

# GENDER-BASED DISCRIMINATION AND SEXUAL HARASSMENT IN THE WORKPLACE IN THAILAND

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

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MARCH 2019



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Manushya Foundation  
& Thai BHR Network,  
*Gender-based Discrimination  
and Sexual Harassment in the  
Workplace in Thailand. 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>

## SPECIAL THANKS

On behalf of Manushya Foundation, I would like to convey our sincere gratitude to all the individuals who have engaged in our business and human rights strategy, who have all contributed sincerely and meaningfully to the development of the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand, and who all share our common vision of communities at the heart of our work, thus bringing to focus and empowering local and affected communities to be at the center of the business and human rights response in Thailand.

We are eternally grateful to the national, regional and international experts that dedicated their time, their invaluable support and guidance to help our organisation and the community members we work with, comprising the Thai BHR Network; to understand the language of business and human rights (BHR), its application in the region and internationally that in turn contributed to the successful collection and collation of evidence-based data and information into our own Independent CSO National Baseline Assessment (NBA) on business and human rights in Thailand. In this regard, we are especially grateful to **Commissioner Angkhana Neelapaijit** of the National Human Rights Commission of Thailand (NHRCT) for her invaluable expertise on the protection of human rights defenders and on the importance of applying a gender lens in the context of business and human rights in Thailand; **Ms. Debbie Stothard** for her extensive contribution with capacity building on business and human rights achieved through workshops conducted together with ALTSEAN-Burma; **Mr. Prabindra Shaky**a for sharing his knowledge and expertise on the application of the UN Guiding Principles on Business and Human Rights (UNGPs) particularly on issues related to indigenous peoples; **Ms. Golda Benjamin** for her direction on the methods to document cases arising out of adverse business conducts; **Ms. Patchareeboon Sakulpitakphon** for imparting to communities an understanding on the responsibility of companies with regards to Pillar 2 of the UNGPs; **Ms. Cindy Woods** for providing an insight into existing National Action Plans on Business and Human Rights and the necessity for a National Baseline Assessment; **Professor Vitit Muntarbhorn** for his invaluable remarks, contributions and support to community researchers and the work of Manushya Foundation; and **Professor Surya Deva** for his support and important recommendations for the development of a meaningful National Action Plan (NAP) on Business and Human Rights (BHR).

We also would like to pay a special tribute to **Ms. Nattaporn Artharn**, who we owe a debt of gratitude to, for her constant and steadfast support, her meaningful contribution serving as our Community Empowerment Coordinator from 2017-2018, for the roll-out of our regional NBA dialogues and BHR capacity building workshops, for her dedication in empowering grassroots communities throughout all our events, for her invaluable grounded knowledge and positive spirit, and also for the inspiration she has granted to the shaping of our work on business and human rights by placing the concerns and solutions of communities at the center of all processes and content.

Manushya Foundation also extends its genuine appreciation and thanks to the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ), in particular **Ms. Nareeluc Pairchaiyapoom**; Former Thai representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), **Dr. Seree Nonthasoot**; and **Dr. Netithorn Praditsarn** of UN Global Compact Network of Thailand, for their acknowledgment of our work and the contributions made by representatives from our community coalition. We are particularly grateful for the safe space provided by the cooperation with the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ) in implementing Manushya Foundation's business and human rights' strategy; in particular, the co-hosting of four Regional National Baseline Assessment Dialogues (January-March 2017), the first experts meeting to inform the independent national baseline assessment on business and human rights in Thailand (2-3 September 2017), and the 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).

Manushya Foundation, also expresses its heartfelt gratitude and deepest appreciation to all the grassroots community members, civil society and academics who are part of the Thai BHR Network, and partners who joined in their individual capacity, 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, LGBTI individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders, the impact of Thai outbound investments and trade agreements*. We are forever thankful to them for the important contribution of their valuable time, their knowledge, their unique insight into their experiences and the situation on the ground in Thailand, and for providing meaningful input into the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand, and/or critical comments into the draft NAP on BHR. These individuals include the following:



1. Amao Pongpanawan, Ethnic Peoples Development Foundation
2. Amporn Pripanasumpun, Indigenous Women Network of Thailand (IWNT)
3. Anuwat Promma, New Esaan Movement
4. Asmah Tanyongdao, Secretary Board Member of Manushya Foundation
5. Asmee Pu, Saiburi Basin of a River Youth Network
6. Buppavan Angkurasee, Amnat Charoen Women's Friend Center
7. Busayapa Srisompong, SHero & Migrant Rights Promotion Working Group (MRPWG)
8. Chainarong Sretthachau, Mahasarakham University
9. Chatchalawan Muangjan, EMPOWER Foundation
10. Chatjaporn Loyplew, Rak Talae Thai Association
11. Direk Hemnakorn, Thepa Community Leader, Green World Network
12. Dr. Somnuck Jongmeewasin, Silpakorn University International College
13. Jetsada Taesombat, The Foundation of Transgender Alliance for Human Rights (Thai TGA)
14. Jintana Srinudet, Consumer Rights Association
15. Jitti Pramongkit, Indigenous Women Network of Thailand (IWNT)
16. Jum Veerawan, Sangsan Anakot Yawachon Development Project
17. Junnapa Kuendee, Assembly of the Poor & Samacha Khon Jon Korani Kuen Pakmoon
18. Kanda Pramongkit, Indigenous Women Network of Thailand (IWNT)
19. Kanlaya Chularattakorn, Indigenous Women Network of Thailand (IWNT)
20. Kannikar Siriwong, Indigenous Women Network of Thailand (IWNT)
21. Kaosar Aleemama, Muslim Attorney Centre Foundation (MAC)
22. Kath Khangpiboon, Thammasat University
23. Katima Leeja, Indigenous Women Network of Thailand (IWNT)
24. Kieratikarn Techavadranakool, Rainbow Dream
25. Kittisak Rattanakrajangsri, Asia Indigenous Peoples Pact (AIPP) & Indigenous Peoples' Foundation for Education and Environment (IPF)
26. Kongpop Sennunta, Migrant Workers Federation (MWF)
27. Krisda Tuprung, CRC Coalition Thailand
28. Kraitong Ngamsurach, Valeo Rayong Labour Union
29. Krittipong Joopoh, Organic Family
30. Kunlakan Jintakanon, Network of Women Living with HIV in Thailand
31. Laofang Bundidterdsakul, Legal Advocacy for Indigenous Communities (LACIC) Thailand



32. Malinee Vachsook, Network of Women Living with HIV in Thailand
33. Manavee Dengdo, Land rights Activist, Budo Community
34. Manop Keawphaka, HomeNet Thailand
35. Manop Sanid, Change East Network
36. Manop Yasanop, Dignity Return Thai Informal Workers
37. Matcha Phorn-In, Sangsan Anakot Yawachon Development Project
38. Nada Chaiyajit, Intersex activist
39. Nan San May Khine, MAP Foundation
40. Napaporn Songprang, Vice-Chair of Manushya Foundation
41. Nattaporn Artharn, Coordinator of Ban Na Moon-Dunsad Environmental Conservation Group
42. Nattawut Chotikan, Faculty of Law, Thaksin University
43. Nattawut Kasem, Environmental Justice Foundation (EJF)
44. Nattawut Sriermthong, Thai Network of People Who Use Drugs (TNPUD)
45. Nattaya Petcharat, STELLA Maris Songkla
46. Nisararat Jongwisan, Tamtang Group
47. Nitaya Chuchuen, M-Moon
48. Nittaya Muangklang, Esaan Land Reform Network (ELRN)
49. Nongair Sairongyamyen, Sangsan Anakot Yawachon Development Project
50. Noppanai Rittiwong, SWING Foundation
51. Noreari Thungmuangthong, Indigenous Women Network of Thailand (IWNT)
52. Pairach Aurfur, Forersia Emission Control Technologies Labour Union
53. Pakorn Areekul, Political activist
54. Panjit Kaewsawang, Women's Rights Activist
55. Panachai Chanta, Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)
56. Pathompong Serkpookiaw, Thai Network of People Who Use Drugs (TNPUD)
57. Phnom Thano, Indigenous Peoples' Foundation for Education and Environment (IPF)
58. Preeyapat Butprasert, Health and Opportunity Network (HON)
59. Punyaphat Kamonnet, Land Rights Activist
60. Punya Chusiri, Network of People Living with HIV in Thailand
61. Puttan Sakaekhum, The State Enterprise Workers' Relations Confederation (SERC)
62. Puttinee Gopatta, HomeNet Thailand
63. Ratchayaporntawee Tanawatthewakul, Health and Opportunity Network



