

EXPLOITATIVE LABOUR PRACTICES: MODERN SLAVERY, FORCED LABOUR, HUMAN TRAFFICKING & CHILD LABOUR

THEMATIC ASSESSMENT
CHAPTER OF THE
INDEPENDENT CSO
NATIONAL BASELINE
ASSESSMENT (NBA) ON
BUSINESS & HUMAN RIGHTS



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PRIORITY AREA 1: LABOUR RIGHTS & STANDARDS

#ThaiBHRNetwork



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Manushya Foundation &
Thai BHR Network,
*Exploitative Labour Practices:
Modern Slavery, Forced Labour,
Human Trafficking & Child Labour.
Thematic Assessment Chapter of the
Independent CSO National Baseline Assessment
(NBA) on Business & Human Rights in Thailand, (2019).*

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About the Thai BHR Network

The Thai Business and Human Rights Network (TBHRN) is an informal, inclusive and intersectional coalition of human rights defenders, community leaders, researchers, academics, and non-governmental organisations from the local, national and regional spheres, who are joining hands to ensure local communities are central to the business and human rights response in Thailand. The Network engages in advocacy, dialogue, and monitoring of business and human rights commitments made by the Royal Thai Government, in particular in engaging in the development and monitoring of the National Action Plan on Business and Human Rights. More information on the TBHRN and its role can be accessed at: <https://www.manushyafoundation.org/coalition-building-workshop-report>

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Through our Independent CSO National Baseline Assessment (NBA) on Business & Human Rights (BHR) in Thailand, we hope to provide the foundation for a meaningful National Action Plan (NAP) on Business and Human Rights (BHR), which would guarantee that Thai businesses are not committing or involved in human rights abuses wherever they operate. We strongly believe that our NBA on BHR could serve as a starting point to raise awareness on the challenges faced by affected communities on the ground, could help address corporate accountability, and ensure responsible business conduct. We see the Thai NAP on BHR as a critical opportunity for civil society and grassroots communities to engage collectively in order to promote a Thai economy that is sustainable and respectful of human rights, while building an understanding of private actors on the adverse impacts of their activities. It is our aspiration that this independent CSO NBA on BHR would influence the Thai NAP on BHR; a NAP that is inclusive of communities' voices, concerns and solutions. We truly believe that this represents a great opportunity for open, frank, transparent and constructive dialogue among all relevant sectors, so that we can all continue working together to ensure that Thai corporations respect human rights at home and abroad.



Emilie Palamy Pradichit
Founder & Executive Director
Manushya Foundation

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ABBREVIATIONS

AAPTIP	Australia-Asia Program to Combat Trafficking in Persons
ACTIP	ASEAN Convention against Trafficking in Persons, especially Women and Children
ASEAN	Association of Southeast Asian Nations
BGMEA	Bangladesh Garment Exporters and Manufacturers Association
BHR	Business and Human Rights
CEDAW	Convention/Committee on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHRB	Corporate Human Rights Benchmark
CLP	Child Labour Platform
COMMIT	Coordinated Mekong Ministerial Initiative Against Trafficking
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisations
CSR	Corporate Social Responsibility
DLPW	Department of Labour Protection and Welfare
EHRD	Environmental Human Rights Defender
ETI	Ethical Trading Initiative
EU	European Union
HRD	Human Rights Defender
HRDD	Human Rights Due Diligence
HRLWG	Human Rights and Labour Working Group
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organisation
IOM	International Organisation for Migration
IUU	Illegal, Unreported and Unregulated
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MDT	Multi-Disciplinary Teams
MoFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MoL	Ministry of Labour
MoU	Memoranda/Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security
NAP	National Action Plan
NBA	National Baseline Assessment
NFAT	National Fisheries Association of Thailand
NGO	Non-Governmental Organisation
NHRCT	National Human Rights Commission of Thailand
NLA	National Legislative Assembly
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLHIV	People Living with HIV
RLPD	Rights and Liberties Protection Department
RTG	Royal Thai Government
SDG	Sustainable Development Goals
SLAPP	Strategic Lawsuit Against Public Participation
SPA	Sub-regional Plan of Action
TBHRN	Thai Business and Human Rights Network



THB	Thai Baht
TIP	Trafficking in Persons
TLS	Thai Labour Standards
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGC	UN Global Compact
UNGPs	UN Guiding Principles on Business and Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime
UNWG	United Nations Working Group
UPR	Universal Periodic Review

INTRODUCTION: Manushya Foundation's Business & Human Rights Strategy

As part of its work in Thailand, the Manushya Foundation (Manushya) aims to further strengthen the capacity of local communities, members of the Thai CSOs Coalition for the Universal Period Review (UPR), of which many are experiencing adverse human rights impacts of corporations, to effectively engage in the UPR implementation phase and to hold the Royal Thai Government (RTG) accountable on its UPR commitments and business and human rights obligations.

After the Thai government received, during its second UPR, a recommendation from Sweden to develop a National Action Plan (NAP) on BHR with the view to implement the UNGPs, Manushya developed a strategy¹ aiming at empowering communities to be at the centre of the business and human rights response in Thailand, by guaranteeing their central role throughout the development, implementation and monitoring of the NAP. To this end, since the beginning of 2017, Manushya has reached out to local communities, national, regional and international experts on BHR to:

- Develop a CSO NBA on BHR, with communities' challenges and needs put at the centre of the assessment,
- Empower local communities to conduct evidence-based research and, together with academics, document Business and Human Rights issues they face, and
- Empower grass-root organisations to tip the balance of power between businesses and governments versus CSOs, and encourage more bottom-up approaches which view CSOs as equal partners. For that purpose, in addition to building capacities on BHR knowledge, Manushya also provides sub-grants to establish and sustain a national network on BHR comprising communities, academics and experts, called the "Thai BHR Network".² The Thai BHR Network is an inclusive and intersectional network of grassroots communities, civil society, academics and experts, including representatives from and/or working on the following issues: *rights of migrant workers, labour rights (formal and informal workers), trade unions, indigenous peoples, stateless persons, community rights, land-related rights, environmental rights, people with disabilities, Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders (HRDs), and the impact of Thai outbound investments and trade agreements.*

As part of its BHR strategy and in order to inform the development of the independent CSO NBA, Manushya Foundation has supported the formation of the Thai BHR Network and has conducted a series of consultations to identify the key priority areas, as well as community-led recommendations: four Regional NBA Dialogues (January-March 2017),³ the first experts meeting to inform the independent NBA on BHR in Thailand (2-3 September 2017), and the second experts meeting to discuss the findings and recommendations of the independent NBA on BHR in Thailand (28 February-1 March 2018).⁴

In order to guarantee the safety of local communities and HRDs engaging in Manushya's strategy, all these six consultations were co-organised with the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ), Thailand.

Throughout the four regional NBA dialogues and the two experts' meetings, Manushya and members of the Thai BHR Network have identified four main areas of focus for the CSO NBA:

- 1) Violations of Labour Rights and Standards;
- 2) Impacts on community rights, indigenous peoples, livelihoods, land-related rights, natural resources and the environment;
- 3) The protection of HRDs;
- 4) Trade agreements and outbound investments.

These four priority areas of focus influenced the content of the Government's NAP on BHR, following our key four priority areas. Thus, this Chapter falls under Priority Area 1 and is part of Manushya Foundation and the Thai BHR Network's Independent NBA on BHR in Thailand.⁵

Manushya Foundation and the Thai BHR Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and non-governmental organisations (NGOs) together ensure local communities are central to the BHR response and discourse in Thailand and work together to inform the development of the NAP on BHR, as well as to monitor and support its effective implementation, with communities' voices and solutions at the centre.

Role of Manushya

“Empowering local communities to be at the center of business and human rights discourse and of the NAP on BHR”

At Manushya, we strongly believe in the importance of collaboration and cooperation to further human rights and social justice and recognise the importance of approaching our work in a constructive manner to ensure the greatest positive change for the communities we serve. However, while we work with any and all willing partners to advance these causes, Manushya is a completely independent human rights organisation. Our willingness to work with 'champions' to create a fairer, more equitable world is based solely on the needs of communities, with the singular purpose of ensuring no individual or group is the victim of human rights abuses caused by business conducts. Our approach lies in the empowerment of invisible and marginalised communities, sharing knowledge with them so they can assert for their rights, facilitating their meaningful engagement in the NAP process so they can become 'Agents of Change' providing solutions to improve their livelihoods.

Working with the RLPD of the MoJ in Thailand is a crucial element of achieving this. However, we see a key difference between working with and working for. For us, collaboration and critique are inseparable partners, and while we are enthusiastic to cooperate, we do so with our driving force of community empowerment at its core. This means that when we work with others, the working relationship has to be based on mutual respect for each other, ideally safeguarded by applying a bottom-up approach and not a top-down one. Our primary motivation and guiding principles are the needs of communities, not the needs of those we are collaborating with. While we believe the value of strong relationships with those in power cannot be denied as essential tools in the fight for human rights, we will not develop and maintain such relationships based on anything other than achieving the goals of the communities we serve, and we will not and have not ever shied away from being strong, critical voices against those we are working with when necessary to advance the needs of communities. Our independence is crucial to us and is what enables us to effectively tackle rights violations and inequality in Thailand.

METHODOLOGY

The methodology used in the research, analysis and writing for this Thematic Assessment Chapter on Exploitative Labour Practices: Modern Slavery, Forced Labour, Human Trafficking & Child Labour in the context of BHR in Thailand relies on primary and secondary data and resources. Primary sources, including voices, concerns, cases, experiences and recommendations of local communities and experts, were collected directly from Manushya's BHR activities; including:

- Four Regional NBA Dialogues on BHR conducted from January to March 2017;⁶
- Four regional capacity building workshops on BHR to demystify corporate accountability to HRDs⁷ held in May-June 2017;
- Two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the NAP on BHR. The First Experts' Meeting aimed at informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018);⁸ and
- The BHR Coalition Building Workshop held on 18-20 November 2017.⁹

Secondly, this Thematic Chapter is based on desk-research and presents an analysis of the international, regional and national legal and policy frameworks pertaining to community rights, the management of natural resources and the environment in Thailand, including the context of BHR and the UNGPs. The research included a systematic literature review of UN human rights bodies' and NGOs' reports, observations and recommendations; online news articles; expert papers; and other publications.

