of which 24 involved firing and demotion from the job because of pregnancy. Among the 24 cases, 17 were eventually settled with the employer, five migrants terminated their contract with the employer and decided to go home, one had a miscarriage, and another withdrew her complaint.<sup>55</sup>

Since the regulatory change in 2002, no employer has been punished for failure to implement the regulations against pregnancy discrimination, a fact that concerns officials of the Rerum Novarum Center, an organization that provides humanitarian assistance to migrant workers. One official of the center explains through a translator: “If the foreign worker becomes pregnant, and the employer forces her to leave but she is not willing to leave, this is against the Employment Service Act. So, the employer does face a fine but so far there have been no complaints of such, so no employer has been punished for it. That to me means that the system is not working as designed.”<sup>56</sup>

The Taiwanese government admits that there may be more cases of pregnancy



discrimination but they remain unreported. As one official notes in an interview conducted to inform this report:

*“We cannot deny that there are no cases of pregnancy discrimination but we have devoted a lot of resources and efforts in all these preventive measures and for inspection. We have also trained the employees and their employers and brokers so that we can make sure that once a violation occurs, and a complaint is filed, we will treat their cases seriously and we will investigate it. We will make sure that the employer who violates the Act does really get punished and the consequences are severe, such as by getting their licenses revoked or their quota cut. These serious measures will affect their business.”<sup>57</sup>*

And most stakeholders interviewed for this report agree that the problem is not a matter of lack of enforcement. No one seems to doubt the seriousness of the government to uphold the law. As Lan notes: “I don’t think that someone who files a complaint based on pregnancy discrimination will be dismissed by the government.” For Lan, the problem stems from the perception of migrants that maternity, although the law allows for it, is not a real option because it could still put their jobs at risk. Even “before they give birth or file a complaint, the migrants already told themselves that they can take care of the

problem on their own. And that they must put priority on their job security over their reproductive rights.”<sup>58</sup>

And the message the government directly communicates to temporary migrant workers only accentuates this perception. For instance, how the National Immigration Agency (NIA)’s website answers the question “Which regulations should be noted when foreign workers come to work in Taiwan?” is quite telling. The website indicates, “If the foreign worker could no longer continue with the same job due to pregnancy, besides causing inconvenience to the employer, this might lead to labor disputes and could affect the foreign worker’s physical and mental condition. The Council of Labor Affairs (CLA) requests foreign workers that are sexually active to take necessary precautions such as the use of condoms and other contraceptives to ensure and protect their own rights.”<sup>59</sup>

The NIA also widely distributes a pamphlet to migrant workers that are translated in the migrant’s local language reflecting the same warning against getting pregnant: “Remember that if you get pregnant, your body will undergo some changes and there are no family and friends to assist you. The Ministry of Labor calls upon foreign workers to take appropriate control measures (such as the use of condom, contraceptive, etc.) when engaging in a sex act in order to protect your rights.”<sup>60</sup>

## 2. Allowing pregnancy but not motherhood

The problem is also not just a matter of convenience but also of legality — regulations in Taiwan do not allow migrant workers to keep their babies. As the NIA official interviewed for this report explains, children of low-skilled temporary migrant workers cannot stay in Taiwan. “There

is no option to stay. If they give birth here, they must send the baby back immediately. The baby is not entitled to get an Alien Registration Card (ARC).” Without an ARC, the baby is essentially undocumented in Taiwan and not covered by the national health insurance.<sup>61</sup>

Indeed, the question for members of the civil society interviewed for this report is how could Taiwan have regulations that allow pregnancy but not motherhood? Lan asks: What are we going to do with migrant workers who give birth here? How are we going to deal with child care and the status of a child born here?" For Lan, there is a lot of grey area when it comes to the implementation of the law, and "not many people enter the grey area."<sup>62</sup>

A government official interviewed for the report recognizes the complexity of the situation and admits that the "issue comes back to the rationale of the migrant worker labor policy and how much social security and social resources must be provided to the children of these workers."<sup>63</sup> Currently, the answer is that no such investment in resources is warranted. As an immigration

official explains, low skilled migrant workers are not "immigrants" and are only in Taiwan temporarily. Thus, the government "cannot guarantee the protective rights of the family members ... Even for family members who want to visit foreign workers, they need to apply for a tourist visa."<sup>64</sup> Similar to Malaysia, the only instance in which a temporary migrant worker can keep the baby in Taiwan is if the father is Taiwanese and he is willing to recognize the child and adopt it.

For NGO officials interviewed for this report, the answer is clear: the government should allow migrant workers to keep their babies in Taiwan and must provide support services, such as day care facilities, in accordance with the provisions of the CEDAW and the Maternity Convention.<sup>65</sup>

### 3. (Less) Dire Options

Caught in a regulatory environment that allows for pregnancy but not motherhood, migrant workers in Taiwan are left with options that are different from their counterparts in Malaysia in some ways but not in others. Interviews with stakeholders and migrants themselves suggest that the changes in regulation essentially open up two additional options for migrants in Taiwan: the ability to work while pregnant and to file redress when fired or demoted due to pregnancy, including the option to leave the employer and stay in a government-funded shelter. The bottom line, however, does not change — migrants still go home to give birth. Many also reportedly receive an abortion while a few who choose to give birth in Taiwan have entered the informal sector or abandoned their babies.