64. Rattathammanoon Meepon, Andaman Power Phuket
65. Rokeeyoh Samaae, Thepa Community, Green World Network
66. Saovane Kaewjullakarn, Thaksin University
67. Saowalack Pratumthong, Rak Talae Thai Association
68. Saowalak Thongkuay, Disabled Peoples' International Asia-Pacific Region (DPI/AP)
69. Saranya Boonpeng, Network of Women Living with HIV in Thailand
70. Saranya Katalo, Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)
71. Sarawut Pinkanta, Center for Protection and Revival of Local Community Rights (CPCR)
72. Sarayuth Rittipin, Esaan Land Reform Network (ELRN)
73. Siribhadee Yensiri, Esaan Land Reform Network (ELRN)
74. Sirisak Chaited, LGBTI Activist & Sex Worker Activist
75. Sitifatimao Maauseng, Heart Support Group (Children in Deep South)
76. Sitthichai Tanoothong, Nakornnayok River Conservation Network
77. Sommai Chanthawong, EMPOWER Foundation
78. Somboon Kamhaeng, Community Leader, Pak Bara Seaport
79. Sompha Chaikla, Taphan Community Organization Council
80. Sompol Sitthiwetch, Andaman Power Phuket
81. Sompong Sakaew, Labour Rights Protection Network (LPN)
82. Sompong Viengchan, Woman Community Leader, Pak Mun Dam
83. Somyot Tohlang, Community member, Pak Bara Seaport
84. Suchart Intha, Migrant Workers Federation (MWF)
85. Sugarnta Sookpaita, Migrant Workers Federation (MWF)
86. Sulaiporn Chonwilai, Tamtang Group
87. Sumitchai Hattasan, Center for Protection and Revival of Local Community Rights (CPCR)
88. Sunaruk Kaeonukun, Network of People Living with HIV in Thailand
89. Supachai Niyompong, Rung Andaman Phuket
90. Supawat Samurpark, Disabled Peoples' International Asia-Pacific Region (DPI/AP)
91. Tee Nayod, Migrant Workers Federation (MWF)
92. Thankamol Bunchai, M-Moon
93. Thanunchay Svittnuntachai, Elderly Catholic Association
94. Thawatchai Khanawiwat, Plan International
95. Thissadee Sawangying, Health Opportunity Network (HON)



96. Thitiya Chutipun, Singburi Community Organisation Council/Singburi Women Group
97. Titipol Phakdeewanich, Ubon Ratchathani University
98. Udom Ngammuangsakul, University of Phayao
99. Vaewrin Buangoen, Kon Rak Ban Haeng Conservation Group (KRBH)
100. Varinyupa Buranaareepong, Asylum Access Thailand
101. Wanitchaya Kanthayuang, Indigenous Women Network of Thailand (IWNT)
102. Wannapong Yodmuang, Transwoman Activist
103. Watcharachai Jirajindakul, National Institute of Development Administration (NIDA)
104. Watchree Sirimaha, Network of People Living with HIV in Thailand
105. Wattana Sansa, YMP Labour Union
106. Winai Payakko, AGC Thailand Labour Union
107. Wimonrekha Sirichairawan, University of Phayao
108. Wipawee Silpitaksakul, Plan International Thailand
109. Wiraphat Wilaisilpdeler, Foundation For Older Persons' Development (FOPDEV)
110. Wiroon Sakaekhum, The State Enterprise Workers' Relations Confederation (SERC)
111. Witoowat Thongbu, Legal Center for Human Rights

Finally, Manushya Foundation would like to thank all the individuals who have participated and/or been supportive of all our business and human rights activities from 2017 till date, who we have not been able to name above, but who we still keep close to our hearts.

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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## ACKNOWLEDGMENTS

Manushya Foundation would like to sincerely thank everyone who contributed to the realisation of this Thematic Assessment Chapter on Gender-based Discrimination and Sexual Harassment in the Workplace in Thailand in the context of Business and Human Rights (BHR) in Thailand. In particular, Manushya Foundation would like to express its deep appreciation to all members of the Thai BHR Network — in particular, environmental human rights defenders (EHRDs), indigenous peoples, grassroots communities, civil society organisations (CSOs), local and national academics and experts for their invaluable inputs throughout the implementation of Manushya Foundation’s business and human rights strategy and activities (Regional BHR workshops to demystify corporate accountability to HRDs and BHR Coalition building workshop), and the National Baseline Assessment (NBA) regional dialogues as well as two experts meetings held in 2017 and 2018 to inform our NBA on BHR.

Special thanks are also given to Manushya Foundation team members who developed this thematic assessment chapter, by conducting: desk research, analysis and writing, studying the international and national legal frameworks, analysis of the UNGPs, incorporating the voices and recommendations from the Thai BHR Network, and providing further analysis of good practices and development of the proposed action plan. These individuals are: Ms. Emilie Pradichit, Founder & Director, Manushya Foundation and Ms. Ananya Ramani, Human Rights Research & Advocacy Officer. Manushya Foundation is also grateful to the following individuals for their research and design assistance: Ms. Tanida Itthiwat, Human Rights Research & Documentation Officer, Manushya Foundation; Ms. Christina Burchia, Human Rights Intern, Manushya Foundation; Ms. Evie van Uden, Human Rights & Development Researcher, Manushya Foundation; Ms. Laurène Cailloce, Research & Communications Volunteer, Manushya Foundation, and Ms. Aurore Lent, Human Rights & Development Intern.

Manushya Foundation would also like to acknowledge the financial contribution of Internews, which kindly supported the implementation of Manushya’s BHR strategy and the development of the independent CSO NBA on BHR. We are particularly thankful to Mr. Brian Hanley, Asia Regional Director, Internews, and Ms. Carolann Minnock, former Thailand Country Director, Internews.



## ABBREVIATIONS

<b>ACWC</b>	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>B.E.</b>	Buddhist Era
<b>BHR</b>	Business and Human Rights
<b>CDA</b>	Constitutional Drafting Assembly
<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>CED</b>	International Convention for the Protection of All Persons from Enforced Disappearance
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEO</b>	Chief Executive Officer
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CGA</b>	Country Gender Assessment
<b>CRC</b>	Committee on the Rights of the Child
<b>CrCF</b>	Cross Cultural Foundation
<b>CSO</b>	Civil Society Organisations
<b>CSR</b>	Corporate Social Responsibility
<b>EHRDs</b>	Environmental Human Rights Defenders
<b>EIAs</b>	Environmental Impact Assessments
<b>EVAW</b>	Elimination of Violence Against Women
<b>FAO</b>	Food and Agriculture Organisation of the United Nations
<b>GDP</b>	Gross Domestic Product
<b>HIV</b>	Human Immunodeficiency Virus
<b>HRC</b>	Human Rights Council
<b>HRD</b>	Human Rights Defender
<b>HRDD</b>	Human Rights Due Diligence
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICMW</b>	The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>ILO</b>	International Labour Organisation
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex
<b>MoJ</b>	Ministry of Justice
<b>MoL</b>	Ministry of Labour
<b>MoPH</b>	Ministry of Public Health
<b>MSDHS</b>	Ministry of Social Development and Human Security
<b>NAP</b>	National Action Plan
<b>NBA</b>	National Baseline Assessment
<b>NCPO</b>	National Council for Peace and Order
<b>NGO</b>	Non-Governmental Organisation



<b>NHRCT</b>	National Human Rights Commission of Thailand
<b>NLA</b>	National Legislative Assembly
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>RLPD</b>	Rights and Liberties Protection Department
<b>RPA</b>	Regional Plan of Action
<b>RPCA</b>	Royal Police Cadet Academy
<b>RTG</b>	Royal Thai Government
<b>RTPO</b>	Royal Thai Police Office
<b>SDGs</b>	Sustainable Development Goals
<b>SMEs</b>	Small and Medium-Sized Enterprises
<b>STEM</b>	Science, Technology, Engineering and Mathematic
<b>STI</b>	Sexually Transmitted Infection
<b>SOGIE</b>	Sexual Orientation, Gender Identity and Expression
<b>SOGIESC</b>	Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics
<b>THB</b>	Thai Baht
<b>TLS</b>	Thai Labour Standards
<b>UN</b>	United Nations
<b>UNDOC</b>	United Nations Office of Drugs and Crime
<b>UNDP</b>	United Nations Development Program
<b>UNGC</b>	UN Global Compact
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>UPR</b>	Universal Periodic Review
<b>WHO</b>	World Health Organisation
<b>WHRD</b>	Women Human Right Defenders
<b>WorLorPor Committee</b>	Committee on Consideration of Unfair Gender Discrimination





## 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 Business and Human Rights (BHR) with the view to implement the UN Guiding Principles on Business and Human Rights (UNGPs), Manushya developed a strategy<sup>1</sup> aiming at empowering communities to be at the centre of the BHR 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 BHR 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 that 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".<sup>2</sup> 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), the impact of Thai outbound investments and trade agreements.*

As part of its Business and Human Rights 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)<sup>3</sup>, 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).<sup>4</sup>

In order to guarantee safety of local communities and human rights defenders 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 National Action Plan on Business and Human Rights, following our key four priority areas. This Thematic Assessment Chapter on Gender-based Discrimination and Sexual Harassment in the Workplace covers all four priority areas of Manushya Foundation and the Thai BHR Network's Independent CSO NBA on BHR in Thailand, to ensure women's concerns, challenges, and solutions are taken into consideration throughout.<sup>5</sup> This includes women in the workplace, women impacted by business and development projects, and women from marginalised communities, including, but not limited to, indigenous women, women from ethnic minority backgrounds, migrant women, women who identify as part of the LGBTI or Sexual orientation, Gender identity, Gender expression, and Sex characteristics (SOGIESC) communities, women with disabilities, and women survivors of violence and abuse.