EXPLOITATIVE LABOUR PRACTICES: MODERN SLAVERY, FORCED LABOUR, HUMAN TRAFFICKING & CHILD LABOUR

CONTEXT

With an increasingly globalised world and a more connected international labour force, opportunities for exploitation and human rights abuse have also soared. As of 2016, there were an estimated 40.3 million people in slavery worldwide, including ten million children, 29.4 million people in forced labour, and 4.8 million people in sexual exploitation.¹⁰ While distinct; trafficking, forced labour, and modern slavery all share an underlying theme: they are predicated on a person's freedom being taken away for the purpose of exploitation – and defeat the idea of a utopian system of equality where all individuals are the same, despite persistent marginalisation and a lack of choices.¹¹ Victims of modern slavery, trafficking, and forced labour have no say in the terms of their employment, and are therefore subjected to economic exploitation as well as to other human rights abuses. Often, they are also unaccounted for in government census and data collection or are otherwise unprotected by national labour laws, allowing an environment of exploitation to flourish.¹²

Child labour is one of the most damaging and problematic examples of labour exploitation. Child labour, in addition to being hazardous to the development of children, allows for the perpetuation of poverty and poor life circumstances, by interfering with a child's right to education, social development, health, and safety.¹³ Many businesses rely on child labour to keep the labour force's cost low. This economic benefit is accrued at the cost of child welfare, access to education, health, and quality of life, and results in the perpetuation of the cycle of poverty.¹⁴

Exploitative labour practices and BHR are intimately connected, with an estimated 90% of forced labour victims being exploited by private enterprises.¹⁵ More than half of the forced labourers (56%) can be found in the Asia-Pacific region,¹⁶ and Thailand is recognised as a key destination for human trafficking. Additionally, Thailand has been found to be a source and transit country for both forced labour and sex trafficking.¹⁷ This happens primarily because victims from neighbouring states with low socio-economic development are trafficked into Thailand through already established and often utilised migration routes.¹⁸ Facilitated by long and porous land borders, irregular migration is a common trend in meeting Thailand's labour demands, particularly in low-skilled sectors.¹⁹ Often, foreign trafficking victims "migrate willingly to Thailand seeking employment through irregular channels without identity or travel documents," making them vulnerable to exploitation.²⁰ High levels of migration, both in and out of Thailand, increase instances of human trafficking, smuggling, abduction, and extortion.²¹

1. INTERNATIONAL & NATIONAL LEGAL AND POLICY FRAMEWORKS:

Existing Laws and Policies, Gaps and Legal Challenges

1.1. International Human Rights Standards

1.1.1. The International Labour Organisation (ILO) Forced Labour and Servitude Convention (C29) – ratified by Thailand

This Convention prohibits all forms of forced or compulsory labour, defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".²² Exceptions are provided for work required by compulsory military service, normal civic obligations, and work carried out in accordance with a court law conviction, in cases of emergency, and for minor communal services performed by the members of a community in the direct interest of the community.²³ The convention also requires that any illegal extraction of forced or compulsory labour be punishable as a penal offence, with ratifying states having to ensure that the penalties imposed by law are "adequate and strictly enforced".²⁴

1.1.2. The ILO Abolition of Forced Labour Convention (C105) – *ratified by Thailand*

This Convention prohibits forced or compulsory labour “as a means of political coercion or education or as a punishment for holding or expressing political views or opinions ideologically opposed to the established political, social or economic system; as a method to mobilise and use labour for purposes of economic development; as a practice in labour discipline; as a punishment for participation in strikes; or as a form of racial, social, national or religious discrimination”.²⁵

1.1.3. ILO Protocol of 2014 to the Forced Labour Convention – *ratified by Thailand but not in force*

Under this Protocol, signatory states commit to abide by measures that “prevent and eliminate the use [of forced labour]”, in order to protect victims and provide them access to “appropriate and effective remedies, such as compensation”, and also to punish any individual responsible for forced or compulsory labour.²⁶ Thailand only ratified the Protocol on 4 June 2018 and it on 4th June 2019.²⁷

1.1.4. The International Covenant on Civil and Political Rights (ICCPR) – *ratified by Thailand*

The ICCPR in Article 8 provides that individuals enjoy the right not to be subjected to forced labour, slavery, and servitude in all its forms, except in accordance with the exceptions provided for in this Article.²⁸

1.1.5. The International Covenant on Economic, Social and Cultural Rights (ICESCR) – *ratified by Thailand*

The ICESCR does not specifically address modern slavery, forced labour or human trafficking. However, it sets out a number of rights, which are inextricably linked to these practices, and some of the key rights violations inherent to them.²⁹ These rights include the right of individuals to freely choose their work, the right to a fair wage, the right to a safe and healthy working environment, and the right to rest, leisure, and reasonable working hours.³⁰

1.1.6. The Convention on the Rights of the Child (CRC) – *ratified by Thailand*

Article 32 of the Convention mandates that state parties recognise a child’s rights to be protected from economic exploitation and from undertaking work that could be hazardous or that could interfere with the child’s education or his/her health as well as physical, mental, spiritual, moral or social development.³¹ To this end, it urges states to take legislative, administrative, social and educational measures to ensure the provision of a minimum age at which a child can be employed, set out measures to regulate the working hours and conditions, and provide penalties and sanctions in case of violation.³²

1.1.7. The Protocol to Prevent, Suppress and Punish Trafficking In Persons (TIP), Especially Women and Children (Palermo Protocol) – *ratified by Thailand*

The Palermo Protocol established the first common international definition of TIP.³³ The Protocol is intended to prevent and combat such crime and facilitate international cooperation, as well as to highlight the problems associated with TIP, that often leads to inhuman, degrading, and dangerous exploitation of trafficked individuals.³⁴

1.2. Regional Commitments

1.2.1. Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, especially Women and Children (ACTIP), and the ASEAN Plan of Action

The ACTIP was drafted to serve as a legal framework to prevent and combat TIP through regional action. It includes provisions related to the protection of and assistance to victims of TIP.³⁵ To complement the Convention and to ensure a comprehensive regional approach to tackle trafficking, the ASEAN Plan of Action provides a roadmap for member states to address challenges that are common to all states through specific actionable steps. These include the “prevention of TIP, [...] protection of victims, [...] law enforcement and prosecution of crimes of trafficking in persons, and [...] regional and international cooperation and coordination”.³⁶

1.3. National Legal & Policy Frameworks

1.3.1. The Constitution of Thailand of 2017

It explicitly deals with forced labour, stating that “forced labour shall not be imposed, except by virtue of a provision of law enacted for the purpose of averting public calamity or when a state of emergency or martial law is declared, or during the time when the country is in a state of war or armed conflict”.³⁷ While the constitution provides exceptions, these are in line with the ILO Forced Labour Convention. The constitution does not explicitly mention child labour, however, provisions relating to children can also be seen as applying to child labour. Section 71 sets forth the responsibility of the State to provide assistance to children to ensure they have a good standard of living, and to protect them from violence and unfair treatment, as well as providing them with remedies and rehabilitation when such treatment occurs.³⁸

1.3.2. The Anti-Trafficking in Persons Act B.E. 2551 (2008)³⁹

This Act criminalises the “procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his or her control”.⁴⁰ This Act also espouses the idea that assisting someone carrying out trafficking amounts to trafficking, and therefore these actions are punishable as such. The Act was amended in 2017 to expand the recognition of means in which people can be placed into forced labour, such as debt bondage. The Act specifically addresses children, setting out that anyone “who, for the purpose of exploitation, commits any of the following acts [...] procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring or receipt of a child” is guilty of trafficking in children.⁴¹ It sets out the criminal penalties for carrying out or supporting these acts.

1.3.3. Human Trafficking Criminal Procedures Act B.E. 2559 (2016)⁴²

This Act seeks to increase the efficiency and effectiveness of the judicial process in coping with the complex nature of human trafficking. The Act introduces an inquisitorial system in human trafficking cases, requiring Courts to take a more proactive role in the fact-finding process of human trafficking cases. It also introduces key procedural measures designed to make the adjudication process less burdensome for the trafficking victims, such as allowing the use of videos for witness cross-examination and testimony. The result of the adjudication process is also potentially more beneficial to trafficking victims as the Court can order the defendant to pay compensation to the victims; even if the original case filing does not contain a compensation request. The Act aims at decreasing trafficking offenders’ ability to flee by mandating more stringent bail conditions and by suspending statutory limitations if the defendant flees during the judicial process. The Courts are also given the power to conduct witness cross-examination in absentia if the defendant flees or is unable to attend the hearing due to sickness.

1.3.4. The Control of Begging Act B.E. 2559 (2016)⁴³

This Act forbids all forms of begging, whether direct or indirect, and also prohibits impromptu “displays of skill” on public footpaths, with performing artists being required to register with local authorities beforehand. Penalties for traffickers and those seeking to benefit from begging are more severe, including prison sentences of up to three years and fines as high as 30,000 Thai Baht (THB) (\$960). Government officials found to be complicit in trafficking for begging face more extreme punishments: up to five years in jail and/or up to 50,000 THB (\$1,600) in fines. The law was enacted to prevent and mitigate the risks of human trafficking.

1.3.5. The Royal Ordinance on Fisheries B.E. 2558 (2015)⁴⁴

The Ordinance aims to offer a fundamental and comprehensive reform to the fishing sector, one of the key industries for modern slavery, forced labour, and human trafficking. The Act deals with these practices directly, seeking to eliminate all forms of forced labour in the fishing industry and to improve welfare and working conditions.

1.3.6. Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)⁴⁵

The Ministerial Regulation provides workers with more comprehensive protections, better working conditions, seeks to eliminate child labour on board, and guarantees that every worker is hired using a standardised labour contract.

1.3.7. The Royal Decree on Managing the Work of Aliens (2017)⁴⁶

The Decree aims to improve Thailand's management of recruitment agencies and to prevent migrant workers from being exploited and becoming victims of forced labour or debt bondage. The decree prescribes requirements to prevent human trafficking, such as mandating an employer to send migrant workers back to their country upon employment cessation with the employer's own money, and requiring an employer to provide money for any debts owed or damage caused to migrant workers, as security.