#### OPTION 1: WORK WHILE PREGNANT AND THEN GO HOME "VOLUNTARILY"

The changes to the regulation essentially allow migrants to keep on working while pregnant: this is a huge departure from previous practice where pregnant workers were deported immediately. However, most migrants would return home to give birth, and non-government stakeholders doubt that the decision to return is generally voluntary. Lan explains, "It can be possible that a migrant worker could voluntarily choose not to give birth in Taiwan. It's possible because they would probably go back to their family. I'm sure many employers will say that ... But I think in practice, that is not the case."<sup>66</sup>

NGO officials interviewed to inform this report share this assessment. Factory workers are



routinely requested to leave and just go back. And in some cases, factory owners may not be aware that migrants are going home because of pregnancy. Wong explains: “Employers in the factories might not even know when the worker becomes pregnant because she will have to tell the agency. And the agency does not want to get into trouble with the employer so they take the worker and ask her to voluntarily leave the country, and return later. So there is no complaint.”<sup>67</sup>

Indeed, an interview with an embassy official in Taiwan confirms that women who became pregnant in Taiwan would normally just go home to give birth and afterwards they try to come back to Taiwan on a new contract.<sup>68</sup>

Wong suggests, “Some migrants feel that ‘I don’t want to exercise my rights.’ It is really a hard battle. The pressure comes from the agent, the brokers, and the employers.”<sup>69</sup>

## **OPTION 2: IF DISCRIMINATED, FILE A COMPLAINT, NEGOTIATE FOR A SETTLEMENT AND STAY IN A SHELTER**

For migrants who choose to exercise their rights, another key change is the option to file redress and stay in a government-funded shelter for free. According to government officials interviewed for this report, “The Act of Gender Equality in Employment is very comprehensive. The employers know that if they violate the Act, they will not only face the penalty fine but also lose their quota because they will not be allowed to hire workers in the future. So when such a situation occurs, the employers will try to reach an agreement either to terminate the contract and leave or she stays at work...employers are often able to reach some kind of agreement with the worker, like a monetary settlement.” And this monetary compensation must be agreed by both parties and only by reaching



an agreement that they can terminate the contract.” The employers usually pay the worker an agreed amount, and if the worker does not agree to leave, the employer has no right to terminate the contract and make her go home.<sup>70</sup>

Migrant workers with cases filed against their employers have the option of staying in a government-funded shelter run by NGOs. While in the shelter, migrant workers can avail themselves of legal services, including assistance in changing employer and finding a new job. The only issue is that although the shelter is free, migrant workers cannot work unless a new employer is found. Unable to financially provide for their families back home while in the shelter, many would eventually give up on their case and go home.<sup>71</sup>

The challenge of finding a new job is more difficult for pregnant workers. There is a stigma against being in the shelter, and even a bigger stigma against being pregnant. As Wong explains, “Either the employer does not



want her because she is pregnant or because she is involved in a labor dispute.” There is also a perception among employers that workers who get pregnant in Taiwan, especially those with husbands in the country of origin, are “behaving badly.” Wong explains, “They live in dormitories, right? They live away from their husbands or are not married so they are not supposed to be pregnant...Because of stigmatization, employers think that she is not a good worker also. And then employers would try to terminate her...The pressure is also internally within the culture.”<sup>72</sup>

## OPTION 3: ABORT THE BABY

Being in a shelter without prospects of a new job puts migrants in a very difficult financial situation. As Wong puts it: “No job equals no money. So they either choose to go back home or abort the baby.”<sup>73</sup>

Indeed, abortion is another option and stakeholders interviewed for this report suggest that it maybe is the most practical option available to migrant workers. Unlike in Malaysia, abortion is not only legal, it is affordable and widely available in Taiwan. As important, there is no social stigma against it.<sup>74</sup>

## OPTION 4: GIVE BIRTH IN TAIWAN

For a few migrants, however, where returning home or committing abortion is not a feasible option, the only recourse left is to give birth in Taiwan. According to officials at the Rerum Novarum Center, there are also a small number of women who deliver their baby in Taiwan and stay in temporary shelters while they recuperate. Once the mother and the baby have recuperated, the mother usually sends the baby back to the country of origin.<sup>75</sup>

There are also cases of mothers who abandoned their babies. Typically, the

baby was born out of wedlock and could not be sent back home, or the mother is undocumented and could not get a passport for herself and for the baby. Lan notes that in these types of situations, the babies are “basically trapped” in Taiwan and abandoned in churches, shelters, and hospitals.<sup>76</sup>

An interview with a government official confirms this problem. Once the baby has been abandoned, the first course of action for the government is to find the baby’s mother, who might now be undocumented if she is no longer working. When abandoned babies cannot be tracked down to a specific nationality, the government conducts a domestic and international search for the parents. Giving birth thus essentially increases the chance of an undocumented worker to be caught and deported. The domestic search is conducted for six months and the international search for three months. If the mother is found and if she is undocumented, then the both the baby and the mother would be sent home together. As the official explains: “We want to make sure that the mother does not leave the child behind here in Taiwan.” Indeed, the Immigration Agency now makes sure that in a deportation proceeding, a mother is asked as a matter of routine if she has ever given birth to a baby while in Taiwan to avoid a situation of separating children from their parents.<sup>77</sup>