Manushya Foundation and the Thai Business & Human Rights Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and NGOs together ensure local communities are central to the BHR response and discourse in Thailand. They 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 on 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 Gender-based Discrimination and Sexual Harassment in the Workplace in Thailand in the context of BHR in Thailand relies on primary and secondary data and resources. Firstly, primary sources, including voices, concerns, cases, experiences and recommendations of local communities and experts, were collected directly from Manushya Foundation's BHR activities; including:

- Four Regional NBA Dialogues on BHR conducted from January to March 2017<sup>6</sup>;
- Four regional capacity building workshops on Business and Human Rights to demystify corporate accountability to HRDs<sup>7</sup> 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)<sup>8</sup> and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018)<sup>9</sup>; and
- The BHR Coalition Building Workshop held on 18-20 November 2017.<sup>10</sup>

Secondly, this Thematic Assessment Chapter is based on desk-research and presents an analysis of the international, regional and national legal and policy framework 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.

### Limitations of the Thematic Assessment Chapter on Gender-based Discrimination and Sexual Harassment in the Workplace

The *Thematic Assessment Chapter on 'Gender-based Discrimination and Sexual Harassment in the Workplace in Thailand in the context of Business and Human Rights in Thailand'* is informed by our desk research of existing secondary evidence, coupled with input and first-hand accounts gathered throughout Manushya Foundation's business and human rights strategy. The Thematic Assessment Chapter does not have the intention to present the most comprehensive assessment of the situation on the ground, but only translates realities as available through the conduct of a literature review of secondary evidence existing in English language, and captures first-hand accounts shared by Thai local and affected communities who engaged in our BHR strategy. These individuals comprise the Thai BHR Network and their communities, who do not represent the opinions of all CSOs working on BHR in Thailand. Further, this Thematic Assessment Chapter does not provide a list of all the cases of rights violations and adverse impacts caused by the activities of Thai companies. Nevertheless, the case studies and voices selected and included in this Chapter demonstrate the challenges faced by affected communities on the ground, and are representative of trends and patterns of adverse business conducts and operations in Thailand and abroad. Finally, this Chapter does not analyse the level to which Thai companies comply with the UNGPs and existing sustainability and human rights standards as enshrined in Thai policies. The Thematic Assessment Chapter focuses on the duty of the Thai State, the legislative and policy gaps and failures to protect human rights in business contexts and to hold companies accountable for their adverse human rights impacts. Despite that, the Thematic Assessment Chapter on Gender-based Discrimination and Sexual Harassment in the Workplace in Thailand in the context of BHR in Thailand shares good practices for businesses to follow, as well as a business-oriented action plan, in compliance with Pillar 2 of the UNGPs, which could be a starting point for Thai companies to ensure responsible business conducts.



The **Gender Lens Working Paper** applies to all four Priority Areas of Manushya Foundation and the Thai BHR Network's Independent CSO NBA on BHR in Thailand, **ensuring women's concerns, challenges, and solutions are taken into consideration throughout.**<sup>11</sup> This includes women in the workplace, women impacted by business and development projects, and women from marginalised communities, including, but not limited to, indigenous women, women from ethnic minority backgrounds, migrant women, women who identify as part of LGBTIQ+ or SOGIESC communities, women with disabilities, and women survivors of violence and abuse.





## Gender-based Discrimination and Sexual Harassment in the Workplace in Thailand

### CONTEXT

A gender lens in the framework of BHR is fundamental: while being disproportionately affected by adverse business-related human rights impacts, women are often excluded from processes of implementing the UNGPs on BHR, exposing them to different human rights violations as well as leaving them out of business-related decision-making processes, negotiations or implementation of development projects. Gender is intertwined with business and human rights in regard to several topics, including, but not limited to: employment and labour rights; land and natural resources; trade and investment, and access to effective remedy.<sup>12</sup>

Firstly, regarding employment in Thailand, discrimination and sexual harassment against women and sexual minority groups in the workplace remain serious issues that affect the lives of numerous individuals. The pervasive nature of both severely undermines Thailand's ability to fulfil its international rights obligations and carry out the post-2015 UN development agenda. Sexual harassment in the workplace in Thailand is very prevalent, largely due to the absence of laws and regulations explicitly prohibiting it. This was highlighted by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in its sixth and seventh periodic reports on Thailand.<sup>13</sup> Further, a 2007 report by the World Health Organisation (WHO) found that physical or sexual harassment was present in 23 to 40% of workplaces in Thailand,<sup>14</sup> and one hotline centre's report indicated that 70% of complaints received came from the government sector.<sup>15</sup> The same WHO report also points out that those who experience sexual harassment often face negative consequences when they attempt to report it, such as threats and defamation, often resulting in victims quitting their job.<sup>16</sup> This may be related to representation within certain industries. Male-dominated work places "tend to have cultural norms that support sexual bravado, sexual posturing and the denigration of feminine behaviour", which often translates into higher levels of sexual harassment.<sup>17</sup>

According to the Thailand National Commission on Women's Affairs, 67% of women in Thailand are in the workforce (the highest ratio in the Asia Pacific region) and comprise 47% of the workforce in the country.<sup>18</sup> Despite these high levels of participation, the Women's Network for the Advancement and Peace Thailand identifies the existence of repeated violations and an inherent practice of gender-based discrimination in Thailand in many aspects of employment, including recruitment, promotion, and retirement age.<sup>19</sup> This can have particularly detrimental effects on women who work within their homes, in the informal sector, or in the export-processing sector, having less access to labour welfare policies.<sup>20</sup> For example, a disparity between the retirement ages of men and women was identified, with many factories setting a retirement age of 55 for women and 60 for men.<sup>21</sup> In the formal sector, wage inequality is still an issue. Due to increased educational attainments by women, the gender wage gap has decreased in recent decades. However, in 2013 the gender wage gap sharply increased.<sup>22</sup> This reflects the way gender-based discrimination favours men and continues to negatively impact women within the labour market.<sup>23</sup>

Social norms and traditional gender roles, such as those around care work, coupled with gendered parental leave policies and lack of government subsidised child care leads to economic disempowerment and unequal access to the labour market for women.<sup>24</sup> These disparities do not only have detrimental impacts on the social and economic well-being of women, but can also impact the economy as a whole. As noted by the World Economic Forum 2017 *Global Gender Gap Report*, the East Asia and Pacific region loses US\$42-47 billion annually as a result of women's restricted access to



employment opportunities.<sup>25</sup> The McKinsey Global Institute, in a 2015 global report on the power of parity, contend that if gender equality in terms of women's economic participation was improved in Thailand, the country could see an incremental US\$70 billion improvement in business-as-usual Gross Domestic Product (GDP).<sup>26</sup>

While Thailand has made noticeable steps of improvement in addressing issues of gender inequality with the passage of the Gender Equality Act, the exemptions in the Gender Equality Act of 2015 present a serious barrier to combating discrimination experienced by women and sexual minorities in the workplace. These exemptions can be used as a loophole to justify discrimination against women and LGBTI individuals, thereby weakening discrimination laws in general, and casting gender equality as conditional.

In addition to discrimination against women, LGBTI individuals also continue to face discrimination within the labour market and in the workplace. According to a 2018 study by the International Labour Organisation (ILO) and the United Nations Development Program (UNDP) on workplace discrimination against LGBTI people, 23% of respondents in Thailand reported experiencing discrimination, bullying or harassment at their workplace because of their SOGIESC.<sup>27</sup> Higher levels of discrimination were reported in state-owned enterprises and national and local government enterprises.<sup>28</sup> Finding employment as an LGBTI person in Thailand can be challenging, with 28% of respondents stating that they may have been denied a job because of their SOGIESC.<sup>29</sup> This equates to working environments lacking representation. While the majority of persons in positions of power are heterosexual and cisgender men, internal cultures which allow harassment and discrimination will continue unabated.

As it is the case with gender discrimination, discrimination against sexual minorities because of SOGIESC has grievous impacts on individuals as well as much larger ramifications. LGBTI people who faced discrimination in their workplace were reported more likely to quit their workplace.<sup>30</sup> Even if LGBTI persons withstand adverse conditions within their work place, they face issues of discrimination throughout the employment cycle, such as unequal remuneration, job training, career development, future job security, and social security upon retirement.<sup>31</sup> The waste of human potential and loss of potential economic output due to harassment and discrimination of LGBTI persons in the workplace and denial of work for LGBTI persons adds up at a larger economic scale.<sup>32</sup>

Furthermore, women face additional discrimination and abuse as they are more likely to belong to other marginalised categories of workers, such as migrant workers, domestic or informal sector workers or sex workers. As such, they are often excluded from labour laws, labour rights protections and standards, and decent working conditions.