1.3.8. Labour Protection Act B.E. 2541 (1998)⁴⁷

The Act ensures that fundamental labour protections are in place. The Act imposes duties on employers to prevent them from violating the rights of all workers during the course of their work, regardless of their nationality and legal status. While the Act does not explicitly mention forced labour, trafficking or slavery, a number of its provisions are relevant to these practices, and it offers protection for rights that are regularly violated by them. The Labour Protection Act is also the primary piece of legislation concerning child labour, with chapter 4 of the Act addressing it specifically. The Act sets out the minimum age for employment in Thailand, which is 15 years old, and sets out specific regulations if a child between 15 and 18 years old is employed, including the responsibilities of employers and specific working conditions, as well as entitlements children must be able to access while being employed. It also sets out particular activities and industries in which children under the age of 18 are prohibited to work.

1.3.9. Employment and Jobseeker Protection Act B.E. 2528 (1985)⁴⁸

This Act obliges the state to set up an employment office, the Department of Employment, to provide public employment services free of charge, and to monitor as well as regulate domestic and overseas recruitment agencies. Besides, to fully ensure the protection of job-seekers against exploitation by business operators, the Department of Employment shall provide them with assistance in this regard, and shall set a standard for skill testing of job-seekers who want to work abroad. Particularly relevant to trafficking, modern slavery, and forced labour is the fact that the Act controls and oversees private employment businesses and expands job-seekers' protections. As private employment agencies are often involved in modern slavery, human trafficking, and forced labour, regulations on these agencies will cover aspects of these practices.

1.3.10. The Child Protection Act B.E. 2546 (2003)⁴⁹

This Act prohibits the involvement of children in work that may cause them physical or mental harm or hinder their development, and prohibits the use of children in begging, criminal acts or any other exploitative activity.

1.3.11. The Homeworkers Protection Act B.E. 2553 (2010)⁵⁰

This legislation, which came into force on 15 May 2011, seeks to protect the conditions of employment, minimum wages, and safe working environment of children under the age of 15 years.

1.3.12. Ministerial Regulation No. 6 (1998)⁵¹

This Regulation addresses the types of work that may be undertaken by employees under the age of 18 years. For example, the regulation prohibits working with hazardous chemicals and radioactive substances.

1.3.13. Ministerial Regulation No. 14 (2012)⁵²

This regulation prohibits the employment of children under the age of 15 in domestic work and is applicable to employers employing workers for domestic work that does not include business activities. There are also specific provisions addressing domestic workers under the age of 18, and requiring labour inspectors to be notified of their employment.

2. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS TO PROTECT, RESPECT AND REMEDY

2.1. Pillar I & Pillar III - The duty of the State to protect against exploitative labour practices and to ensure effective access to remedy

Efforts to criminalise modern slavery, forced labour, and human trafficking are positive actions towards the obligations of the State to protect individuals against the violations of rights that are inherent to these practices. With its legislating against modern slavery, forced labour, and human trafficking, Thailand partly complies with Guiding Principle 2 of the UNGPs that requires States to clearly set out the expectation that businesses respect human rights,⁵³ and Guiding Principle 3 that mandates the enforcement of laws that force businesses to respect human rights.⁵⁴ The legislative focus on exploitative labour practices, particularly on trafficking and the rights' violations that accompany them, requires businesses to respect individuals' rights by not engaging in these exploitative practices, while imposing criminal sanctions in case they do. In addition, the specifically targeted laws on areas in which these practices are more prevalent, such as fishing and domestic work, represent a more holistic attempt to protect rights.⁵⁵ However, while these laws do offer protections against rights violations, there remains a whole range of problems and gaps. The Anti-Trafficking Act fails to account for victims who are specifically in a situation of forced labour.⁵⁶ This ought to be outlined clearly in Thai Law. Exemptions also exist with regard to the liability of boat owners, who lease out their boats under the Ministerial Regulations Concerning Labour Protection in Sea Fishery Work, which is a significant lapse. In addition, in violation of obligations under Guiding Principle 2 of the UNGPs, the RTG fails to comply with its international obligations, by not adhering to the ILO Forced Labour Convention. Although it has been ratified, business enterprises and corporate bodies still attempt to derail the process of promulgation of laws with respect to the obligations set out therein. To elaborate on that, at the last public hearing on the draft of the Forced Labour Act, the National Fisheries Association of Thailand (NFAT) and the Joint Standing Committee on Commerce, Industry and Banking - which is a body of three vital private sector organisations including the Federation of Thai Industries, the Thai Bankers Association, and the Board of Trade of Thailand - completely rejected this draft legislation.⁵⁷ This influence over the RTG directly amounts to corporate capture through influencing the legislative process. While it is commendable that the RTG is attempting to encourage public participation in government decision-making and inviting public comments on legislations, it is important that all sectors and groups get equal representation and acknowledgment, to ensure an effective stakeholder consultation process.⁵⁸

With respect to trafficking, there also remain problems that result from the conflation of trafficking and sex work,⁵⁹ which is a long debated yet vital issue. Indeed, it makes it unclear for businesses to know how they should respect the rights of individuals employed at in their enterprises. This lack of clarity coupled with gaps in the protections guaranteed under international law also arise because neither indigenous peoples nor their rights are recognised. Therefore, they are more vulnerable to forced labour and human trafficking, and they embody the State's violation of its duty to protect them under the UNGPs. Besides, there are no clear guidelines regarding the identification of trafficking and illegal migration. According to Guiding Principle 1, states are required to take 'appropriate steps to prevent, investigate, punish, and redress' human rights abuses 'through effective policies, legislation, regulations, and adjudication.'⁶⁰ However, due to gaps in legislation and a weak implementation of the laws, that can exacerbate the violations, Thailand fails to comply with Guiding Principle 1. This compound of weak legislation and enforcement allows modern slavery, trafficking, and forced labour to thrive. The small number of labour inspectors or interpreters, and the general lack of human resources capacity also hinder effective monitoring of the situation, therefore also violating Guiding Principle 1.

On Pillar 3 and the access to remedies in trafficking, the Anti-Trafficking in Persons Act facilitates victims' access to remedy by providing them with assistance through both the Ministry of Social Development and Human Security (MSDHS) and the Suppression and Prevention of Human Trafficking Fund.⁶¹ In particular, provisions that offer legal aid to victims and enable them to take traffickers to court are important given the nature of trafficking and the condition of trafficking victims.⁶² In addition, the Human Trafficking Criminal Procedure Act is a positive example of the State's adherence to Pillar 3 of the UNGPs.⁶³ Principle 26 of the UNGPs sets forth that States should take steps to ensure domestic judicial mechanisms are effective with respect to BHR, and to

consider “ways to reduce legal, practical, and other relevant barriers that could lead to a denial of access to remedy”.⁶⁴ By allowing cross-examination and testimony via video, the Act facilitates the participation in judicial proceedings, as it accounts for victims’ probable lack of willingness to speak in court against those responsible for violating their rights.⁶⁵ Additionally, it allows victims who are not based in Thailand to actively participate in the judicial process, something that is particularly important in trafficking cases.⁶⁶ The Act also increases the chances of traffickers being prosecuted as it limits their ability to flee or escape charges, based on the statute of limitations.⁶⁷ These are positive attempts at offering effective remedy in trafficking cases. However, in practice, when it comes to all exploitative labour practices, there exist several disincentives to accessing remedies, that contribute to the violation of Pillar 3. Lengthy court procedures and long stays in shelters until the case is solved contribute to disincentivising victims of exploitative practices from coming forward.⁶⁸ Besides, bribery and intimidation of victims and witnesses prevent any action and make them fear for their safety.⁶⁹ Additionally, defamation cases are used to bar workers who are victims of exploitative labour practices from accessing remedies.⁷⁰ They often do not have the means and opportunities to go through a drawn-out lawsuit, with an adverse party that is economically more powerful and enjoys a more expensive attorney, to address defamation or to file a case for the violation of their rights.⁷¹ Their unwillingness to come forward and utilise grievance redressal mechanisms is also fuelled by the fact that often, victims have their papers confiscated until the resolution of the case.⁷²

2.2. Pillar II & Pillar III - The corporate responsibility to respect labour rights & standards to address exploitative labour practices, and to ensure effective access to remedy

The current legal framework in Thailand features a number of initiatives designed to encourage businesses to respect human rights. However, while there are efforts to tackle the practices of human trafficking, forced labour, and modern slavery; none of these legislative measures are targeted at businesses themselves. Rather, the focus is on individuals who engage in trafficking, either alone or for a business. There is no legal requirement in Thailand to carry out Human Rights Due Diligence (HRDD), with regards to modern slavery, forced labour, and human trafficking,⁷³ as set out in Guiding Principles 17 to 21. Guiding principle 15 requires a policy commitment to respect human rights, a HRDD process, and processes to remediate any adverse impact;⁷⁴ and Thai companies have embraced these principles either through national, regional or international commitments.⁷⁵ However, there are also gaps in the implementation of these policy commitments. These include: the continued persistence of exploitative labour practices;⁷⁶ attempts to influence legislative policy as in the case of the Forced Labour Act drafting process,⁷⁷ and the filing of defamation charges against any critics pointing out violations of rights by businesses.⁷⁸ Businesses also attempt to contravene the law, such as by not reporting to labour inspectors, and falsifying age documents.⁷⁹

Regarding the access to remedy and grievance redressal in businesses, there is no information of such company-based mechanisms, specifically aimed at tackling violations that amount to or result from forced labour, human trafficking, and modern slavery. Moreover, businesses’ priority seems to lie with ending these practices, instead of establishing mechanisms that compensate, rehabilitate, restitute or reintegrate the individuals whose rights have been violated. Moreover, as mentioned above, corporations and people associated with them may bribe and intimidate witnesses accessing state based judicial mechanisms,⁸⁰ so it would probably be impossible for these victims to be guaranteed access to an effective, transparent, and independent grievance redressal mechanism within the company.