If the mother cannot be located, the baby is recorded as stateless and is open for adoption. However, migrants’ children are rarely adopted within Taiwan. As a government official interviewed for this report explains, “We don’t adopt foreign kids here so it’s really hard to be a foreigner and an orphan.” For this informant, “If you are undocumented and you get pregnant, there is really no better option available than to go back home and give birth.”<sup>78</sup>

## ***VII. THAILAND: UPHOLDING MATERNITY RIGHTS FOR THE FORTUNATE FEW***

### **A. PREGNANCY DISCRIMINATION ON PAPER**

Among the three countries under review, Thailand adheres closest to the provisions of the CEDAW and the Maternity Convention for two reasons. First, although it requires pregnancy testing among its migrant workers at the point of recruitment and periodically during a migrants' employment, there are no regulations that require employers to use the results as a condition for hiring or continued employment, nor is it linked to deportation, as in the case in Malaysia.<sup>79</sup>

The pregnancy test is administered every time a migrant renews her work permit, or every two years, and is part of efforts within the Thai government to eliminate a debilitating disease called lymphatic filariasis. More commonly known as elephantiasis, the disease causes severe inflammation and disfiguring of the leg. It is highly contagious and is easily spread through mosquito bites. Although Thailand has officially controlled the disease, lymphatic filariasis is still endemic in some parts of the world, including Myanmar.<sup>80</sup>

To receive a work permit, migrants must take a dose of Diethylcarbamazine (DEC), a drug used to control the disease in endemic communities. Since DEC is not recommended for pregnant women, Thai regulations require that women must first undergo a pregnancy test and only those who test negative are required to take the DEC. While the test is required by regulation, according to migrant workers interviewed for this report, if a woman is pregnant during the health screening she can skip the dose of DEC and still get their work permit. The administration of the DEC

is also part of a health screening process that also checks for the presence of a range of communicable diseases and disorders such as tuberculosis, leprosy, Stage 3 syphilis, narcotic drug addiction, alcoholism, and psychosis or mental disorder.<sup>81</sup>

Migrant workers who passed the health screening are eligible to access a wide range of health care benefits in parity with the locals, such as child delivery, neo-natal care and contraception, including tubal ligation. In fact, Thailand is the only country in the world where migrants have the same health care rights as nationals. This policy has been in place since 2013, when Thailand's Ministry of Public Health extended the country's extant universal health care policy — which has been in place for Thai nationals since 2002 — to include migrants.<sup>82</sup>

As Nannette Motus of the International Organization for Migration explains: "Most countries have existing mechanisms for providing universal health coverage for their citizens, but this may not necessarily mean extending coverage to migrants, mobile populations, and other vulnerable groups in their countries. Thailand, in particular, has health insurance schemes for both documented and undocumented migrants."<sup>83</sup>

Second, Thailand has also taken a step further than Taiwan by allowing low-skilled migrants from three origin countries — Myanmar, Cambodia and Laos — to live with their dependents. This is part of an effort by the Thai government to bring the nearly three million undocumented migrant workers



from these three countries, the majority of which are from Myanmar, into the formal sector. The Thai government has repeatedly initiated registration and partial regularization programs since 1992 to curb the exponential increase in irregular migration to Thailand.<sup>84</sup>

Currently, there are roughly four types of migrants working in the low and mid-skilled sectors in Thailand, each with varying immigration status and corresponding health and social protection benefits.

- **“Pink Card” holders:** In 2014, the Thai government started offering

undocumented migrants the opportunity to receive temporary identity cards issued at the provincial level. More commonly known among migrant workers and employers alike as “pink cards” because of their color, these cards essentially allow an undocumented migrant to live and work in Thailand temporarily and to access a government provided universal health insurance scheme with the benefits as described earlier. Pink card holders can essentially “walk in” and apply for a job directly to employers just like local workers. However, given that the registration is at the provincial level, pink card holders cannot travel and work outside of the province they registered in, thus limiting their residency and employment options.<sup>85</sup>

- **“Passport” holders:** The “pink card” system is designed as a temporary measure for migrants waiting for the full regularization of their stay in Thailand. Pink card holders are expected to undergo a national verification scheme whereby they “verify” their identity and nationality with their respective embassies, secure a passport and find a Thai employer who is willing sponsor them for a work visa. These “passport holders” can move within Thailand and can easily change employers, just like local workers. Unlike pink card holders, they can also register with the Social Security Administration which gives them access to a full range of social protection benefits including 90 days paid maternity leave, a childbirth grant of 12,000 baht (US\$362), and a monthly child allowance of 350 baht (US\$11) for each child under six years old.<sup>86</sup>