Finally, women are adversely impacted by business activities in regards to their access to effective remedies: women and girls are discriminated against and excluded from judicial and non-judicial remedies for business-related human rights abuses, while grievance mechanisms for sexual and gender-based violence are generally inadequate.<sup>33</sup> Additionally, a common obstacle to access to remedy is the lack of accountability for the violations committed by businesses against women's human rights and the non-recognition of land rights to women, which allows corporations to exploit the natural resources on their land.

## 1. INTERNATIONAL & NATIONAL LEGAL AND POLICY FRAMEWORK: Existing Laws and Policies, Gaps and Legal Challenges

### 1.1. International Human Rights Standards

Legally binding core international human rights treaties related to gender-based discrimination ratified by Thailand are (1) *International Covenant on Civil and Political Rights (ICCPR)* 1966, ratified on 29 October 1996; (2) *International Covenant on Economic, Social and Cultural rights (ICESCR)* 1966, ratified on 5 September 1999; (3) *Convention on the Elimination of All Forms of Discrimination Against Women* 1979, ratified on 9 August 1985; and (4) *Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* 1966, ratified on 28 January 2003. Another core international human rights instrument related to gender-based discrimination is the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)* 1990. However, this Convention is not ratified by Thailand.

Besides core international human rights instruments, ILO established various Conventions and Declarations related to gender-based discrimination in the workplace. The ones ratified by Thailand are (1) *ILO Equal Remuneration Convention No. 100*, ratified on 8 February 1999; (2) *ILO Discrimination (Employment and Occupation) Convention No. 111*, ratified on 13 June 2017; and (3) *ILO Declaration on the Fundamental Principles and Rights at Work*, which does not require any ratification.

ILO Conventions related to gender-based violence that Thailand has not ratified are:

- *ILO Occupational Safety and Health Convention No 155*, which prescribes occupational safety and health in all sectors of employment;<sup>34</sup>
- *ILO Workers with Family Responsibilities Convention No. 156* which applies to both men and women workers;<sup>35</sup>
- *ILO Maternity Protection Convention No. 183* which applies to all employed women, including those in atypical forms of dependent work, and sets out the standards for maternity protections;<sup>36</sup>
- *ILO Migration for Employment Convention No. 97* which focuses on international migration for employment, the recruitment of migrants, and conditions of work in the host country that include non-discrimination on wages, union activities, benefits, and social security;<sup>37</sup>
- *ILO Migrant Workers (Supplementary Provisions) Convention No. 143* which deals with the rights of migrants in irregular situations and addresses issues such as abusive conditions;<sup>38</sup>
- and *ILO Domestic Workers Convention No. 189*, which obliges States Parties to effectively promote and protect the human rights of all domestic workers, including by providing decent working conditions, eliminating all forms of forced or compulsory labour, and eliminating discrimination related to employment and occupation.<sup>39</sup>

Lastly, Thailand has adopted the non-binding *Beijing Declaration and Platform for Action 1995*.

#### 1.1.1. International Covenant on Civil and Political Rights

Ratified by Thailand in 1996, the ICCPR enshrines the rights of all people in terms of non-discrimination and equality. Specifically, Common Article 2 of the ICCPR and the ICESCR calls on State Parties to “respect and ensure to all individuals [...] the rights recognised in the present Covenant without distinction of any kind, such as [...] sex”.<sup>40</sup>

#### 1.1.2. International Covenant on Economic, Social and Cultural Rights

Ratified by Thailand in 1999, the ICESCR sets forth the principle of non-discrimination, guaranteeing that the rights in the Covenant must be exercised without discrimination of any kind. Articles 6 and 7 set out rights with regards to employment, including the right to work, and the right to just and favourable working conditions.<sup>41</sup> General comment No. 23 states that State Parties should

demonstrate they “have taken all steps necessary towards the realisation of the right within their maximum available resources”, and that any failure to take such steps “amounts to a violation of the Covenant”.<sup>42</sup> It further recommends the introduction of “quotas or other temporary special measures to enable women and other members of groups that have experienced discrimination to reach high-level posts and provide incentives for the private sector to do so”.<sup>43</sup>

The Committee on Economic, Social and Cultural Rights (CESCR), has commented specifically on harassment in the workplace on the basis of sex, sexual orientation, gender identity, and intersex status, among others. The report lists nine minimal elements that should be included in national policy and applied to both the public and private sectors in regards to sexual harassment. This includes the provision of an explicit definition of sexual harassment in the workplace, mandatory training for all employees, and ensuring victims have access to justice.<sup>44</sup> On the subject of gender equality, the report notes that in order to ensure the equal treatment of female workers, State Parties need to address “structural obstacles that perpetuate gender inequality” such as traditional gender roles and intersectional discrimination.<sup>45</sup> Upholding gender equality does not mean treating women as a special group, but instead requires State Parties be cognisant of the differing needs of female and male workers at different points throughout their life cycle, and be aware of elements like provision of child care and safety for pregnant workers.<sup>46</sup>

Finally, the CESCR also underlined that sex workers are protected under the Convention and that States should take appropriate measures to protect them from all forms of violence, coercion, and discrimination as well as provide them access to sexual and reproductive health-care services.<sup>47</sup>

### **1.1.3. The Convention on the Elimination of All Forms of Discrimination Against Women**

Ratified by Thailand in 1985, CEDAW is a foundational document on the equal treatment of women and elimination of discrimination against them. The Convention explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasises that such discrimination “violates the principles of equality of rights and respect for human dignity”.<sup>48</sup> As defined in Article 1, discrimination is understood as “any distinction, exclusion or restriction made on the basis of sex [...] in the political, economic, social, cultural, civil or any other field”.<sup>49</sup> Article 3 of the Convention gives positive obligation towards the principle of equality by requiring States parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”.<sup>50</sup> This means that States have a duty to address discriminatory laws and take measure to halt discrimination against women committed by third parties, including by engaging with business enterprises for them to adopt measures towards this goal.<sup>51</sup> Article 11 deals explicitly with employment and work, equating women’s right to equal rights in all aspects of this, and prohibiting discrimination on the grounds of marriage or maternity with regards to employment. It calls on State Parties to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure [...] their right to work”.<sup>52</sup> Finally, Article 14 specifically addresses discrimination against rural women, and provides that States should take necessary measures to ensure that they have equal access to economic opportunities through employment or self-employment, organising self-help groups and/or cooperatives.<sup>53</sup>

Furthermore, the Committee on the Elimination of Discrimination Against Women issued several recommendations that are relevant to women and BHR, among which are topics such as: equal remuneration for work of equal value (General Recommendation No. 13); unpaid women workers in rural and urban family enterprises (General Recommendation No. 16); measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product (GDP) (General Recommendation No. 17); political and public life (General





Recommendation No. 23); women migrant workers (General Recommendation No. 26), and the rights of rural women (General Recommendation No. 34).<sup>54</sup>

Specifically, General Recommendation No. 25 states that the identical treatment of women and men “is not enough”, and that “non-identical treatment of women and men will be required” so as to take biological, as well as socially and culturally constructed differences into account and rectify underrepresentation of women and ensure the redistribution of power.<sup>55</sup> One mechanism that can be used to achieve this is the introduction of quota systems within public and private enterprises.<sup>56</sup> Laws and quota systems, however, must be coupled with changes to internal cultures of enterprises and the power dynamics that exist within them. Change must be undertaken in a participatory manner, with key stakeholders at the centre of these processes.

General Recommendation No. 23 highlights the responsibility of States to implement Article 7 of CEDAW and thus, the need to ensure the participation of women in the political and public life on equal terms with men, including in the ‘formulation of government policy and the implementation thereof’ as well as their participation in NGOs and associations.<sup>57</sup> Historically, women have been excluded from the public life and decision-making processes due to their role in the private or domestic sphere, and are as such treated as inferiors, while men prevailed respected and honoured in political life. Due to these stereotypes and social beliefs, the adoption of temporary special measures is necessary for the participation of women in public life as well. The Committee also emphasises the importance of women’s economic independence as a means for them to participate actively in the public life.<sup>58</sup>

General Recommendation No. 26 affirms that women migrant workers are entitled to the protection of their human rights as well as protection from discrimination.<sup>59</sup> However, violations to human rights of women migrant workers happen in countries of origin, countries of transit, and in countries of destination, where they are more likely to face discrimination and restrictions in employment, finding occupations only in the informal and entertainment sectors. Furthermore, they often have to accept harsh or unequal conditions and terms of work, and experience intersecting forms of discrimination. They are unable to access health services, are more at risk of sexual abuse, sexual harassment and physical violence, and have limited access to justice.<sup>60</sup> States where migrant women work have responsibilities regarding their human rights and they need to remove discriminatory bans and provide equal legal protection to all workers.<sup>61</sup>