3. PRACTICES ON THE GROUND: CHALLENGES, IMPACTS & SIGNIFICANT CASES

Challenge 1: Despite an increased legislative and policy push with regard to trafficking and forced labour, these practices continue to occur

Impact

The Global Slavery Index estimated that in 2016, there were 425,500 individuals living in conditions of modern slavery in Thailand.⁸¹ These practices can result in gross human rights violations, with victims suffering from a denial of income, physical and mental abuse, and in extreme cases, torture and often death.⁸²

Case of exploitative labour practice against Burmese fishermen⁸³

In Pattani, a Burmese fisherman had to quit his job on a boat due to health reasons. He worked for 12 months on the boat, and only received his salary after quitting work. Although it was agreed that he would receive 5,500 THB (\$175) or 61% of the legal minimum wage once in six months, he was only paid 8,000 THB (\$255) for 12 months (or 7.4% of the legal minimum wage), not including overtime. His supervisor justified it arguing that he lost the yearly record of his payments. At the time of this incident, the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work 2014 stipulated that employers must keep records of the working time, salary, and a written contract, while providing a copy of these documents to their employees. Like many fishermen, this Burmese individual did not have a written contract, which left him powerless when it came to reporting the incident.

Voice from the ground⁸⁴

"I have to beg for my wages like a dog when I'm supposed to get paid".

Anonymous Burmese fisherman in Thailand

Challenge 2: Although in recent years there has been a consistent focus on exploitative practices with a number of laws, action plans, and statements released about the practices, there remains an official complicity in modern slavery, forced labour, and human trafficking

Impact

Official complicity in practices amounting to modern day slavery serves as a significant barrier⁸⁵ to effective access to remedy, as victims are often prevented from testifying due to a mistrust in authorities. It also allows exploitative labour practices to continue, as those in power have a vested interest in these practices.⁸⁶

Case of official complicity in human trafficking⁸⁷

In July 2017, a total of 62 individuals consisting of senior military, police, and other government officials were convicted by a criminal court for being involved in human trafficking in the country. The sentences of these individuals varied in terms of degree, from four to 94 years of imprisonment. Concern was raised by different human rights groups who pointed out that threats were made against witnesses, translators, and police investigators during the investigation and trial. They also voiced their opinion on the premature termination of investigations.

Voice from the ground⁸⁸

"It is a very obvious fact that the agent and the police are linked. Ko Myo [the broker] had ordered us to work on a rubber tree farm owned by a police officer. We had to clear undergrowth and bushes".

Khin Zaw Win, 46, former Myanmar fishing crewman in Thailand

Challenge 3: Barriers to the effective enforcement of child labour laws result in continued violations of the laws

Impact⁸⁹

Although strict penalties are put in place for violating the laws on child labour, notably through an increased penalty for each child employed in violation of the law, the enforcement of these provisions is often lacking. An example is the necessity to notify the Department of Labour Protection and Welfare (DLPW) on the employment of child workers, which many employers circumvented by employers falsifying bone density records, and thus the age of the child. In addition, other factors contributing to the ineffective enforcement of laws include: inadequate number of labour inspectors, inadequate number of interpreters during labour inspections, ineffectual inspection processes in the informal sector and in those workplaces that are difficult to access, and the absence of identity documents among the children of migrants, indigenous peoples or those that are otherwise marginalised/from minority communities. A lack of understanding and awareness of laws and standards that protect children also contribute to the continued violation of rights.

Case of ILO technical advice for developing economies⁹⁰

According to the technical advice of ILO, developing economies must adopt a ratio of one inspector for every 15,000 workers. With a workforce of 38.45 million workers, Thailand would need to employ 2,558 labour inspectors to comply with this technical standard. However, labour inspections in Thailand have been carried out by only 188 labour inspectors under the Ministry of Labour (MoL), 592 civil servants from the DLPW, 98 employees contracted by the DLPW, and 628 individuals from other agencies such as the Royal Thai police. This number of 1,506 individuals involved in labour inspections falls short of the number mandated by the ILO. Labour inspectors play a vital role as they are responsible for assessing a penalty and immediately referring the case to the police on their discovery of a child labour violation. Yet, among these 1,506 individuals, not all of them are labour inspectors.

Voice from the ground⁹¹

"I don't want to go to the court because the [offender] will know that it's me, will see me, and then I might be harmed, get hurt, later on".

Anonymous Thai child victim of sexual exploitation

Challenge 4: The absence and denial of citizenship rights to indigenous communities make them particularly vulnerable to abuse and exploitation

Impact⁹²

Indigenous peoples are more likely to migrate for economic reasons and often do so by paying a middleman.⁹³ Since they also lack the legal documentation to take out formal loans, this increases the likelihood that they turn to informal loans for financial emergencies, making them more vulnerable to debt bondage.⁹⁴

Furthermore, and because of their undocumented status, indigenous communities are less likely to call the police if they believe they have been subjected to criminal exploitation, therefore allowing perpetrators to abuse or exploit ethnic minorities with little fear of being held accountable for their crimes.⁹⁵ Therefore, a culture of impunity endures when it comes to TIP.

Case of Karen ethnic group

Alathoo, a member of the Karen ethnic group, said there have been no efforts; nothing significant had been done when asked about national government's actions to combat trafficking.⁹⁶

Voice from the ground⁹⁷

"There are many people who do not leave the village by force but the process of human trafficking happens later, which is why there is a need to teach girls how to be aware of their situation, where to go if they have problems, what phone contacts they can call..."

Charm, a Shan respondent living in Thailand

Challenge 5: Human trafficking is closely associated with people smuggling and illegal migration, making it difficult to clearly identify trafficking victims. Practitioners, as well as the media, need to fully understand the difference between “victims of human trafficking” and “illegal immigrants”. In addition, the identification process is very limited

Impact

The lack of understanding of human trafficking can result in victims being wary of speaking up, fearing being stigmatised as illegal immigrants, and potentially facing criminal prosecution or deportation.⁹⁸ Additionally, those responsible for assisting victims of trafficking may fail to recognise trafficking when it occurs due to a lack of clarity, therefore resulting in the victim’s continued suffering.⁹⁹

As many victims of trafficking and forced labour are migrants, they may not have the necessary Thai language skills to find out about or have access to grievance redressal mechanisms, to contact authorities and use other services designed to assist them. This results in many victims of exploitative labour practices having no avenue to access remedy and escape the situations they are in.

Voice from the ground¹⁰⁰

“When we arrived at Ao Udom [...] we got a new job to sew sacks for covering eucalyptus logs. The wage agreed to was 400 THB (\$13) per day but the employer said he would pay a lump sum after the work was done. We worked for three months but nobody got paid. Each person should have received 5,000 THB (\$160). [...] Later, all of us realised that we might not get our money and thought about going to report our employer to the police, but we couldn’t do it because we couldn’t speak Thai. One important thing also was that we felt we were “illegal workers” and might also be arrested if we went to inform the police, so we decided to quit the job without being paid”.

Jade, a Cambodian worker in Thailand

Challenge 6: Owing to the transnational nature of human trafficking, there is a need for CSOs/NGOs to also tackle the issue of forced labour and human trafficking by networking at all levels, therefore helping to bridge the gap between the government, laws, and policies, to work in hard-to- reach areas, and ensure the monitoring of such work

Impact¹⁰¹

As countries in the Mekong sub-region have long borders, trafficking routes and routes for illegal entry sometimes overlap, making it more difficult to identify victims. Differences in the domestic laws of each country with regard to victim assistance and prosecution of perpetrators, have hindered the efficiency of victim assistance and repatriation. This results in victims of trafficking either being left without rescue or support or being prevented from going home, when they are identified.

Voice from the ground¹⁰²

“Being cheated out of their wage is the main problem that most Cambodian workers have faced. Many people I know still face this problem, although they are documented migrant workers. When they are cheated out of their wage, nobody can help them. [...] Nobody dares to inform the police. We need to have intermediary to help negotiate with employers and help from organisations to follow up with our cases”.

Pengbol, a Cambodian worker in Thailand

Challenge 7: The process of accessing judicial remedy in trafficking and forced labour cases can dissuade victims from going to court

Impact

Systematic disincentives, such as an excessively long duration of court cases and processes, and stays in shelters or a lengthy repatriation process result in many victims returning to their country of origin instead of seeking prosecution.¹⁰³ Additionally, during court proceedings, victims experience the consequence of corruption or are intimidated or bribed by those involved in their rights’ violation.¹⁰⁴ This can result in victims

either being reluctant to testify or accepting financial incentives instead of going through drawn out legal proceedings.

Case of domestic servitude of a 14-year-old girl¹⁰⁵

A 14-year-old girl, who was a victim of domestic servitude was forced to wait an excessive amount of time for a verdict in the resulting court case. While the defendant in her case was found guilty in 2006, only three years later in 2009 was the verdict appealed and upheld. The verdict was further appealed against before the Supreme Court and its result was still pending three years later.

Case of two Burmese fisherman¹⁰⁶

On 13 March 2019, the Labour Court of Region 9 initiated a mediation after two Burmese fishers filed a complaint with the DLPW Satun province regarding unpaid wages. The labour inspector in charge of the case concluded that the boat owner owed them respectively 105,200 THB (\$3,360) and 104,400 THB (\$3,330) and ordered him to pay these amounts. However, this financial compensation was half of what the two Burmese fishers had asked for, as it was based on a very conservative estimate calculated from working hours. The owner of the boat appealed to the labour court and when both fishermen realised that the case would be lengthy and drag them into complicated judicial procedures, they agreed to settle for a much lower compensation (70,000 THB (\$2,240)) than expected.

Voice from the ground¹⁰⁷

“On the day before we went to the court, two men came to see us [at the police station]. One was Burmese and the other one was Thai. The Burmese person was the one who we had refused as a translator before. A Thai man was with him. They told us that we were due to attend court the next day and asked us not to mention the boat owner’s name before the court. They also asked us not to mention any information about the boat owner, such as a boat’s serial number and the name of the fish processing facility. Even we had not been informed yet at that time that we were going to be taken to the court that day, but they already knew beforehand. We were told that the boat owner was prepared to give us ‘hush money’ on our return [to Myanmar]”.

Khin Zaw Win, 46, former Myanmar fishing crewman in Thailand

Challenge 8: Workers who have been victims of trafficking and forced labour, and who seek judicial remedy face defamation lawsuits, from the businesses which allegedly violated their rights

Impact¹⁰⁸

Defamation lawsuits serve as a barrier to impede workers from accessing remedies. Victims are often poor and do not have the financial means or will to fight a long court case against large companies. In addition, such cases against victims disincentivise others from coming forward, as they may be dissuaded from going to court for fear of facing legal repercussions themselves.