- **MOU workers:** In 2002 and 2003, the Thai government signed Memoranda of Understanding (MOU) with the

governments of Myanmar, Cambodia, and Laos, institutionalizing a temporary labor migration scheme using recruitment agencies as intermediaries. Essentially adding an additional route to access Thailand's labor market, the MOU system allows employers interested in hiring migrant workers to directly recruit in Myanmar, Cambodia, and Laos, similar to the temporary labor migration system in Malaysia and Taiwan. Workers under the MOU system can stay and work in Thailand for a maximum of four years. However, they cannot change employers and must return home to their countries of origin for at least three years after the initial four-year stay. Like passport holders, workers under the MOU scheme are also entitled to 90 days paid maternity leave, a childbirth grant of 12,000 baht, (US\$362), and a monthly child allowance of 350 baht (US\$11) for each child under six years old.<sup>87</sup>

- **Undocumented workers:** Undocumented workers comprise the overwhelming majority of migrant workers in Thailand estimated to be nearly two million. This group of workers includes those who have never sought documentation but also those who have stepped out of the formal system by allowing, for instance, their pink cards or passports

to lapse. Indeed, despite efforts to incorporate undocumented workers into the formal system, a large number remain outside of the documented channel. One key reason, according to migrants interviewed for this report, is the cost involved in applying for a work permit. It costs around 17,000 baht (US\$513) to recruit through the MOU. Although hiring a “pink card” holder costs a lot less at around 3000 baht (US\$91) the other alternative — hiring an undocumented worker — is much cheaper at essentially zero cost to both workers and employers.<sup>88</sup>

Since undocumented workers have easy access to employment, employers and workers alike have less incentive to use the formal labor system. The government's most recent response is to put the pressure on employers to comply by increasing the penalty for non-compliance coupled with stricter monitoring of workplaces and implementation of border controls. In 2017, the Thai government has issued a “crackdown” on undocumented migrants and drastically increased the penalty for employers hiring undocumented worker from between 10,000 baht (US\$300) to 100,000 baht (US\$3,000) per migrant worker in 2008, to 400,000 (US\$12,000) to 800,000 baht (US\$ 24,000), a 700 percent increase.

## B. PREGNANCY DISCRIMINATION IN PRACTICE

Interviews with migrants and employers alike suggest that despite the protection afforded by the Thai government, the only real guarantee against pregnancy discrimination is to find and work for a good employer who is willing to abide by the rules and provide the maternity benefits already recognized in existing regulations. Interviews with two

sets of migrants — one working in factories in Sahmut Sakhon, a province near the capital city Bangkok, and another working in factories in Mae Sot, a town along the Thai-Myanmar border and a popular entry point for undocumented migrants — show two markedly different realities for migrant workers in Thailand.



## 1. The Good Life

Interviews with workers in factories near Bangkok that supply FLA brands, may suggest that pregnancy discrimination rarely happens, if at all, in Thailand. Although many migrants interviewed do not know exactly why they must undergo a pregnancy test, nearly everyone agrees that the pregnancy test results will not disqualify them from getting the work permit. According to the migrants interviewed for this report, they are confident they will not be fired because they have never heard of friends or relatives getting fired due to pregnancy. Many of the migrants interviewed for this report have either been pregnant themselves or know friends and relatives who have been pregnant. A few even shared views that the government institutes the pregnancy test to “protect” them. As one migrant explains, “if the factory finds out I am pregnant, then they have to give me light duty work, and also the maternity benefits.”<sup>89</sup>

An FLA affiliate consulted for this report confirms the practice of pregnancy testing in Thailand but also stated that they have not found cases in their supply chain of migrant workers being terminated due to a positive pregnancy test result.<sup>90</sup> As one manager at a factory near Bangkok explains, many migrants work until the eight-month of their pregnancy, with the majority choosing to deliver the baby in Thailand.<sup>91</sup>

As far as workers under the MOU are concerned, there is a difference in opinion among stakeholders interviewed if recruitment agencies in Myanmar screen out migrants that are or could be pregnant during the initial recruitment phase. One employer, for instance, explains, “I don’t know whether my agent in Myanmar looked into pregnancy or not. The agent basically selects the workers for me to choose from so there is a possibility but I cannot know for sure.”<sup>92</sup>

Some employers, however, say that there is no pregnancy discrimination in Myanmar and that the agencies they work with do not conduct pregnancy tests while there.<sup>93</sup> Migrants interviewed for this report who received a work permit through the MOU process contest this claim, however, with some reporting getting tested for pregnancy twice: once in Myanmar and again once they arrived in Thailand. However, migrants also report that only the presence of contagious diseases such as elephantiasis and tuberculosis will disqualify them from getting the work permit, not pregnancy.<sup>94</sup>

Civil society representatives interviewed for this report share the same observation. As Sutthisak Rungrueangphasuk of the MAP Foundation for the Health and Knowledge of Ethnic Labour explains, “pregnant women can still pass the medical exam and get a work permit even if they are not tested for the diseases due to pregnancy. Doctors just don’t tick the box that says they are sick, and the work permit is granted.”<sup>95</sup>

Indeed, as Box 2 below shows, the concern for the Thai government and employers alike is not on testing migrants for pregnancy but on preventing it in the first place by actively providing information on contraceptive use as well as ensuring migrants’ easy access to affordable or free contraception. This is a concern many migrants do not necessarily object to. Like their counterparts in Malaysia and Taiwan, migrants in Thailand would still choose not to get pregnant despite access to maternity benefits.