Finally, General Recommendation No. 34, together with Article 14 of CEDAW, is the first international instrument specifically addressing the rights of rural women.<sup>62</sup> The Committee recognises in this recommendation how rural women “continue to face systematic and persistent barriers to the full enjoyment of their human rights” and how their rights and needs “remain insufficiently addressed or ignored in laws”.<sup>63</sup> Barriers and violations are also present in their right to work, as they face unequal access to income diversification opportunities, have limited opportunities to obtain paid employment, and are disproportionately present in the informal sector, working “extremely long hours in low-skilled, part-time, seasonal, low-paid or unpaid jobs, home-based activities and subsistence farming”. Being the majority of agricultural workers, rural women also face higher risks to their health and other related complications due to the use of fertilisers and pesticides. However, they are underrepresented in agricultural organisations or cooperatives. The Committee reminds that States have a duty to promote and ensure in their legal frameworks the right to decent working conditions, equal pay, and labour force representation of rural women.<sup>64</sup>

#### **1.1.4. The International Convention on the Elimination of All Forms of Racial Discrimination**

Article 5 of ICERD provides that State Parties shall commit to the prohibition and elimination of racial discrimination in all its forms and shall guarantee to everyone —without distinction of race, colour, or

national or ethnic origin— the right to work, free choice of employment, equal pay for equal work, and just and favourable remuneration.<sup>65</sup>

#### **1.1.5. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)**

Although Thailand did not ratify this legal instrument, this convention for the human rights of migrant workers is very relevant for the BHR framework. Article 2 of the ICMW provides the most comprehensive definition of a migrant worker: “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. These include ‘frontier worker,’ ‘seasonal worker,’ ‘project-tied worker,’ ‘itinerant worker,’ ‘seafarer’ and ‘self-employed worker.’<sup>66</sup> In addition, the Convention recognises migrant workers as social entities and extends recognition of rights to members of their families.<sup>67</sup> Relevantly, Article 7 states that States must undertake measures, in accordance with international human rights instruments, “to respect and ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction, the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”.<sup>68</sup>

Furthermore, the Convention lists human rights, including non-derogable rights, applicable to documented and non-documented migrant workers, enshrined in other human rights instruments that Thailand has ratified, such as: non-discrimination (Article 7); the right to life (Article 9); protection from torture or cruel, inhumane or degrading treatment or punishment (Article 10); freedom from slavery, servitude or forced or compulsory labour (Article 11); freedom of thought, conscience and religion (Article 12); the right to liberty and personal security and protection against arbitrary detention (Article 16); and the right to procedural guarantees (Article 18). Moreover, the Convention provides to documented migrant workers equal access to education, vocational guidance and training services, housing, social and health services and cultural rights (Article 43). In addition, the ICMW applies at all the different stages of the labour migration process, and identifies the responsibilities of governments in countries of origin, transit and destination (or employment).

#### **1.1.6. ILO Remuneration Convention No. 100**

Ratified by Thailand in 1999, the preamble of ILO Equal Remuneration Convention No. 100 calls for “the equal remuneration of men and women workers for work of equal value” and in Article 1(b) defines this as “rates of remuneration established without discrimination based on sex.”<sup>69</sup>

#### **1.1.7. ILO Discrimination (Employment and Occupation) Convention No. 111**

Ratified by Thailand in 2017, the ILO Discrimination (Employment and Occupation) Convention No. 111 defines discrimination in Article 1(1a) as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” and includes “access to training, access to employment and to particular occupations” under its definition of employment or occupation in Article 1(3).<sup>70</sup> Article 2 calls on Member States to create and pursue a national policy for the promotion of equality of opportunity and treatment within employment with the intention of eradicating discrimination.<sup>71</sup>

#### **1.1.8. ILO Recommendation 200**

Importantly, the ILO has recognised sex workers as workers within the informal economy in its discussions related to Recommendation 200 (adopted in 2010),<sup>72</sup> which concerns HIV/AIDS and the world of work. The Recommendation applies to *all* workers working under all forms of arrangements, and at all workplaces, including “persons in any employment or occupation” in “all sectors of economic activity, including the private and public sectors, and the formal and informal economies”.<sup>73</sup>

#### 1.1.9. The International Labour Organisation Declaration on the Fundamental Principles and Rights at Work

Adopted in 1998, the Declaration commits all Member States, regardless of whether they have ratified the fundamental ILO Conventions,<sup>74</sup> to act and recognise four key areas of rights and principles in employment. One of these is the elimination of discrimination in employment and occupation.<sup>75</sup>

Although the ILO does not have any explicit conventions on sexual harassment in the workplace, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recognised sexual harassment in the workplace as a form of discrimination. According to CEACR, sexual harassment in employment can take two forms:

- “1) Quid Pro Quo, when a job benefit —such as a pay rise, a promotion, or even continued employment— is made conditional on the victim acceding to demands to engage in some form of sexual behaviour; or
- 2) hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim”.<sup>76</sup>

Thailand has not ratified two of the eight conventions.<sup>77</sup> However, as a Member State, Thailand is obliged to uphold the four central principles enlisted in this Declaration.<sup>78</sup>

#### 1.1.10. The Beijing Declaration and Platform for Action

The 1995 Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, is another important instrument for the achievement of gender equality and empowerment of women.<sup>79</sup> It established the “burden of poverty on women, inequalities in education, training, economic structures and policies, productive activities and access to resources” as a priority and determined actions to enhance women’s rights in the business context, such as equal pay, training, participation, financial access to women’s businesses and reforming discriminatory laws.<sup>80</sup>

#### 1.1.11. The Working Group on Discrimination Against Women in Law and Practice

Some of the special procedures of the Human Rights Council (HRC) are dedicated to women’s rights and related to BHR.<sup>81</sup> For example, the *Working Group on discrimination against women in law and practice* noted how there are still significant barriers to women’s access to leadership and decision-making positions within financial institutions. It also recognised that the gendered harm specific towards women has been invisible in the context of transnational businesses and trade policies.<sup>82</sup> Additionally, the *Special Rapporteur on trafficking, especially women and children* observed that in post-conflict zones, the risk of trafficking-related exploitation of women and girls is higher because of the lack of access to education, protection, resources, and personal documentation and because of the high demand of cheap labour after a crisis.<sup>83</sup>

#### 1.1.12. United Nations Resolution 17/19 on Human Rights, Sexual Orientation and Gender Identity

In 2011, Thailand ratified this landmark resolution, which “express[ed] grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity” and commissioned a study “documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”.<sup>84</sup> Citing the ICESCR, Section 51 of the resulting report stressed that “[u]nder international human rights law, States are obligated to protect individuals from any discrimination in access to and maintenance of employment”.<sup>85</sup>



### **1.1.13. United Nations Sustainable Development Goals (SDGs)**

The 2030 Agenda for Sustainable Development sets women's economic empowerment and the realisation of women's rights, including in the context of employment, as critical goals.<sup>86</sup> Target 1.4 provides that all men and women should have equal rights to economic resources, ownership, control over land and other forms of property, inheritance, natural resources; while Target 1.b aims at the creation of policy frameworks at the national, regional and international levels, based on gender-sensitive development strategies.<sup>87</sup> Goal 5 is also relevant to BHR because it addresses the empowerment of all women and girls as well as gender equality, including through recognising and valuing unpaid care and domestic work (Target 5.4); ensuring "women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life" (Target 5.5); giving women equal rights to economic resources, including control over land and ownership (Target 5.A); and adopting policies for the promotion of gender equality (Target 5.C).<sup>88</sup> Furthermore, Goal 8 is important in this context as Target 8.5 focuses on "full and productive employment and decent work for all women and men [...] and equal pay for work of equal value", while Target 8.7 aims at the eradication of forced labour and ending modern slavery and human trafficking.<sup>89</sup> Finally, Goal 10 can be applied in the women and BHR contexts as it aims at reducing inequalities.<sup>90</sup>

The UN refers to combatting LGBTI marginalisation as a "development imperative" and a "human rights priority".<sup>91</sup> The SDGs reflect this commitment to fighting discrimination and inequality in all levels of society, speaking to the SDGs' central tenant of 'leaving no one behind'.<sup>92</sup> This is specifically reflected in Goal 5 on gender equality, and in Goal 10 on reducing inequality. Goal 8, on ensuring decent work for all, also has equality and anti-discrimination at its core. In a 2018 report on LGBTI discrimination in employment in China, the Philippines, and Thailand by UNDP and ILO, Jao Cilliers, Chief of the Policy and Programme Support Division at the Bangkok Regional Hub of UNDP, commented that achieving the component of the SDGs is a particular challenge when it comes to discrimination of LGBTI people in the workplace.<sup>93</sup>

### **1.1.14. UN Global Compact Women's Empowerment Principles**

The Women's Empowerment Principles developed by the UN Global Compact (UNGC) and UN Women focus on the empowerment of women "in the workplace, marketplace and community", emphasising that corporate action is needed in promoting gender equality and women's empowerment. These principles come from the idea that all businesses can benefit from equality for women and thus, they should be incentivised to adopt such principles and put them into practice.<sup>94</sup>