Case by Thammakaset amounting to a Strategic Lawsuit Against Public Participation (SLAPP) lawsuit¹⁰⁹

In response to a complaint submitted by 14 migrant workers to the National Human Rights Commission of Thailand (NHRCT) accusing Thammakaset Farm of labour abuse, the farm owner filed defamation charges against the migrant workers. The workers alleged that they were subjected to “20 hours of work a day, forced to work overtime, and being compelled to sleep in chicken rearing areas overnight”.¹¹⁰ On 23 August 2017, the Court accepted the criminal defamation charges filed by the farm owner for a full trial beginning on 4 October 2017.¹¹¹ On 16 August 2017, the Thammakaset Co. Ltd. Farm manager informed the Court at a preliminary hearing that the business decided to reinstate theft charges against two workers for allegedly stealing their timecards, despite the decision made by the Lopburi provincial prosecutor on 21 June 2017 to drop these charges, on the basis that they were without merit.¹¹² When questioned by the labour inspectors, the migrant workers submitted their timecards as proof of excessive working hours.¹¹³ If found guilty, the 14 migrant workers could face up to 1.5 years imprisonment and/or fines up to 30,000 THB (\$960).¹¹⁴

Voice from the ground¹¹⁵

"I was documenting the labour rights of migrant workers from Myanmar working on a poultry farm and the rights of civil society organisations that support the workers. Thai authorities found that the company had violated labour protection laws and ordered it to pay compensation to the migrant workers. Fortify Rights published statements and a campaign video to amplify the voices of the workers and demonstrate the impact of the rights abuses. I also used Twitter to share the working conditions and the challenges that migrant workers are facing. Those tweets led to the poultry farm making civil and criminal complaints against me, saying that my online posts defamed their reputation. [...] Some people have advised the migrant workers and me simply to make an apology and stop talking about the labour rights conditions related to the business. For me the lawsuits are a demonstration of intimidation and injustice against people who want to speak truth to powerful corporations".

Sutharee Wannasiri, Thai human rights activist
who faced criminal prosecution and a civil lawsuit
for reporting on businesses' abuses regarding migrant workers' rights

4. EXAMPLES OF GOOD PRACTICES AND GUIDELINES TO GUARANTEE COMPLIANCE WITH THE UN GUIDING PRINCIPLES ON BUSINESS & HUMAN RIGHTS AND IN THE IMPLEMENTATION OF LAW AND POLICY

4.1. Government-led Good Practices & Legislations

4.1.1. Compliance with Thai Labour Standards (TLS): Corporate Social Responsibility (CSR) of Thai Businesses (TLS 8001-2010)

For compliance with national standards and international obligations with respect to labour management, the MoL of the government of Thailand developed a set of guidelines called the TLS: CSR of Thai Business (TLS 8001-2010), to serve as good practice for businesses and their subsidiaries to comply with.¹¹⁶ The TLS sets guidelines that prohibit the support and use of forced labour, in any form.¹¹⁷ With the goal of obtaining a TLS certification from the MoL, these guidelines have been implemented in the management practices of several Thai companies and their subsidiaries.¹¹⁸

4.2. Business-led Good Practices & Guidelines

4.2.1. Stronger Together, a means to address exploitation

Launched in 2013, Stronger Together is a multi-stakeholder business initiative that supports business enterprises to take action to address modern slavery including forced labour, trafficking for labour purposes, and exploitation whether it happens in their own operational activities or through their labour providers or their suppliers who provide them with goods and services.¹¹⁹ This support is provided in the form of guidance, training material, resources, and a network for business employers, labour providers, and workers to use, in order to prevent, identify and address exploitation in businesses and their supply chain.¹²⁰

4.2.2. Aligning with the principles of the United Nations Global Compact (UNGC)

With more than 12,000 members in 160 countries, the UNGC is the largest corporate sustainability project with participants from the business sector, labour associations and organisations.¹²¹ To align with international laws and policies on sustainable business practices, the UNGC has set out ten guiding principles on human rights, labour, environment, and anti-corruption, and with collaborative and innovative examples in practice.¹²²

With respect to exploitative labour practices, UNGC principles 4 and 5 stipulate that businesses should eliminate 'all forms of forced and compulsory labour' and ensure 'the effective abolition of child labour'.¹²³ Businesses part of the UNGC are expected to incorporate these principles in their operations and annually report on how their efforts have progressed,¹²⁴ a step that has been taken by businesses in Thailand as well.¹²⁵ Failure to do so for two consecutive years, results in expulsion from the UNGC.¹²⁶ In Thailand, over 50 companies have signed on

to the UNGC and a number of them have made commitments to abide by its principles.¹²⁷ Notable amongst them are the CP group,¹²⁸ PTT¹²⁹ and True,¹³⁰ who have taken steps to ensure the adherence to and understanding of international human rights principles.

4.2.3. Management of risks with the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability

Guided by standards set in the international conventions of ILO and the United Nations (UN), the IFC's Performance Standards on Environmental and Social Sustainability provides guidance to businesses the IFC invests in, in terms of responsibility and risks and impacts' identification, in an attempt 'to avoid, mitigate, and manage the risks and impacts as a way of doing business in a sustainable way'.¹³¹ Performance Standard 2 addresses labour and working conditions, including with an overarching objective to protect the workforce by tackling child labour and forced labour.¹³² This standard also requires the monitoring, assessing, and addressing child labour and forced labour in the supply chain.¹³³ However, a problem remains with the standard on child labour, as it does not entirely prohibit this practice. The IFC Standards state that in cases where domestic law has provisions for employment of minors, the business merely has to follow those laws that apply to them.¹³⁴ This leaves children unprotected from provisions such as compulsory military conscription.

4.2.4. Roadmap to the elimination of child labour through the Child Labour Platform (CLP)¹³⁵

The CLP, supervised and overseen by the UNGC's Human Rights and Labour Working Group (HRLWG) works to obtain businesses commitment to a framework of achieving elimination of child labour. It does so by: building on collective learning by encouraging dialogue and exchanges of experiences in tackling child labour (including in the supply chain) between the government, businesses, workers, and civil society actors; identifying barriers to the implementation of ILO and Global Compact child labour principles through an analysis of issues faced and practical ways of resolving them; supporting cooperation by combining efforts of companies with present and future domestic institutional mechanisms and programmes; and mainstreaming strategies and good practices by building knowledge through general and sector-specific research.

4.2.5. Guaranteeing protection to children employed as child labourers in the garment industry

The garment industry can be used as an example of protective measures' implementation, regarding children. In July 1995, the Bangladesh Garment Exporters and Manufacturers Association (BGMEA) signed a Memorandum of Understanding (MoU) with ILO and United Nations Children's Fund (UNICEF).¹³⁶ This had dual purposes: the first was ending child labour in the garment industry, by withdrawing children from factories, and the second was ensuring these children's compensation and social protection in the form of schooling and vocational training, and a scheme of income compensation for their families.¹³⁷ As a result, 130 informal schools were opened with 3,900 children below the age of 14 being enrolled within a year.¹³⁸ To monitor the enforcement of these measures, a system was set up.¹³⁹ This served as a model, not just to highlight the importance of ending child labour, but also the necessity to strengthen these measures with alternative solutions in place.

4.2.6. Participation in the UNGC Action Platform on Decent Work in Global Supply Chains

In 2017, the UNGC established the Action Platform on Decent Work in the Supply Chain as a means to facilitate dialogue and collaboration with respect to businesses and their role in promoting decent work in the supply chain.¹⁴⁰ This platform helps in the promotion of Sustainable Development Goals (SDGs), the UNGPs, the ILO's Fundamental Principles and Rights at Work, and the ten principles of the UNGC.¹⁴¹ The UNGC Action Platform participants specifically address practices of modern slavery and child labour in their global supply chain, with 88% of these businesses having steps in place to promote the eradication of child labour, and 94% of the businesses having steps in place to promote the eradication of modern slavery.¹⁴²

4.3. Good Practices & Guidelines led by Multilateral Initiatives

4.3.1. Benchmarking of the Supply Chain through Know the Chain

A collaboration between NGOs, foundations, and organisations that conduct research on corporate governance and environmental sustainability, Know the Chain, is a resource that helps both businesses and investors to understand and address forced labour within their supply chain.¹⁴³ This is achieved through benchmarking, that

is used to identify and share best practices in industries of information and communication technology, food and beverage, and apparel and footwear.¹⁴⁴ These benchmarking reports utilise indicators of commitment and governance, traceability and risk assessment, purchasing practices, recruitment, workers voice, monitoring, and remedy.¹⁴⁵

4.3.2. MoUs with agencies combating human trafficking in Thailand's provinces

Between 2006 and 2008, the government of Thailand and NGOs signed MoUs in each of the seven provincial regions of Thailand, including: the MoU on Operating Procedures for Concerned Agencies in Combating Human Trafficking in 8 Eastern Provinces; 19 North-eastern Provinces; in 17 Northern Provinces; in 8 South-eastern Provinces; in 6 South-western Provinces; in 8 Upper Central Provinces, and in 9 Lower Central Provinces.¹⁴⁶ Signed between provincial governors, the police, Social Development and Human Security Officers, public prosecutors and NGOs, these MoUs provide a practical set of guidelines to prevent and suppress TIP in Thailand.¹⁴⁷ These aim to protect all victims, whether men, women, children, foreign or stateless persons through Provincial Operation Centres that are overseeing, coordinating, and operating all processes to prevent and suppress trafficking.¹⁴⁸

4.3.3. The Criminal Justice Responses to TIP as a practitioner guideline

The Criminal Justice Responses to TIP: Ending Impunity for Traffickers and Securing Justice for Victims was developed as a practitioner guide providing assistance in securing criminal justice for victims, and addressing impunity of perpetrators through the criminal justice systems of ASEAN member countries.¹⁴⁹ It covers issues such as strengthening the legal framework, specialisation and cooperation, victim and witness management, witness protection, trial handling, child victim aspects, and international legal cooperation to combat trafficking.¹⁵⁰