Many of the workers interviewed for this report also confirmed receiving the social protection benefits prescribed by regulations, including

## BOX 2: Preventing pregnancy, not testing for it

Employers interviewed for this report confirm that government representatives visit factories regularly — every three months in one factory, and every year in another factory — to discuss the importance of contraceptive use. A message that many migrant workers interviewed for this report welcome since, like their counterparts in Malaysia and Taiwan, many would still choose not to get pregnant despite the availability of maternity benefits. As one migrant explains: “I know my entitlements to maternity benefits but I still don’t want to get pregnant. I want to give priority to my work. After delivery, I still have to take care of the baby, but I would rather work.”<sup>96</sup>

And indeed, many migrants interviewed for this report plan their pregnancy and delay it by using contraception. As one migrant notes: Getting pregnant should be planned. It should not happen unexpectedly. When I just started working, I do not want to get pregnant so I took contraception. I don’t want to worry that I will be pregnant so I took precaution.”<sup>97</sup>

Interviews with migrant workers also suggest that many, particularly married women, take oral contraception, which is easily accessible at pharmacies for around 120-350 baht (US\$ 4 – US\$11). Some migrants also work in factories that provide free oral contraception as well as information on how to use them because, as one migrant explained, it can be “tricky and complicated.” Female migrants who are not married also reported knowing that the free contraception is also available to them.<sup>98</sup>

the 90 days paid maternity leave, the childbirth grant of 12,000 baht (US\$362), and a monthly child allowance of 350 baht (US\$11) for each child under six years old. Some migrants also reported that the factory allows and pays for prenatal visits made during working hours. As one migrant explains: “Sometimes I go alone, and sometimes I go with my husband and I always get the daily wage.”<sup>99</sup>

Other migrants also reported having special arrangements such as the privilege of going home five minutes early and having a lighter workload. Migrant workers interviewed for this report who are or have been pregnant noted being transferred from the production line into the office to assume lighter tasks such as counting, placing stickers, and winding thread.<sup>100</sup>

Interviews with migrant workers also suggest that many eventually choose to give birth in Thailand not only to avail themselves of the maternity benefits, but also to take advantage of the opportunity to register and keep their baby with them. There seems to be a perception among migrant workers interviewed for this report that they would not be able to easily bring their baby back to Thailand if they choose to give birth in Myanmar.<sup>101</sup>

## 2. The ‘Not So’ Good Life

Interviews with stakeholders in Mae Sot paint a starkly different reality for migrant workers: pregnancy discrimination is rampant — not necessarily at the point of recruitment but when migrants are already employed.

### AT THE RECRUITMENT STAGE

Migrants and NGO officials agree that unless an applicant is visibly pregnant, employers

in Mae Sot would not necessarily screen out pregnant workers. Indeed, all stakeholders interviewed for this report described the recruitment process as quite informal. Many factories do not even require migrants to undergo a medical test because they prefer to hire undocumented workers.

As one official at the Young Chi Oo Workers Association explains: “Mae Sot employers

typically post job openings at places where Myanmar people typically work, hang out, or live. The posts do not mention whether the factory prefers a woman or man or a documented or undocumented worker. They just indicate that the factory needs ‘workers who are skillful in sewing.’ The posts would also typically say that the migrants would receive a ‘good salary’ and overtime pay but would not mention the exact amount or rate. Pregnancy is not mentioned in these job announcements. What matters to the factories is if she/he has sewing skills.”<sup>102</sup>

Interviews with migrants also suggest that pregnancy is rarely discussed at the point of recruitment. Interestingly, some factories even hire workers with no discussion of the migrants’ actual sewing skills; much less their pregnancy plans. One migrant interviewed for the report, for instance, was asked only one question: if she can write or not. Similarly, one migrant recounts: “I came in Mae Sot in 2008 and applied in a factory that my smuggler recommended. The factory didn’t ask if I was pregnant or if I have a family or a baby. They didn’t even ask if I could sew. The factory just accepted me.”<sup>103</sup>

## WHILE EMPLOYED

An official at the Yaung Chi Oo Workers Association explains that the easy recruitment process reflects a simple reality: “The employers in Mae Sot want workers, and the workers also want to get a job. So nobody would raise the issue if you are pregnant or not. But once the worker is employed, and the employer found out that she is pregnant, then she gets fired.”<sup>104</sup>

An official of the Arakhan Labor Center agrees, explaining further that “the factory will not directly say that you are fired but would just ask the migrant worker to ‘take a rest.’”