## **1.2. Regional Commitments**

### **1.2.1. Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights**

The ASEAN Declaration on Human Rights affirms that all persons are entitled to the rights and freedoms set forward in the Declaration, without distinction of any kind.<sup>95</sup> Therefore, every person has the right of recognition everywhere as a person before the law; as such they are entitled to equal protection of the law, without discrimination.<sup>96</sup> Article 4 of the Declaration provides that the rights of women, migrant workers, and vulnerable and marginalised groups "are an inalienable, integral, and indivisible part of human rights and fundamental freedoms".<sup>97</sup> It also states that the realisation of human rights and freedoms should "take into account peoples' participation, inclusivity, and the need for accountability".<sup>98</sup>

### **1.2.2. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers**

In its general principles, the Declaration states that "both receiving and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and



dignity of migrant workers in a climate of freedom, equity, and stability”.<sup>99</sup> It also enlists the obligations of receiving States, which should: primarily take into account and uphold fundamental rights and human dignity of all migrant workers; work towards harmony and tolerance between receiving States and migrant workers; facilitate access to resources and remedies, through information, training and education, as well as access to justice and social welfare; promote fair and appropriate employment protection, including payment of wages and decent working and living conditions for migrant workers; and provide migrant workers victims of discrimination, abuse, exploitation and violence with adequate access to legal and judicial systems.<sup>100</sup> Sending States also have obligations under this declaration, such as: enhancing measures to protect and promote the rights of migrant workers; setting up policies to facilitate the migration of workers, “including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin”; and “establish[ing] and promot[ing] legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies”.<sup>101</sup>

### **1.2.3. ASEAN Guidelines for Occupational Safety and Health**

The ASEAN Guidelines for Occupational Safety and Health intends to provide small and medium enterprises’ (SMEs) employers with the “direction and assistance in the development, implementation, evaluation and improvement” of their safety and health management systems. These guidelines are based upon the ILO Guidelines on Occupational Safety and Health Management Systems of 2001.<sup>102</sup>

### **1.2.4. ASEAN Guidelines for Corporate Social Responsibility (CSR) on Labour**

The Guidelines refer to international standards, including the ILO Conventions No. 100 and 111 on the elimination of discrimination in respect of employment and occupation; Conventions No. 155, 161, 187 on labour standards regarding occupational safety and health; the ILO Declaration on Fundamental Principles and Rights at Work; and the UNGPs.<sup>103</sup> Within the priority areas of these guidelines, enterprises should commit “to promote equality of opportunity and treatment in employment,” and non-discrimination as well as refrain from exploitative or abusive labour practices.<sup>104</sup> In addition, this document reiterates that migrant workers should be treated with respect, dignity and equality, “without discrimination, exploitation, abuse, or violence”.<sup>105</sup>

## **1.3. National Legal & Policy Framework**

### **1.3.1. Constitutional Framework**

The Constitution of Thailand of 2017 sets out in Section 4 that the “human dignity, rights, liberties and equality of the people shall be protected”.<sup>106</sup> It also prohibits discrimination on the basis of sex (*‘phet’*), stating: “Men and women shall enjoy equal rights”.<sup>107</sup> This offers a binary understanding of gender, excluding non-binary and intersex persons and also does not provide protection of LGBTI persons or those of differing gender expressions. Similarly, Section 28 uses binary terms to state that individuals “shall enjoy the right and liberty in his or her life and person”.<sup>108</sup> Within the drafting of the 2007 Constitution, there was a proposal made to include “persons of sexual diversity” as persons protected from discrimination, however this was rejected.<sup>109</sup> In its place, the Constitutional Drafting Assembly (CDA) released a constitutional ‘intentions’ document, which stated that the word *‘phet’* included “differences of individuals whose gender identity, gender and sexual diversity are different from their physical sex”, as well as its traditional meaning (differences between women and men).<sup>110</sup> As the ‘intentions’ document for the 2017 Constitution has yet to be published, it is still unclear whether this interpretation of *‘phet’* will be used.<sup>111</sup>

### **1.3.2. The Labour Protection Act – B.E. 2541 (1998)**

The legislation ensures that fundamental protections for labour are in place. The Act imposes duties on employers not to carry out rights violations during the course of work against any worker, regardless of their nationality or legal status.<sup>112</sup> Section 15 of the Act prohibits discrimination based on gender in terms of employment, unless equal treatment is not possible because of the nature of the work.<sup>113</sup> Sections 38-52 elaborate on this, restricting the type of work that an employer can ask women and children employees to do, with the intention of protecting the individual from harm in certain types of work.<sup>114</sup>

Within the 2008 amended Act, (Labour Protection Act No. 2), Section 16 prohibits harassment of any employee, not just limited to women and children, provided the subject of harassment has a lower position or ranking in the workplace than the harasser. It states: “[a]n Employer, a chief, a supervisor, or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee”.<sup>115</sup> The Act, however, does not cover harassment among employees of the same ranking, and does not provide a definition of harassment. Further, while Section 41 of the Act entitles female employees to 90 days of Maternity Leave, it does not allow for Paternity Leave.<sup>116</sup> As noted by the 2015 World Economic Forum *Global Gender Gap Report*, the adoption of Paternity Leave evens out the distribution of household work, encourages women’s economic participation, and closes the gender pay gap.<sup>117</sup>

### **1.3.3. Occupational Safety, Health and Environment Act – B.E. 2554 (2011)**

The Act lays out the employer’s obligations in providing a safe working environment for workers. In Section 4, it first defines “occupational safety, health and environment” as “actions or working conditions which are safe from any cause resulting in danger to life, physique, mentality or health arising out of or related to working”.<sup>118</sup> In Section 6, it states that employers are “obligated to provide and keep an Establishment and an Employee in safe and hygienic working conditions and environment including to support and promote an operation of the Employee preventing the Employee from any harm on life, physique, mentality and health”.<sup>119</sup>

### **1.3.4. Thai Labour Standards (TLS): CSR of Thai Business – TLS. 8001 (2003)**

The TLS act as a guideline for employers in their treatment of workers in order to develop good practices, ensure quality of life for workers, and comply with international standards. Article 5.6.1 of the TLS states: “an establishment shall not engage in or support any discrimination in respect to employment, payment of wage and remuneration, providing welfare and opportunity for training and development, promotion, termination of employment or retirement due to [...] sex, [or] personal attitude on gender or sexual orientation”.<sup>120</sup> Article 5.6.2 goes on to state that an establishment should not “obstruct, interfere or perform any action affecting the use of employee’s rights, exercise of their practices” when they relate to sex or sexual orientation.<sup>121</sup> The TLS, however, are not binding for companies and are only voluntarily certified by employers.<sup>122</sup>

### **1.3.5. The Gender Equality Act – B.E. 2558 (2015)**

The legislation specifically prohibits any type of discrimination on the basis of gender or sexual orientation, setting out criminal penalties for discrimination of up to six months in jail and fines of no more than 20,000 Thai Baht (THB) (\$640).<sup>123</sup> Article 3 states: “[u]nfair gender discrimination’ means any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female or of a different appearance from his/her own sex by birth”.<sup>124</sup> The language used, however, makes it unclear whether all aspects of SOGIE are covered, and conveys a binary understanding of gender as being either male or female, with no room for intersex and non-binary gender identities.

The Act provides grievance mechanisms for those who believe they have suffered damages caused by unfair gender discrimination in the form of the ability to submit complaints to the Committee on Consideration of Unfair Gender Discrimination (WorLorPor Committee), which can provide temporary protection measures, offer compensation or remedy, and impose fines or imprisonment.<sup>125</sup> The Act also establishes a Gender Equality Promotion Fund to be spent on assisting or compensating victims of gender discrimination as well as on the promotion of gender equality and prevention of unfair gender discrimination.<sup>126</sup> However, civil society groups have raised concerns regarding the effectiveness of the WorLorPor to investigate complaints, namely in the qualifications of Committee members, and the lengthy case review period.<sup>127</sup> Additionally, as noted by the 2018 Statement at the end of the United Nations Working Group on BHR's visit to Thailand, "lack of any complaint for sexual harassment under the 2015 Act in over two years should not be taken as evidence of gender equality: rather, this seems to indicate that the full potential of this new law is not being realised".<sup>128</sup> A key component of this is awareness of rights. A 2018 report by the World Bank, *Economic Inclusion of LGBTI Groups in Thailand*, found that "51% of LGBTI respondents and 69% of non-LGBTI respondents report they are not aware of [laws prohibiting anti-LGBTI discrimination]".<sup>129</sup>

Furthermore, as noted by CEDAW in their 2017 concluding observations on the combined sixth and seventh periodic reports on Thailand, the exemptions laid out by Section 17, paragraph 2—which allows for gender discrimination in cases of religion or national security—undermine its effectiveness as a mechanism of protection and contravenes international human rights principles, the ICCPR, and CEDAW.<sup>130</sup> In the Second Cycle of the UPR, Thailand accepted Spain's recommendation to "[p]revent discrimination in all cases without taking consideration of grounds such as religious beliefs or national security" but has yet to repeal Section 17.<sup>131</sup>

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## **2. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPS) TO PROTECT, RESPECT AND REMEDY**

Regarding the responsibility of States to protect human rights under Pillar 1 of the UNGPs, Principle 3 of Pillar 1(B) sets out the need for States to enforce laws aimed at requiring businesses to respect human rights, guiding businesses in upholding these, and encouraging businesses to communicate their human rights impacts.<sup>132</sup> It asserts that the most effective way to encourage businesses to respect human rights principles is to utilise a combination of mandatory and voluntary, national and international methods.<sup>133</sup> It also urges States to guide businesses in recognising the specific challenges that women, amongst others, face.<sup>134</sup> However, to protect workers and citizens from human rights abuses with a gender lens, States need to provide national laws that fully and appropriately protect and respect the rights of women and girls and that recognise their specific needs and challenges.<sup>135</sup>

Regarding the corporate responsibility to respect human rights under Pillar 2 of the UNGPs, Principle 11 of Pillar 2(A) requires businesses to avoid transgressing the human rights of others and to address potential adverse human rights impacts of their businesses.<sup>136</sup> With regards to discrimination, this manifests as a responsibility to avoid engaging in discriminatory practices and actively address them when they occur through effective Human Resources practices. Within this, discrimination in the workplace is dealt with swiftly and effectively, or through stringent company policies in which discrimination in any form is not tolerated and leads to significant and legitimate consequences.