4.3.4. The Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) and regional collaboration on trafficking

The COMMIT process is an initiative led by the governments of the six countries that are part of the Greater Mekong Sub-region. This alliance seeks to fight trafficking, and is designed as a consultative process that includes civil society actors, trafficked persons, victim support agencies, and international organisations through cross border collaboration and cooperation.¹⁵¹ To operationalise the MoU and meet its commitments, Sub-regional Plans of Action (SPA) are drafted and implemented following deliberations at the COMMIT Taskforce meetings and consultations in the implementing countries.¹⁵² Currently, the SPA IV of 2015-2018, which is the fourth plan, is being implemented in coordination and cooperation in the areas of policy, prevention, prosecution, protection, monitoring, and evaluation.¹⁵³

4.3.5. Regional efforts through the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP)

The AAPTIP assists with the improvement of criminal justice responses to trafficking in ASEAN countries including Thailand, by working with judges, prosecutors, and law enforcement officers, and towards regional cooperation.¹⁵⁴ This is achieved by improving investigation of transnational trafficking, prosecution of exploiters, fair, and timely adjudication of TIP cases, as well as regional leadership and cooperation.¹⁵⁵ In Thailand, AAPTIP has worked with law enforcement officials and Anti-Trafficking units to improve the investigation of labour trafficking.¹⁵⁶ It has achieved this by providing the Anti-Trafficking commanders with a professional development course to ensure the undertaking of effective supervisory duties, by administering standard operating procedures and improving investigative processes with specialised units, and by supporting the coordination of Multi-Disciplinary Teams (MDTs) to tackle trafficking in the fishing industry.¹⁵⁷ AAPTIP has also provided professional development training to prosecutors, particularly in the provinces, and helped establishing a specialist prosecutor office.¹⁵⁸ AAPTIP is working with Thai judges through judicial consultations to ensure they adopt the best procedural practices, and also trains them to improve the quality of interpretation by the court during TIP cases.¹⁵⁹

4.3.6. Regulation through a third country carding process and the Seafood Taskforce

As the world's largest market for importing seafood products, the European Union (EU) has taken steps to regulate illegally caught fish from entering the region.¹⁶⁰ It does so by using EU regulations to end illegal,

unreported, and unregulated (IUU) fishing that requires strict standards to be maintained, or these countries risk being carded.¹⁶¹ In response to being carded, countries have undertaken legislative and policy reforms, amongst other measures, to ensure that they implement international obligations through the adoption of an effective legal framework to combat IUU fishing.¹⁶² Being carded is not just a diplomatic tool but could also result in blacklisting and trade sanctions by the EU.¹⁶³ As a result, the RTG has stepped its efforts of monitoring and controlling the seafood industry.

In addition, a joint task force called the Seafood Taskforce has been formed by businesses, government bodies and NGOs such as Charoen Pokphand Foods, Sodexo, and Costoco, to ensure that the supply chain is free from any form of forced labour.¹⁶⁴ Every member of this taskforce has to make a commitment to minimum requirements, and to support the goals and ensure progress on the objectives of the taskforce.¹⁶⁵ Manufacturers that are part of this task force have also refused to purchase products from and have terminated contracts with all the suppliers involved in human rights violations of any provisions of the Fisheries Act of 2015.¹⁶⁶ As a specific and measurable workplan, the Seafood task force also has a Code of Conduct that addresses child labour, forced labour, employment contracts, freedom of movement and personal freedom, retention of personal documents, recruitment fees, humane treatment, workplace equality, freedom of association, grievance procedures, wages and benefits, working hours, worker awareness and training, private employment agencies and recruiters, and health and safety.¹⁶⁷

4.3.7. The Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises and the National Contact Points for Responsible Business Conduct

In line with applicable laws and international standards, the OECD Guidelines for Multinational Enterprises provides governmental recommendations to multinational corporations.¹⁶⁸ These are multilateral, non-binding principles and standards that establish responsible business conduct in a global context, and promote positive practices of businesses towards the economy, environment and society.¹⁶⁹ Paragraph 1(d) of the OECD guidelines recommends that businesses “contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations”.¹⁷⁰

4.3.8. Ethical Trading Initiative (ETI) and their Code of Labour Practice

The ETI is an alliance of multisector actors, including companies, trade unions, and NGOs that work together to promote the respect of worker’s rights worldwide, both within businesses and in their supply chains.¹⁷¹ Basing their actions on the UNGPs and sharing methods for their effective implementation,¹⁷² companies that are part of ETI adopt a code of labour practices which their subsidiaries and suppliers are also expected to work towards to.¹⁷³ Sourced from the ILO conventions, the Code of Labour Practices includes aspects related to exploitative labour practices, such as: “employment is freely chosen; child labour shall not be used; and no harsh or inhumane treatment is allowed”.¹⁷⁴

4.3.9. Multi-stakeholder initiative to address labour issues in South-East Asia¹⁷⁵

The Issara Institute, initiated by experts from the UN was created as a multi-stakeholder alliance that includes both public and private actors, and civil society, working towards resolving labour issues in South East Asia. It was initially focussed on the export-import industry in Thailand, to address forced labour in the supply chain.

4.3.10. Assessing the human rights performance of businesses according to the Corporate Human Rights Benchmark (CHRB)

The CHRB is a multi-stakeholder initiative which methodologically assesses the performance of businesses in line with human rights standards, including the UNGPs amongst other international instruments and standards set therein.¹⁷⁶ This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.¹⁷⁷ One of its indicators evaluates if a business is committed to respecting the human rights of workers by “respecting the principles concerning fundamental rights at work in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work, together with those human rights of workers that are particularly relevant to the industry.”¹⁷⁸ The ILO core conventions include those on the elimination of forced and

compulsory labour as well as the abolition of child labour.¹⁷⁹ This benchmarking system also provides performance indicators on human rights practices for specific sectors, such as the agricultural and apparel sector. These include assessing the occurrence of child labour, through age verification and corrective actions in the operations of a business and in its supply chain, assessing the occurrence of forced labour through research into debt bondage and other unacceptable financial costs, and restrictions on workers in the operations of a business and in its supply chain.¹⁸⁰

4.3.11. Addressing modern day slavery through the Bali Process on people smuggling, TIP and related transnational crimes

Envisioned as a forum to raise regional awareness of and cooperation on people smuggling, TIP and related transnational crimes, the Bali Process helps to address these issues through policy dialogue, information sharing, and the adoption of practical measures for cooperation.¹⁸¹ The Bali Process includes 49 member countries and international organisations such as the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), ILO, and the United Nations Office of Drugs and Crime (UNODC).¹⁸² In addition, it has also created an Ad Hoc group that brings together international organisations and member countries that are most affected, in order for them to comprehensively address specific issues and devise strategies to resolve them on a case to case basis.¹⁸³ Thailand is both a member country and a part of the 16-member Ad Hoc group.¹⁸⁴

The Bali Process Government and Business Forum has been devised as a means for governments to engage with the private sector in order to augment legal and legitimate labour migration as a means to combat trafficking and all related acts of exploitation, and to ensure that non-abusive labour practices are adopted in the supply chains of these businesses.¹⁸⁵ The first forum was held in August 2017 and brought together governments and the business sector from 45 countries, including Thailand, to deliberate on ways to prevent and combat human trafficking, forced labour, modern slavery, and the worst forms of child labour.¹⁸⁶

5. RECOMMENDATIONS AND ACTION PLAN FOR THE STATE: PILLAR I AND PILLAR III

5.1. PILLAR I: STATE DUTY TO PROTECT

Priority Area 1	Drafting and amendment of laws and policies		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Amend the draft bill on forced labour prevention and ensure its implementation, in line with ILO Protocol 2014 to the Forced Labour Convention of 2013 as ratified by Thailand.	The draft bill must be amended to ensure its compliance with international obligations particularly with respect to the definition of forced labour, the punishment for violations, and the role and responsibility of state agencies in contributing to ending forced labour. In addition, forced labour should be punishable as a stand-alone criminal offence and not just as a part of human trafficking.	The National Legislative Assembly (NLA), MoJ, MoL	All legislations in Thailand should adopt the same definition of forced labour. It is essential that provisions to raise public awareness about forced labour be included in the bill, with examples on the local context duly provided. Timeline: 1 year - 2019
	Corporate capture by influencing the legislative process should be addressed and avoided in the future, particularly during public		This can be ensured by having all sectors and groups getting equal representation and acknowledgment, to ensure an effective



	participation in government decision making and while inviting public comments.		stakeholder consultation process. Timeline: 1 year - 2019
Immediately decriminalise sex work and all solicitation as contained in the Prevention and Suppression of Prostitution Act of Thailand, as it could lead to exploitative labour practices, violating the rights of sex workers.	It is necessary that provisions to protect sex workers against forced labour practices and actions that amount to modern day slavery are drafted and implemented, including but not limited to the decriminalisation of sex work. These provisions should prevent the perpetuation of an unsafe work environment for sex workers, promote the ability of sex workers to report crimes committed against them to the police, and end the continuing impunity enjoyed by the abusers.	NLA, MoJ	This should help to resolve the negative effects on health and other aspects that perpetuate discrimination and stigma of individuals. Timeline: 2 years – 2019-2020
Amend the Fisheries Act, 2015 to be in line with the Work in Fishing Convention, 2007 (ILO Convention No. 188), to ensure continued application and compliance through formal channels.	Towards this end, it is necessary to provide accountability mechanisms and provisions that are not ambiguous or subjected to a narrow interpretation, and that ensure that officials are trained on these accountability features.	MoJ, MoL, Law enforcement officials	Narrow and inflexible interpretation of the law that leads to inquiry officials or public prosecutors not prosecuting cases of trafficking and forced labour should be effectively addressed. Timeline: 1 year - 2019
Review and provide a flexible definition of exploitation to ensure that it covers all forms of exploitation.	There are constraints to the forms of exploitation that can be interpreted by the Anti-Trafficking in Persons Act, which law enforcement officials interpret strictly. Such provisions should include other forms of exploitation such as forced labour, debt bondage, and withholding of identity documents.	NLA, MoJ, MoL	This provides a legal basis to identify and investigate cases of individuals that are victims of trafficking and face other forms of exploitation. Timeline: 1 year - 2019
Priority Area 2	Addressing root causes of exploitative labour practices		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Provide human rights-based education to communities to raise awareness on the rights of women and girls, to address structural barriers, lack of knowledge, and discriminatory beliefs	Such awareness raising and information dissemination should include an explanation of rights they are entitled to and legislations that guarantee these rights, with examples tailored to the local context.	MSDHS, RLPD,	This should help achieve the goal of community resilience as a response to exploitative labour practices. The number of individuals educated and the provinces covered must be assessed.