And during that time of supposed ‘rest,’ she will not get paid. After the baby’s delivery, some factories would accept the migrant back; others would not, essentially forcing the migrant to find another job in another factory.<sup>105</sup>

Working in a new factory typically means going back to a lower starting salary. As Rungrueangphasuk explains: “If you are a senior worker, you get a bit more pay. If you are new, you get less.”<sup>106</sup> The return to a lower salary is even more problematic in places like Mae Sot where the majority of factories are known for not paying the minimum daily wage of 300 baht (US\$10) in the first place. The salary depends on what the factory is willing to pay, which is in turn dependent on the skill of the worker. The higher the skills, the higher the salary, ranging between 120 – 180 baht (US\$4 – US\$5) per day, or between a third and a half of the minimum wage, and an additional 15 – 22 baht (US\$ 0.42 – US\$0.66) per hour as overtime pay.<sup>107</sup>

Officials at the Yaung Chi Oo Workers Association clarified that there are some large factories in Mae Sot (with between 3000 to 5000 workers), and that they generally do not fire pregnant women. But most of the factories in Mae Sot are small, with about 100-500 workers each, and these smaller factories hire mostly undocumented workers who are not entitled to government-provided maternity benefits.”<sup>108</sup>

Migrants who find themselves pregnant in Mae Sot have two options. A focus group discussion with officials of the Arakhan Labor Center confirms that some receive an abortion, which is illegal in Thailand. He explains that with no access to a clinic, migrants resort to “home remedies” to abort the baby and those with some



money seek the services of what he calls “old experienced women” who perform abortion for a small fee. He expresses worry, however, that these so-called experienced women perform abortion with “no safety precautions in place.”<sup>109</sup>

Most migrants, however, would choose to keep their babies and “work as much as they can, as long as their employer would allow.” As an official of the Arakhan Labor Center explains: “In Mae Sot, if you are pregnant, the employer will make you work hard...They do not care, they do not give them lighter work.”<sup>110</sup> Indeed, one woman

interviewed for this report worked until the day of her delivery. She recounts: “It was very hard. The factory gave me 20 days leave after I delivered my baby but with no pay. I managed to return to my job though which is important because I need money to support my baby.”<sup>111</sup>

Given the problematic issues migrants in Mae Sot face, especially those who are undocumented, it is not surprising that a number of migrant and civil society organizations have been formed to provide much-needed support, such as the MAP Foundation for the Health and Knowledge of Ethnic Labour, Arakhan Labor Center, and





Yaung Chi Oo Workers Association. These organizations help fill the protection gap by providing not just information to migrants about their rights but also direct access to various kinds of health and education services, such as free contraception and subsidized school fees to children of migrant workers.

## FEAR IN EXERCISING RIGHTS

Interviews with NGO officials clarify, however, that pregnancy discrimination persists in Thailand not just because migrants are not aware of their rights (because many are); it is also because of workers' fear of exercising their rights. An official of the Arakhan Labor Center explains the predicament migrants face in a place like Mae Sot: "Most of the workers here are illegal, and they are afraid of the police. They are from a different country. They face a lot of problems in Myanmar too, so even if they don't know the law in Thailand they still take the chance to work here. They could earn more money here than they ever could in

Myanmar. Once they are here, they just accept whatever employers offer them. They are fearful, and the employers know that and take advantage of it."<sup>112</sup>

Indeed, it can be argued that expecting migrants to ask for maternity benefits is a stretch when very few would dare to complain over not receiving something as basic as the government-prescribed minimum wage. As one worker explains: I am aware that the minimum wage in Thailand is 300 baht (US\$10) but if I raise my voice and other workers are silent, I will only get fired."<sup>113</sup> NGO officials also clarify that immigration status does not matter as much when it comes to pay: "Legal or not, you get the same pay: 160 baht (US\$5) per day."<sup>114</sup>

The exploitative system persists because even among factories, there is pressure not to abide by the rules. As an official of the Arakhan Labor Center explains: "If one factory decides to pay the salary according to law, the other factories who do not follow the law would not like it. They will come and

## 3. The Long Road from Mae Sot to Bangkok

Indeed, for many migrants, the most practical solution is to find a way out of places like Mae Sot, where discrimination is rampant, and into jobs in factories closer to Bangkok, where the employment situation is generally much better. The goal for many migrants interviewed for this report is quite clear: find a good employer who will help them regularize their stay. The processing costs of the regularization are normally paid by the migrant and sometimes subsidized by the factory.

Indeed, Mae Sot is typically a first stop in a long journey within Thailand fueled by hopes of finding a better employer. Migrants

interviewed for this report highlighted coming first to Mae Sot, with many arriving more than a decade ago when the border controls were more relaxed. One migrant explains: "At that time, I got a certificate of residency to live in Thailand, not a pink card. And then I got a job and with the help of my employer, I applied for a work permit."<sup>116</sup>

Those who received a work permit could then move out of Mae Sot and find an employer near Bangkok, with the help of referrals from friends and relatives. Most migrants interviewed for this report have described seeking out a specific factory because it is a



considered a “good factory” by their peers. One migrant interviewed explained her route from Mae Sot to Bangkok: “I first came to Thailand illegally 13 years ago because my sisters were already here. I crossed the border in Mae Sot, got a pink card and then worked in a factory there. After a few years, I moved to a factory closer to the Malaysian border, and then finally to this factory recommended by my friend.” Another migrant similarly recounts: “When I came here over a decade ago, I did not have a passport. I just crossed the Ya Naung border and worked in a factory in Mae Sot. My brother then found work in Bangkok and he helped me secure a job in the same factory. Now I have a passport and can work in any factory I want.”<sup>117</sup>

An interview with an official of the Arakhan Labor Center confirms that many migrants desire to leave Mae Sot and go to Bangkok. For this official, the reason is obvious: “Migrants know that many factories pay the

minimum wage in Bangkok, so they try to find their way out of Mae Sot and move there. And the workers that are already working in Bangkok never want to come back and work in Mae Sot again.”<sup>118</sup>