Principles 17 – 21 set out the need for companies to conduct human rights due diligence (HRDD) of their operations to identify and address cases of discrimination and the potential adverse human rights impacts companies' practices may be having.<sup>137</sup> This process should be ongoing, evolving in tandem with changes in business operations. It is important that once human rights impacts are

addressed, businesses monitor the efficacy of responses, and in doing so involve those directly affected in this process.<sup>138</sup> Commentaries to Principles 18 and 20 urge businesses to pay attention to the different risks endured by women, when identifying negative human rights impacts.<sup>139</sup> Due to the fact that women are often the worst-paid, most precarious and vulnerable workforce, businesses should ensure a gender focus in their HRDD, which should concentrate also on the particular risks of exploitation and abuse that women face as well as on lifting the present barriers to their enjoyment of human rights.<sup>140</sup>

Finally, regarding the access to effective remedy under Pillar 3 of the UNGPs, Principle 27 stipulates the need for States to provide effective, suitable judicial and non-judicial grievance mechanisms to remedy business-related human rights abuses.<sup>141</sup> This also means that States need to ensure that women effectively have the power and voice to raise complaints; that sexual, emotional and physical harm they may experience is duly taken into consideration; and that they can access and receive proper compensation for any harm or damage suffered. Grievance and remedy mechanisms should also take into account the threats, abuses, and disparities that women are more likely to endure in comparison to their male counterparts. Finally, women also should be enabled to access trade unions to organise, be represented, express their concerns, and bring up grievances collectively, without fear of retaliation or discrimination.<sup>142</sup>

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

#### 3.1. Adverse business policies and practices in the workplace

##### Challenge 1: Sexual Harassment of women in the workplace

The individual's rights to liberty, work, and safety are violated when a company fails to address sexual harassment in the workplace. Sexual harassment claims are minimised or ignored when definitions of what qualifies as sexual harassment are unclear.

##### Impact

CEDAW observations of the combined sixth and seventh periodic reports of Thailand noted the absence of legislation explicitly prohibiting sexual harassment in the workplace.<sup>143</sup> The impact of this is reflected in the WHO report from 2007, which found either physical or sexual harassment to be present at 23-40% of workplaces in Thailand.<sup>144</sup> Although the Labour Protection Act protects those discriminated against if their harasser is of different ranking, it has no provision for harassment by co-workers of equal ranking, creating a gap in protection.

Furthermore, while the Thai Labour Protection Act prohibits discrimination, it gives no clear definition of sexual harassment. Similarly, while sexual harassment is clearly a form of gender-based discrimination, neither the Gender Equality Act nor the TLS mention sexual harassment. Without clear definitions of sexual harassment, many are unaware of what actions qualify as harassment. This means that verbal harassment within the workplace is often dismissed as 'teasing' or 'joking'.<sup>145</sup> Activists note that even in the case of inappropriate physical contact at work, unless it is rape, judges within the criminal court often dismiss it for lack of evidence or because it is not taken seriously, and cases have often taken two to three years to be resolved.<sup>146</sup> Without a clear definition of harassment in the law that includes and defines sexual harassment, women will continue to suffer.

##### Case of sexual harassment in the workplace by a manager<sup>147</sup>



A 20-year-old woman began working as a secretary in the sales department of a company in Bangkok after graduating from vocational school, having studied secretarial work. She was the only woman in the department among eight men. Her manager was a 45-year-old man who flirted with her frequently, including offering her rides home and invitations to lunch. Her response was to maintain a polite distance, avoid being in his presence, and ignore his advances. At a certain point, her manager started to become angry at her continued rebuffs. At the end of her probationary period, her manager gave her a negative performance review without any justification. At the same time, her friends who worked as secretaries in other departments were all given positive reviews. When she brought her case up with the personnel manager, she was advised to take her case up higher. When her case was eventually brought up with the company's Managing Director, she was transferred to a different department, where she has remained. No disciplinary action was taken against her abusive manager.

#### **Case of impunity of male co-workers harassing a female colleague<sup>148</sup>**

Beau, a 27-year-old financial professional in a top Thai finance firm, was subjected to sexual slurs and comments by co-workers. In a male-dominated working environment, Beau's ease in working and drinking socially with her co-workers after work hours was interpreted "as meaning that [she's] 'easy'" and led to her male co-workers sharing sexual jokes about her. When Beau reported this behaviour to her human resources department, she says they did little to help her or reprimand her harassers despite already being aware of the issue. Because her harassers were featured in the media, "they are like celebrities in the finance industry" leading the human resources personnel person to "calculat[e] the risk and return for taking [the case] further and in the end ignor[e] [her] case". Beau reported that human resources dealt with this type of harassment very differently when it involved harassment of high-ranking employees by those of lower rank. In that case, those of lower ranking were suspended or fired.

#### **Case of sexual abuse by a supervisor with no consequences for the abuser<sup>149</sup>**

See, a 27-year-old from Bangkok had been working in the art department of a company for six years in an all-male team of ten co-workers. When See's supervisor ordered her to go on a trip to Pattaya for a project, the department only rented two rooms to save money. See was along with two male friends and her supervisor. But one night, See woke up to her supervisor forcing himself on her, following which she pushed him away from her, ran out of the room, and spent the night and morning in the main lobby. Because her co-workers saw her supervisor asleep in her bed, when they saw her, they looked at her strangely. This continued when the team returned to Bangkok, and rumours started to circulate about her. When See told the story to a friend who had been on the trip, he said that he would be an eye-witness if she decided to speak to the management about what had happened. However, when See brought the incident up with management, they were uninterested, and her friend went back on his promise to be an eye-witness out of fear of being penalised. The management were apathetic about the case and questioned the truthfulness of her account. Following this, See was given a bad performance review by her supervisor and treated poorly as a whole. He did not give her any new assignments and refused her requests for leave. As a result, See transferred to a different department. No disciplinary action was taken against her supervisor.

### **Challenge 2: Women face discrimination in the workplace on the basis of their gender**

The right of non-discrimination is violated when a company adopts practices that discriminate on the basis of gender in the recruitment, retention, remuneration, and promotion of workers in the workplace. At the same time, the Gender Equality Act is not upheld by the Royal Thai Police and the exclusion of female officers not only violates the Act, but also has a serious negative impact on female victims of sexual assault and reporting of sexual assaults.

#### **Impact**



There exists a significant gap within the current legislative framework in Thailand with regards to protections from discrimination. Concrete initiatives to tackle discrimination and offer remedy are only currently offered to sexual minorities, women, and people living with disabilities. Even then, there are exclusions, specifically in regards to Section 17 of the Gender Equality Act exempting discriminatory behaviour in the public and private sectors with regards to freedom, security and protection of others, or in accordance with religious obligations or national security.<sup>150</sup> Indigenous peoples, ethnic minorities, and people living with HIV currently have no formal protections under Thai law.<sup>151</sup> This means that although ‘women’ as a social category are protected by law, there is no legislative recognition of the intersectional discrimination that certain groups of women —such as indigenous women, women of ethnic minority groups, and migrant women— face. Legislation such as the Royal Decree on Managing the Work of Aliens (2017), which increases penalties for companies employing undocumented migrant workers, have a harsher impact of women, who are often the first to be fired.<sup>152</sup> Groups that are the most marginalised in society are also often those who have the least access to mechanisms of justice with no protection under the law, limited social capital, and limited knowledge of what legal or social assistance is available to them.