with respect to them.			Timeline: 1 year - 2019
Address structural and systemic causes of poverty and inequality, which result in the poor and marginalised being vulnerable to exploitative labour practices; in accordance with the Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequence, and development issue no. 4 of the 2030 Agenda for Sustainable Development on inequality tackling issues of access, gender, opportunities, and outcomes.	Policies and practices must be put in place to address marginalisation and exclusion that bars access to resources and opportunities. These inequalities may be of opportunity or outcome and must be specifically identified to be addressed. Income and gender inequalities should also be tackled. The disproportionate effects of discriminatory practices on women and girls ought to be analysed, documented and resolved for this purpose.	The MSDHS	These inequalities are addressed in a cross-sectional manner over all the SDGs including in goal 4 on education; goal 5 on gender equality; goal 6 on water sanitation; goal 7 on energy; goal 8 on inclusive and sustained economic growth and so on. These policies and practices must be studied for effectiveness in addressing inequality based on research under these various aspects. Timeline: 3 years – 2019-2021
Priority Area 3	Processes to monitor occurrence of exploitative labour practices		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Formulate government enforced monitoring systems based on the principles set out in the first and second pillar of the UNGPs.	The government should establish monitoring processes and regulatory institutions to make sure that the private sector complies with international obligations.	MoL, MoJ	Separate mechanisms and processes must be established in all 77 provinces of Thailand, with additional monitoring in the sectors with a higher risk of exploitative labour practices. Timeline: 2 years – 2019-2020
Strengthen the effectiveness of labour inspectors in preventing exploitative working conditions, in line with the views of the Special Rapporteur on TIP, especially women and children.	The role of labour inspectors in identifying trafficked persons in workplaces should be strengthened. Inspectors should be involved in MDTs that detect trafficking cases and protect other labour rights.	The MoL, MoJ	The number of labour inspectors must be one to every 15,000 workers and they must be accessed to determine their understanding of the law and its implementation. Timeline: 3 years – 2019-2021
Strengthening of the national legislative framework to ensure that labour and human rights violations that result in slavery are monitored and eradicated, in line with the	For this purpose, standardised disaggregated data on labour rights and human rights violations should be collected and maintained. Eradication of these rights violations should be undertaken through legal,	MoL,, MoJ	This method of early identification and prevention through the cooperation of multiple stakeholders, such as the government, CSOs, the private sector, trade unions, and the general population, is

Report of the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences.	judicial and institutional enforcement with appropriate rehabilitation and restitution through remedies.		critical. Timeline: 1 year - 2019
Improve oversight over labour conditions in other informal sectors such as agriculture and construction in accordance with the statement of the UNWG on BHR in their statement at the end of their visit to Thailand.	Replicate and scale up measures that have been implemented in the fisheries sector, through the requirement to conduct and report on HRDD.	MoL	This is a measure to address forced labour and human trafficking in these sectors, and therefore studies must be conducted to record the prevalence. Timeline: 2 years – 2019-2020
Priority Area 4	Identifying trafficking victims, by differentiating the smuggled and illegal immigrants		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Mandatory training should be carried out for all government ministries, agencies, and individuals; incorporating the views of the Special Rapporteur on TIP, especially women and children.	During the training, the definition and constituent elements of trafficking must be clearly explained, along with guidelines for identifying victims of trafficking and how to appropriately respond to trafficking.	MoJ, MoL	This must be carried out particularly for ministries/ agencies working on tackling trafficking and forced labour, including for the MDTs, labour inspectors, and frontline officers. Timeline: 2 years – 2019-2020
Develop an effective screening process to identify survivors of TIP.	In case of a large number of people to interview for screening, a contingency plan must be devised to deal with the increased number.	MoL, MoJ, and law enforcement officials	The screening process must be consistent in identifying victims with the eight-page template developed by the Human Trafficking Prevention and Suppression Committee being used as a guideline. Timeline: 2 years – 2019-2020
Run a public awareness campaign and provide media training, ensuring dissemination nationwide.	This awareness and training exercise should address what constitutes trafficking, and how to seek help if you suspect someone is a victim of trafficking.	MoL, MoJ	Rights of victims and modes to access remedies as well as agencies/authorities responsible must be covered. Timeline: 2 years – 2019-2020
Priority Area 5	Defamation lawsuits		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Protect workers and trafficked victims from defamation lawsuits.	Prevent businesses accused of being involved in forced labour and human trafficking from	MoJ, MoL	Companies should only be able to file defamation charges if cases against them

	filing defamation charges against workers, while charges on trafficking and forced labour are pending.		have been dismissed and it has been proved they were not part of these practices. Timeline: 1 year - 2019
Priority Area 6	Curbing official complicity in exploitative practices		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Enforce a zero-tolerance policy to corruption, with a view to dissuade such practices, in line with the 2015 Committee on Economic, Social and Cultural Rights (CESCR) concluding observations.	The government should enhance the effectiveness of the legal, structural, and policy measures to combat corruption in all sectors and levels, prosecuting and adequately punishing offenders.	MoL, MoJ	It must commit firmly to a policy of zero tolerance of trafficking-related corruption and complicity by public officials. Timeline: 3 years – 2019-2021
Priority Area 7	Addressing the transnational nature of trafficking		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Creating cross-border mechanisms to deal with trafficking must not be managed by a single state, but through international cooperation, as determined by the UNWG on BHR and drawing from the best practices of the Schengen system.	Trafficking must be addressed through international, regional, and cross-border mechanisms, such as the Schengen system in Europe, which allows participating States to exchange information on the movement of individuals.	MoL, MoJ and the Ministry of Foreign Affairs (MoFA)	This must be specific to the local context when applied by the State domestically. Timeline: 3 years – 2019-2021
Priority Area 8	Tackling stigma		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Awareness and training given to all trafficking and forced labour related government agencies, particularly for those individuals who are part of the healthcare and policing services.	Train all government agencies and State services on the difference between victims of trafficking and sex work; and on non-discrimination with regard to sex workers, including an understanding of the difference between decriminalisation and legalisation of their work.	MoL, MoJ, police, and law enforcement officials	Through knowledge providing sessions, anti-discriminatory practices should be normalised, and any actions violating this must be made punishable. Timeline: 2 years – 2019-2020
Gender equality awareness education in schools and through public campaigns at the national and local levels.	Negative perception of sex workers is intrinsically linked to perceptions of acceptable female sexuality, based on the idea of ‘good’ and ‘bad’ women. To combat this, awareness campaigns should focus on gender roles, perceptions of womanhood,	MmoJ, MoL, MSDHS	This must be in line with recommendations made in the 2016 Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) .

	and women's sexuality.		Timeline: 5 years – 2019-2023
Criminalise discrimination with strict punishment and penalties in the penal code and through the NAP on BHR.	The Penal Code and the NAP on BHR must include non-discrimination as a principle and criminalisation as a penalty, providing modes and methods of access to remedies.	MoJ, MoL	This should help protect specific communities and groups that are disproportionately discriminated against and who face exploitative labour practices, including but not limited to women, migrants, indigenous peoples, and the stateless. Timeline: 2 years – 2019-2020
Priority Area 9	Human trafficking as a result of other human rights violations at the national level		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Policies and laws to be implemented for the prevention of the occurrence of human rights violations.	Recognising human trafficking as a systemic problem resulting from other human rights violations, legal and policy reforms should be undertaken to include provisions that enforce laws and policies on the rights of the marginalised, and prevent violation.	MoJ, MoL, MSDHS	It must strongly reinforce non-discrimination and laws, policies and perceptions that perpetuate such practices. The suggestions contained in the 2015 Concluding Observations of the CESCR must be utilised for this purpose. Timeline: 3 years – 2019-2021
Ensure the identity of marginalised communities and individuals is protected, to reduce their vulnerability to exploitation and abuse.	Strengthen measures to facilitate the naturalisation and integration of stateless persons, to prevent their abuse through trafficking and forced labour.	MoJ, MoL	These measures must be in line with the 2015 CESCR Concluding Observations. Timeline: 2 years – 2019-2020
Priority Area 10	Protection of children from violation of their rights		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Enforce national and international legislations that set out obligations on child rights.	Enforce national legislations against child labour and its worst forms, including through the dissemination of this information on child protection laws and other rights children are entitled to. Develop and implement cross-sectional NAPs to eliminate the worst forms of child labour as a priority.	MoJ, MoL, MSDHS	Periodically, review the implementation to ensure the rights of all children are protected, without exception. Timeline: 2 years – 2019-2020 This must be undertaken following a participative consultation. Adequate resources must be provided

			to achieve it. Timeline: 2 years – 2019-2020
	Review and update national lists on hazardous work that is prohibited for children.		This must be done following a participative consultation with social partners. Timeline: 2 years – 2019-2020
Provide education and training to children.	Extend and improve access to free, compulsory, quality education for all children, particularly those under the minimum age of employment.	MoJ, MoL, MSDHS, The Ministry of Education	Special strategies should focus efforts of girls. This must extend to vocational or technical education where more beneficial and in their best interests. Timeline: 2 years – 2019-2020
	Adopt strategies to remove costs that are a barrier to education.		Strategies must be adopted based on social conditions. Timeline: 1 year – 2019
	Adopt strategies to encourage and monitor school enrolment, attendance, retention and reintegration through scholarship and school meal programs to help poor families reduce the costs of education.		A cost benefit analysis on the implementation of these strategies should be carried out all over Thailand. Timeline: 2 years – 2019-2020
	Create a child-friendly learning environment, in which children are protected from abuse, violence, and discrimination.		This should be implemented in schools and other educational institutions throughout Thailand. Timeline: 2 years – 2019-2020
	Develop concrete actions and mechanisms to meet the needs of children that have been engaged in the worst forms of child labour, to support their transition out of it, in line with ILO Convention 182.		Ensure periodic oversight and analysis of the effectiveness of these actions to ensure their reintegration. Timeline: 2 years – 2019-2020
Extend policies that ensure social protection of children who are victims of the worst forms of child labour, to prevent their return to exploitative labour practices.	Implement strategies, policies, and programmes that offer access to and delivery of social and health services to vulnerable and socially excluded, and hard-to-reach households and children,	MoJ, MoL, MSDHS	These should be complemented by social protection floors that are a nationally defined set of basic social security guarantees. Timeline: 1 year – 2019