An official of the Arakhan Labor Center likens Mae Sot to a “hotel or guest house where people come and go.” As this official further explains: “Migrants would stay here in Mae Sot for some time but then they would eventually leave and be replaced by newcomers. This makes our work hard because we have to constantly provide new information to those who have just newly arrived. They don’t have a clue of how things work here.”<sup>119</sup>

### TRAPPED IN MAE SOT

Not everyone has the networks and/or the money to eventually leave Mae Sot, however. As one undocumented migrant in Mae Sot explains: “I am scared because I am still an illegal worker. I would like to get documentation but I couldn’t afford it. And the process has only become more expensive and confusing through the years. I now have a card provided by my community leader, which at least allows me to move within my community. But I know that this card does not allow me to live anywhere in Thailand, much less move not far from where I live.”<sup>120</sup>

Indeed, getting documentation has become more difficult over the last few years as the Thai government has adopted a stricter stance against undocumented migrants. For instance, the Thai government stopped issuing pink cards in 2015, which essentially closed the formal route to undocumented migrants, particularly those who have recently arrived. An official of the Arakhan Labor Center explains: “Migrants with passports can extend their stay but those who do not have any documents have no options left. Those

with pink cards cannot renew their pink cards and without a pink card, they cannot get the passport. They have no option but to go home or live in constant fear of deportation.”<sup>121</sup>

Indeed, the recently announced crackdown on irregular migration has caused an alarm to many undocumented migrants all over Thailand. For instance, one pregnant woman interviewed for this report has been unable to access pre-natal care since the crackdown because she is afraid to be caught by the police while on her way to the clinic. She explains: “I am five months pregnant now but I am not sure of my due date. I only visited the clinic once. I would like to go back to the clinic again but I am scared to go there. Normally, I would go to the clinic by motorbike, but now that my pregnancy has progressed, I could not just ride a bike. I had to take two different

buses to reach the clinic and I worry that I would get caught during the checkpoints. It is too risky.”<sup>122</sup>

And it is a risk many undocumented migrants are not prepared to take. Being caught by the police can mean two things: paying a hefty bribe of 2000-3000 baht (US\$60 to US\$90) or, even worse, deportation. Indeed, with the increasing crackdown against irregular migrants, NGO officials and migrants alike observe that the local Mae Sot police have been replaced with police from Bangkok. One migrant explains: “Before, the police officers will just take our money and let us go. But not anymore. The police officers from Bangkok conduct the checks now and the situation is much stricter. The officers do not want to take our money. They would just deport us back to Myanmar.”<sup>123</sup>

## ***VIII. MOVING FORWARD IN POLICY AND PRACTICE: Being a Responsible Employer in an Imperfect System***

For companies serious about preventing pregnancy discrimination among its migrant workforce, a two-pronged approach is required. First, it is important to seriously advocate for a comprehensive legislative and policy framework change at the national level that would institutionalize non-discriminatory practices. At the same time, however, it also

critical not to wait for policy changes to take effect, which could take decades. Companies can choose to actively address the difficult situation migrants face now by introducing innovative solutions aimed at preventing pregnancy discrimination. In short, companies could choose to operate responsibly even within an imperfect system.

### **A. ADVOCATING FOR COMPREHENSIVE LEGAL AND POLICY CHANGES AT ORIGIN AND DESTINATION**

In the medium- to long-term, advocating for changes in the legal and policy frameworks is important. As the case of Taiwan shows, a policy change is possible with combined

pressure from the international community and advocacy at the national level, particularly from NGOs working on migrant and women’s rights issues. Taiwan’s experience also shows,

however, that advocating for policy change can take time. As noted earlier, it took 15 years of active advocacy in Taiwan to pass the Gender Equality Act. Temporary migrant workers could still be denied maternity benefits in practice despite the existence of rules and regulations that closely reflect CEDAW and the Maternity Convention provisions. In advocating for policy change, the experience in Malaysia, Taiwan and Thailand, points to two critical lessons:

**First, there is value in brands and suppliers advocating for a comprehensive set of regulations that protect not just the right to pregnancy but also the right to maternity.**

Laws and regulations, such as those found in Taiwan, allowing migrants to be pregnant but not to keep their children are problematic. Unless these two policy areas are connected, real change in the practice of pregnancy discrimination against migrant workers is impossible to achieve. As the cases of Taiwan and Thailand show, providing access to a set of complementary rights is critical, foremost among them is a sensible immigration policy that grants temporary migrants the option to live with their children at the country of destination.

