



สถาบันวิจัยและพัฒนาเพื่อการเฝ้าระวังสถานะไร้รัฐ (สฝร.)

Stateless Watch for Research and Development Institute of Thailand (SWIT)

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No. Special 1/2009

3 August 2009

Dear His Excellency, the Prime Minister

RE: Cover letter for Legal Opinion and Proposal to protect Pol (Abdulla) and every child born on Thai soil from illegal immigrant parents who had been permitted to temporarily reside on special basis (A child born in Thailand, under the provision of Section 7 *bis para* I of the Nationality Act, 1965 (2nd Amendment 1992))

Encl.: Legal Opinion and Proposal to protect Pol (Abdulla) and every child born on Thai soil from illegal immigrant parents who had been permitted to temporarily reside on special basis (A child born in Thailand, under the provision of Section 7 *bis para* I of the Nationality Act, 1965 (2nd Amendment 1992))

On 20th July 2009, police officers had raided and arrested Pol or Abdulla, a three years old boy--a child of a registered migrant worker, who is permitted to work and temporarily reside in Thailand, while his mother was selling Roti in a farmer market in Mueang District, Samutprakarn Province. The boy was detained at Suan Plu immigration center, with a possibility that he could face deportation at 22.00 pm on 27 July 2009. The boy was allegedly charged of illegal entrance to the Kingdom, under the provision of Section 54 of the Immigration Act 1979.

Officers of Human Rights for Development Foundation (HRDF) had coordinated with Bangkok Clinic for Rights and Legal Personality Legal Counseling (Bangkok Clinic) and Stateless Watch for Research and Development Institute of Thailand (SWIT). Later the coordination with the Lawyer Society of Thailand was sought to petition the immigration bureau to suspend the deportation and release the child back to the family immediately (in reference to the letter issued by the Lawyer Society No. SorSorMor. 367/2552, date 27 July 2009.) The boy was later released from the immigration detention center on 28th July 2009. Hence, We appreciate and were thankful that the immigration officers agreed to release the boy, accordingly.

Despite the boy had been released and returned to the family, SWIT, HRDF and Bangkok Clinic are concerned that many state agencies did not have accurate and correct understanding about legal facts or legal personality of Pol and other children sharing the same legal status with him. Thus these children were often arrested, detained and deported.

In order to prevent any repeated unlawful arrest and detention of children in the future and to protect every child who is in the same situation, beyond the specific case of Pol, the following legal opinion and proposal to protect Pol (Abdulla) and every child born on Thai soil from illegal immigrant parents who had been permitted to temporarily reside on special basis (A child born in Thailand, under the provision of Section 7 *bis para* I of the Nationality Act, 1965 (2nd Amendment 1992)) is proposed for your kind attention. The legal

opinion and proposal was a joint academic work between SWIT, HRDF, Bangkok Clinic and our network.

We affirmed that a child born in Thailand for illegal immigrant parents who are allowed to reside temporarily in the Kingdom on special and individual basis, by virtue of Section 7 *bis para* I of the Nationality Act, 1965 (2nd Amendment 1992)) could not be liable to a charge and a punishment of illegal immigration because the child did not enter the Kingdom. An arrest, detention and deportation is a violation of international criminal law that a person must not be inflicted with a criminal punishment unless one has committed an act which the law provides to be an offence (*nullum crimen, nulla poena sine lege.*) It is also a violation of core principles to guarantee rights and liberty, human dignity and equality of a person in the Constitution of Thailand 2007 (Section 32, Section 4 and Section 30.)

We request your kind attention to a proposal for a prevention of problems in 4. (The details proposal is available in the legal opinion and proposal attached.)

4. Proposal for a prevention of problems

4.1 Even Thailand does not consider to grant the nationality to the child, the government can implement measures to ensure the right of the child will be protected by ensuring that Thailand and its officials must not arrest and deport and child out of the Kingdom.

4.2 Initially the Thai government should prevent the child from being stateless, by certifying the right to reside and residency. The measure could be done immediately by recording the name and personal record of the child in either Tor.Ror 38 Kor or Tor.Ror. 38/1, which are personal record database of people permitted to resign in the Kingdom on special basis (corresponding to facts and status of each child.) (Further more, the information would be crucial and useful for alien population management in Thailand). The above measure could be implemented by the following.

- (1) Interpret and expand the coverage of the Cabinet resolution, dated 26 May 2008 to include accompanying family members of migrant workers, so that the accompanying family members enjoy the right to reside and resident status in the same manner as a registered migrant worker.
- (2) Enact a cabinet resolution to warrant the right to residency and resident status of the accompanying family members, as previously practiced (e.g. the cabinet resolution, dated 18 December 2007.)
- (3) Advocate the ministerial regulation issued under Section 7 bis para III. Of the Nationality Act to ensure that the child will not be deported from the Kingdom, the legal personality and residency of the child will be corresponding to those of the parents.

4.3 Prior, during and after an implementation of the above measures, under the international obligation as a state party to the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights and the Convention on the Rights of the Child (CRC), Thailand is legally bound to protect and promote children's through at least four principles of non-discrimination, the best interest of the child, child protection and the right to survival and to be developed to the fullest. The principles were also enshrined in the Constitution of Thailand Section 4 and Section 30. The Convention on the Rights of the Child was specially in adopted in domestic law in the Child Protection Act 2003, which the provisions of the law are corresponding to the CRC, such as the unfair non-discrimination and the best interest of the child principle (i.e. Section 22 and the

Ministerial Regulation issued under Section 22, determining the guideline of practices for best interest of the child or unfair discrimination against the child 2006.)

Hence, every child must have fundamental rights protected, such as the right to receive birth documentation (birth certificate) for further reference of her/his legal personality/ nationality, the right to fundamental healthcare and/or health security (universal coverage) the right to education, etc. We would like to emphasize significant participation from other rights protection agencies such as the Rights and Liberties Protection Department, The Central of Attorney General for Child Protection and Central Family Institute, etc. to protect rights of every child born in Thailand.


We and the network are hopeful that the Prime Minister, who supervises and monitors administrative section, will encourage and advocate a mechanism for fair and effective legal implementation for a better standard or a new norm to protect rights of the child. We thank you in advance for your understanding to the situation that these children are facing.

We request your kind attention, implementation of the proposal and a action for a concrete code of practices in this regard for the child, for public interest.

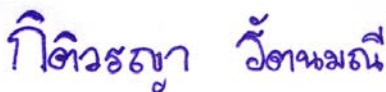
Sincerely Yours,



(Somchai Homlaor)
Secretary General
Human Rights for Research and Development



(Darunee Paisanpanichkul)
Director,
Stateless Watch for Research and Development Institution of Thailand



(Kitiwaraya Rattanamanee)
Working Group Member
Bangkok Clinic for Rights and Legal Personality Legal Counseling

- CC:
- 1) General Director, Office of the Attorney General
 - 2) Chairperson, the National Human Rights Commission
 - 3) Chairperson, the National Child Protection Commission
 - 4) Chairperson, the National Economic and Social Advisory Council (NESAC)
 - 5) The director of the Immigration Bureau
 - 6) Minister of Interior
 - 7) Chairperson, Migrant Workers Management Commission