	including children with special needs.		
	Work towards implementing a system of social protection through, cash transfer schemes; public works; access to credit, insurance and savings schemes; and strengthening and implementing national protection frameworks to protect children from exploitation.		This must serve as a means to support the capacity of families to protect their children. Timeline: 2 years – 2019-2020
Labour market policies should address issues contributing to the worst forms of child labour, in accordance with the ILO Conventions and policy documents.	Regulate the informal economy, where most instances of child labour occur by strengthening labour inspection, and enforcement mechanisms and capabilities.	MoL	There must be one trained and efficient labour inspector per 15,000 workers in Thailand. Timeline: 2 years – 2019-2020
	Create an environment, policies, and mechanisms that contribute to and encourage combating child labour in the supply chain.		Business enterprises should be held accountable for the actions of their subsidiaries and suppliers in this manner. Timeline: 2 years – 2019-2020
	Mechanisms to ensure access to vocational training, as well as employment creation and promotion of decent work for adults and young people.		These actions should be evaluated to determine if it facilitates school to work transition. Timeline: 1 year – 2019
Protection of children from specific groups, including children of migrants and indigenous peoples must be ensured.	Policies and mechanisms must be put in place to provide access to education, health benefits, social security benefits, and other assistance to these children.	MoL, MSDHS	Strict measures for enforcement and monitoring should also be included, through government policies. Timeline: 2 years – 2019-2020
	Programmes for awareness raising amongst these groups must be carried out to dissuade children from having to depend on labour practices that amount to exploitation.		Focus groups and surveys to determine synthesis of this information, must be undertaken. Timeline: 2 years – 2019-2020

5.2. PILLAR III: ACCESS TO REMEDY

Priority Area 1	Access to remedy and compensation by victims of exploitative labour practices		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Strengthen and simplify the	Provide effective and	MoJ	These information and



judicial process for victims of trafficking and forced labour, based on the views of the Special Rapporteur on TIP, especially women and children; in addition to other international legal and policy documents.	accessible information and complaints mechanisms with respect to judicial processes to victims of exploitative labour practices, such as the provision of telephone hotlines with operators speaking multiple languages.		complaints mechanisms, including justice systems and processes must be women and child friendly. Timeline: 3 years – 2019-2021
	Provide victims and their families with adequate and unconditional assistance through the legal process to ensure their protection, rehabilitation, and reintegration, also through measures such as providing funding to NGOs working on access to justice for labour violations.		Access to assistance must be applied to all persons, without discrimination. Timeline: 3 years – 2019-2021
	Disincentives from the legal process for victims should be removed, including the need for trafficking victims to stay in the country in shelters, while the trial is ongoing. Introduce measures that allow victims to participate in the legal process without having to be victimised further, for example, by ensuring legislations that permit video testimony, so victims can participate from their home country, are implemented.		Inspection and monitoring mechanisms should document court cases. Timeline: 3 years – 2019-2021
Provide protection to victims from further harassment and threats during the legal proceedings or trial.	This can be done by denying bail for defendants in trafficking cases, effectively monitoring defendants and others who are involved/ associated, and working to stamp out corruption from law enforcement who may be collaborating with traffickers.	MoJ	This should help ensure that workers who do participate in legal proceedings or are not coerced, bullied or manipulated by those involved in or accused of trafficking. Timeline: 1 year - 2019

6. RECOMMENDATIONS AND ACTION PLAN FOR BUSINESSES: PILLAR II AND PILLAR III

6.1. PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT

Priority Area 1	Adherence to legislations and standards of human rights and labour rights		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline

Businesses must address adverse impacts that directly or indirectly result in exploitative labour practices, in violation of national laws and international standards as set out in the ILO Conventions.	Through policies and practices, workers should be guaranteed the protection of their rights through prioritised action, particular to the sector, industry, and area of operation.	Businesses	Existing policies and modes of implementation must also be mapped for coverage and to determine gaps. Regular reviews and consultations with internal and external stakeholders will help create a robust policy. Timeline: 2 years – 2019-2020
Businesses must be held responsible for the impact of their supply chain and its contribution to exploitative labour practices, determined in accordance with international human rights standards as established by the Universal Declaration of Human Rights (UDHR), ICCPR and ICESCR.	The supply chain recruitment, outsourcing, and subcontracting must be inspected for practices that yield an undesirable impact through standards followed or that are not complied with.	Businesses	This can be undertaken by utilising a due diligence mechanism to identify, prevent, mitigate, and account for actual and potential adverse impacts that contribute to such practices. Timeline: 2 years – 2019-2020
Undertake due diligence processes to determine liability for any violations and the address them.	Businesses should use due diligence mechanisms to identify, prevent, and mitigate violations resulting in work conditions that are exploitative. This can be done by effective monitoring of employees working conditions, keeping accurate employee records, reporting to labour inspectors, and regularly interviewing workers to ensure their rights are being respected.	Businesses	An effective due diligence process must include contributions from workers, CSOs, and individuals and communities affected. They must be incorporated into business practices. Timeline: 2 years – 2019-2020
Workers should be allowed to enjoy all their rights without restrictions.	All businesses must remove limitations imposed on the full enjoyment of workers.	Businesses	Any action placing workers under the control of a business, government or any other actor would amount to such a limitation. Timeline: 1 year – 2019
Align with initiatives that set up codes of conduct and ethics on business engagement with BHR, that comply with standards provided in international legislations and policies.	The frameworks provided by different mechanisms or coalitions, such as the IFC, must be harmonised with international labour and human rights standards particularly with respect to forced labour, modern slavery	Business coalitions and multi-stakeholder initiatives or platforms	While compliance with codes or principles are rewarded, businesses must also be held accountable for violations such as undertaken through the EU yellow card process. Timeline: 1 year – 2019

	and human trafficking.		
Priority Area 2	Raising awareness and empowerment to access human rights and labour rights		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Educate workers and individuals on their rights and remedies available in case of violation of their rights in general, and specifically with respect to practices that amount to exploitative labour practices.	This must include an explanation of human rights and labour rights, under domestic and international legislations and policies. They must also be made aware of processes and policies on grievance redressal, including compensation they are entitled to, in case of violations.	Businesses	Engagement of workers and individuals with their rights is essential and contributes to a more productive workforce, and greater economic development of businesses. Timeline: 2 years – 2019-2020
Adopt a bottom up approach to empower those at the base of the supply chain and the organisational structure of the business and its subsidiaries, to protect themselves.	To achieve this, structural change must address power imbalance to ensure that those whose rights are likely to be violated are in a position to amplify their voices, for them to raise any concerns with respect to the violation of their rights and solutions to the same.	Businesses	Such structural change should be formalised through company policies that address internal structure and place this as a condition on subsidiaries and those part of the supply chain for continuing association with them. Timeline: years – 2019-2021
Priority Area 3	Platform for monitoring and tracking information		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Dedication of resources to ensure supply chain sustainability is essential.	A team of professionals should be responsible for ensuring sustainability in supply chains, by monitoring standards of employment adopted by businesses and individuals. Investment should be set aside to specifically target responsible sourcing from suppliers that abstain from exploitative practices.	Businesses	This should serve to ensure that existing businesses and individuals as well as future entrants in the supply chain do not engage in forced labour, modern slavery or human trafficking. Timeline: 1 year – 2019
Create a platform for data sharing or automated data systems that monitor and track supplier information, such as through blockchain technology.	These platforms or systems should be designed to streamline the determination of where issues manifest that contribute to exploitative labour practices and what the root causes of those issues are. Sharing these at the national or regional level will enhance tracking of the violation of rights, while reducing the	Businesses	This should result in more transparency of the supply chain and the violations that occur therein. Timeline: 3 years – 2019-2021

	resources that have to be dedicated to it.		
6.2. PILLAR III: ACCESS TO REMEDY			
Priority Area 1	Access to remedy and compensation by victims of exploitative labour practices		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Create complaint mechanisms for workers and individuals affected, to raise concerns regarding their rights.	The mechanisms set up must be independent and fair, with dedicated personnel who have the power to act to remedy abuses. The person in charge must have decision-making power and fix a clear timeframe to solve problems.	Businesses	The mechanism must receive the concerns of workers and takes steps to remedy any present or future violations, with worker participation. Timeline: 1 year – 2019
Grievance redressal mechanisms, conducted within a company must provide an effective remedy.	Compensation must be provided for the actual loss to livelihood, the loss caused by unintended deficiencies and the cost incurred as a result of legal proceedings. The business must make contributions to a remedy fund that can be used in the case of violations.	Businesses	Compensation must be full and adequate and cover any loss of occupation and livelihood. Timeline: 1 year – 2019
Provide legal support to individuals whose rights have been violated as result of exploitative labour practices.	Businesses must provide monetary and logistic support, to these individuals in order for them to access remedies – without any attempt to influence the decision. They must also refrain from filing defamation suits against victims of rights violations, without a legal basis.	Businesses	Compensations obtained must be sufficient and effective. It may be monetary or resource based, and rehabilitative or restitutive in nature. Timeline: 1 year – 2019

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- ⁴ Manushya Foundation conducted two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the National Action Plan on Business and Human Rights. The First Experts’ Meeting aimed at Informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts’ Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018). Please see: Manushya Foundation, *Executive Summary: First Experts Meeting to inform the independent national baseline assessment on business and human rights in Thailand, 2-3 September 2017*, (2017), available at: <https://www.manushyafoundation.org/single-post/RELEASE-OF-FIRST-BHR-NBA-EXPERTS-MEETING>; and Manushya Foundation, *Executive Summary: Second Experts Meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand, 28 February-1 March 2018*, (2018), available at: <https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-SECOND-BHR-NBA-EXPERTS-MEETING>
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MANUSHYA
Empowering Communities | Advancing Social Justice

Founded in 2017, Manushya Foundation serves as a bridge to engage, mobilise, and empower agents of change by: connecting humans through inclusive coalition building and; by developing strategies focused at placing local communities' voices in the centre of human rights advocacy and domestic implementation of international human rights obligations and standards.

Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to ensure they can constructively raise their own concerns and provide solutions in order to improve their livelihoods and the human rights situation on the ground.