It is important to note that in many countries with large migrant labor populations, including Taiwan, Malaysia and Thailand, governments have already given high-skilled temporary migrants the option to live with their dependents. Indeed, the point of contention is mainly whether low-skilled temporary migrant workers, particularly those engaged in so called “3-D” jobs — demeaning, dirty, and dangerous — are also entitled to the same set of rights as their highly skilled counterparts. There is recognition from the various stakeholders consulted for this report that the problem is neither straightforward

nor easy to solve. As a manager in a factory in Malaysia noted, the government has legitimized pregnancy discrimination because it essentially denies low-skilled migrants’ access to social insurance.<sup>124</sup> Bent Gehrt, Field Director for Southeast Asia at the Worker Rights Consortium, recognizes similar dynamics working in Thailand. He explains: “The Thai government is still struggling and they are worried. And they have a reason to worry as well. Myanmar is a big country and a lot of people could come in.”<sup>125</sup>

As countries draft regulations aimed at preventing pregnancy discrimination among migrant workers, a national dialogue is essential on the more fundamental question of the social role low-skilled migrants play within the countries of destination. As noted earlier, the CEDAW begins with an explicit recognition of the “social significance of maternity.” It specifically recognizes that the “upbringing of children requires a sharing of responsibility between men and women and society as a whole.” Thus, governments must adopt “special measures” to “protect maternity.” But what if low-skilled temporary migrant workers are considered as outsiders to the very societies they work in? Would their maternity have “social significance” and thus be worthy of protection?

Answering these fundamental questions is an important step in drafting comprehensive regulations that would more adequately address the pregnancy discrimination temporary low-skilled migrants face. These questions are finally being asked and discussed in Taiwan. As noted, migrant groups are currently advocating for allowing temporary migrants the option to live with their children. The same question has been partially asked and answered in Thailand when the government made the decision over a decade ago to allow low-skilled temporary



migrant workers and their dependents from three neighboring countries — Myanmar, Laos, and Cambodia — access to residency, health, and social benefits in parity with local workers.

Clearly, there is value for companies to support such a difficult conversation. As an FLA affiliate noted in a response to a survey conducted to inform this report: “We believe that the issue of mandatory pregnancy testing for migrant workers must be addressed through dialogue with relevant stakeholders, including governments who most likely require this practice as a way of avoiding the birth of foreign babies in their countries and hiring workers that are not able to work.”<sup>126</sup>

**Second, the rules and regulations must be changed in both the workers’ countries of origin well as in the destination countries.**

The artificial demarcation between regulations at origin and at destination countries must be eliminated. Policies work best if seen as a continuum crossing national borders. The policy and regulatory mismatch in many migration corridors complicates the prevention of pregnancy discrimination, as governments at either origin or destination cannot enforce rules outside of its jurisdiction. A country of destination, for instance, may pass a law banning pregnancy testing but that practice may not be observed at the origin, and vice versa, as the experience in Taiwan shows.

## B. ADOPTING INNOVATIVE SOLUTIONS TODAY

Amending national rules and regulations takes time, and companies serious about addressing pregnancy discrimination now cannot afford to wait for a time-consuming legal or policy change. There is an opportunity to fill the protection gap and create an environment that addresses pregnancy discrimination among temporary migrant workers in the short term. Companies could choose to support various innovative solutions at all stages of a temporary migrant workers’ employment, of which three types of approaches are worth serious consideration:

**First, at the point of recruitment, brands should support efforts to ensure that suppliers and factories only work with ethical recruitment agencies.**

For instance, there are emerging initiatives to create independent assurance organizations that would vet recruitment agencies at both origin and destination with a goal of providing a “white list” of recruitment agencies.

Examples of efforts in this area include the International Organization of Migration’s (IOM) *International Recruitment Integrity System (IRIS)*, the Association of Labor Providers’ (ALP) *ClearView*, and The FAIR Hiring Initiative’s *On The Level*.<sup>127</sup>

Additional steps should be taken to ensure migrant female workers receive factual information about the legal environment around pregnancy testing, their rights and obligations under the law in the destination country, as well as what avenues of redress are available should they become pregnant. For example, training before departure about the legal environment, and training in the workplace on rights and responsibilities under the law could be one way to ensure migrant workers are fully informed.

**Second, companies should also ensure that in countries where pregnancy discrimination is permitted by law, they take extra steps to educate their local staff, their buyers, and**

**their compliance staff on the increased risk to their female workforce, and take steps to mitigate the impact.**

For example, brands could include additional audit questions designed to discover pregnancy discrimination. They could also explore the creation of redress mechanisms that would allow suppliers and factories to apply international standards without violating local norms. In Malaysia, which requires immediate deportation of the pregnant migrant worker, companies could create a fund to compensate deported migrants with an amount comparable to what locals would receive in terms of maternity and other benefits. This fund could also be used to ensure that deported migrants do not end up paying for other expenses related to their return, including the airfare and the levy. Brands can also work with suppliers to ensure that deported migrants can return to their previous jobs by giving preferential hiring, a practice that a few employers in Malaysia have already started to follow.

**Finally, companies should support existing initiatives proposed by civil society, especially in countries where rules and regulations are already in place to protect migrant workers but implementation is lax.**

For instance, shelters for migrant workers, such as those found in Taiwan and Thailand, require a tremendous amount of resources, financial and otherwise, that governments and civil society organizations themselves may not be able to provide in full. Companies could assist in maintaining these shelters and ensuring that migrants receive appropriate legal advice and aid so that they can make informed decisions. There is also value in supporting incentive programs that will encourage victims of pregnancy discrimination in pursuing their legal rights. Such programs may include providing financial assistance (including the payment of court fees and a subsistence and transportation allowance) and assistance finding employment and skills training. ■





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