Also, CEDAW underlined the “persistence of strong stereotypical attitudes about the roles and responsibilities of women and men” in Thailand, which undermines women’s social status and their position in the labour market.<sup>153</sup>

Discrimination on the basis of gender is also seen in regards of remuneration: the so-called gender pay gap. It appears to be common in the informal sector, which is predominated by women workers. The gender pay gap is linked to the continuous discrimination against women and “directly connected to the undervaluation of the work that women generally undertake, and the skills required in female dominated sectors/occupations”. Certain groups of women are even more affected by this discrimination, such as women belonging to racial and ethnic minorities.<sup>154</sup>

Another prevalent discrimination is against women living with HIV, especially in Eastern and Central Thailand, in accessing jobs as well as bank loans and insurances.<sup>155</sup> Furthermore, they are requested to take a blood test prior to employment.<sup>156</sup> Similar discrimination occurs against women who use drugs: their drug test results are revealed without permission, and they have difficulties in applying for jobs or registering for bank accounts.<sup>157</sup> An additional example of discrimination is the exclusion of women in the Royal Thai Police. In September 2018, the Royal Police Cadet Academy (RPCA) in Bangkok announced that from 2019 onwards it will only admit men into the Academy, a move that rights groups describe as only one more example of a series of sexist police recruitment rulings.<sup>158</sup>

This decision was made one month after another made by the Royal Thai Police Office (RTPO) regarding 250 vacant positions to be filled exclusively with male officers following resignations by female interrogation officers.<sup>159</sup> While a deputy police spokesman asserted that the women had resigned for personal reasons and to take care of their families, a Facebook post from an individual claiming to represent the women argued otherwise.<sup>160</sup> This individual asserted that, in reality, the resignation rate of male officers was higher than that of female officers and that the true causes of the resignations were the lack of equipment and career advancement opportunities.<sup>161</sup> National Human Rights Commissioner of the National Human Rights Commission of Thailand (NHRCT), Angkhana Neelapaijit responded to the news of the appointments with strong criticism, stressing that the RTPO was in violation of CEDAW.<sup>162</sup>

Aside from violating both international obligations (CEDAW) and national law (the Gender Equality Act) on discrimination and gender equality, these actions will have disastrous consequences for female sexual assault, sexual harassment, and victims of domestic violence. According to a 2017 report by UN

Women, UNDP, and the UN Office on Drugs and Crime (UNDOC), 87% of rape cases in Thailand go unreported.<sup>163</sup> Prior to this, Thailand's police stations were already understaffed in terms of female officers and underequipped in terms of training, knowledge, and skills in providing services to women.<sup>164</sup>

### **Challenge 3: Lack of protection and promotion of decent working conditions and workers' rights for women in informal sectors and women migrant workers**

In Thailand, there is a higher risk of discrimination and abuse for women employed in informal sectors and for women migrant workers, who are often excluded from labour laws.

#### **Impact**

In Thailand, working conditions are safeguarded by numerous acts and conventions that cover a broad range of topics such as job status, minimum wage, social security, working hours, and health and safety at work.<sup>165</sup> However, despite these protections, violations are common, particularly for those working in the informal sector, which is currently unregulated under Thai law.<sup>166</sup> There are incentives for many businesses operating within the informal sector to remain unregulated, as often it can be more economically lucrative as companies are able to avoid government regulations such as minimum wages, and to exempt themselves from reporting obligations linked to working conditions, in particular with respect to health issues associated with labour.<sup>167</sup> There can therefore often be a conflict between government and business interests regarding the regulation of informal labour.

These data are concerning because, as highlighted by the Committee on the Elimination of Discrimination against Women, in the Thai informal sector, which includes domestic workers, the workforce is mostly composed of women, who "continue to be excluded from labour and social security protections, such as minimum wage protection, overtime compensation and maternity leave".<sup>168</sup> Specifically, informal home-based workers, who are often women, are found to have the lowest level of security and earnings amongst Thai workforce.<sup>169</sup> The nature of the environment where home-based workers operate is largely without known measures of regulation. This environment is also often considered as being "largely unknown, inappropriate and sometimes hostile to them".<sup>170</sup> The situation of abuse of women domestic workers has even been presented in advertisements, showing how normalised this practice is.<sup>171</sup>

Likewise, the UN Working Group on BHR recognised that women workers in Thailand, especially domestic workers and migrant workers, experience "unique obstacles in leading an equal life".<sup>172</sup> The ILO Sub-regional Office for East Asia also underlined that Thailand should ensure that home-based employment is a "workplace where employment standards and basic human rights are fully respected" and that businesses should face serious consequences if they abuse an undocumented or unregistered foreign worker.<sup>173</sup> As a matter of fact, there is intersectionality in forms of discrimination and abuse for women domestic workers that are also migrants.

Women migrant workers are at a high risk of abuse and exploitation in Thailand, above all if undocumented.<sup>174</sup> The CERD, in fact, highlighted its concerns regarding the abuse and exploitation of migrant workers in Thailand, especially irregular ones, and recommended to provide specific protection for migrant workers.<sup>175</sup> Similarly, ILO stated in a study that all of the women migrant workers who were involved in a research, experienced some form of abuse and exploitation by their employers in Thailand.<sup>176</sup> Other concerns on their conditions were raised by the UN Working Group in its visit to Thailand, commenting that migrants workers are often hired in order for private companies to avoid legal liability; however, it suggested that the State should require businesses to conduct and report on HRDD and "ensure that migrant workers who get injured while working are provided workers' compensation and social security benefits". Another concern is that migrant workers are

forced to pay fees in the recruitment process and such procedures should be halted with proper policies from the Government. Additionally, national identification processes for undocumented migrant workers are lengthy and not efficient.<sup>177</sup> Furthermore, there is a gap in Thai legislation in ensuring that the same protection is provided to migrant workers as to all other workers because the Thai National Health Insurance Act and the Social Security Act provide that health insurance and social security cannot be applied to workers without Thai nationality or migrant workers who do not have their passport and other documents.<sup>178</sup>

#### Case of harsh conditions of work and violations of labour rights of home-based workers

Mrs. Wimala Saengkaew, known as Yui, worked as an embroiderer for ten years, earning a monthly income of five to six thousand THB (\$160-\$190). She established an embroidery group, and as the number of members in the embroidery group grew, Yui had to find more work from more companies, including one that exported children's clothes made from organza to Nigeria. Yui worked long days from seven in the morning to eight in the evening. Problematically, organza embroidering required her to breathe in the strong smell of kerosene every day, and the oil can accumulate in the body and cause damage to health, and the starch-based fabric stabiliser could splash into one's nose. The company did not provide an employment contract. It only gave simple delivery notes and a notebook documenting delivery dates, the quantity of work to be delivered, and delivery signatures. Also, once finished work was received, the wages were not paid instantly; with five lots of work delivered, only one lot was paid. This pattern of payment continued, despite the Homeworkers Protection Act mandating that workers must be paid promptly. Furthermore, if any damage or sub-standard work was found, the work was rejected. With each rejection, wages were deducted at the rate of the clothing's price. Once, Yui gave a large amount of work to an outside group that failed to meet the supplier's timeline. Consequently, wages totaling 400,000 THB (\$12,880) were not paid. Although she tried to negotiate with the hirer, he claimed that the few days delay had a severe economic impact on him and refused to pay. Yui then had to work harder to support her family and pay the wages owed to the embroiderers. In retaliation, group members took her household appliances, television and linoleum away, leaving her house almost unfurnished.<sup>179</sup>

#### Case of exploitation of women migrant workers

A 17-year-old Burmese-Karen girl was a migrant domestic worker and had been violently attacked by her Thai employer. She sustained severe injuries, such as a fractured skull and ribcage, and was brought unconscious to a hospital, where she stayed for two months. The girl had to pay a fee of 12,000 THB (\$390) to a broker in order to find the job; she was further confined to her residence, systematically physically abused and denied the agreed monthly salary of 4,000 THB (\$130). The employer was charged with the assault but released on bail. ILO commented on the conditions of work that the girl had to undergo as "worst forms of child labour" and requested accountability and justice for the victim.<sup>180</sup>

#### Challenge 4: LGBTI individuals face discrimination in the workplace on the basis of their SOGIESC, which is also lacking of a clear definition and terminology

The right of non-discrimination is violated when a company adopts practices that discriminate on the basis of SOGIESC in the recruitment, retention, remuneration, and promotion of workers in the workplace. Furthermore, the lack of clarity surrounding discrimination regarding SOGIESC means sexual minorities are unprotected in the law.

#### Impact

Under the 2017 Constitution of Thailand, sexual minorities are excluded from the same protections and rights guaranteed to heterosexual and cisgender individuals. While the Constitution enshrines equal treatment on the basis of sex, it lacks any clause specific to discrimination on the basis of gender

identity or sexual orientation. While the Gender Equality Act offers some protection for certain groups, its binary understanding of gender excludes others, and its redress mechanism has failed to inspire real change. Existence of any non-discrimination policy for sexual orientation in Thailand is limited, and intersex persons are not explicitly recognised. In the UNDP/ILO 2018 study, only 23% of respondents in Thailand reported the existence of LGBTI antidiscrimination policies in their workplace, with only 17% stating that their workplace had an official procedure for complaints when it comes to LGBTI discrimination in the workplace.<sup>181</sup> Constant stigma and discrimination leaves the vast majority of transgender people unable to obtain and maintain adequate employment, forcing many to concentrate into certain sectors of employment, such as entertainment, sex work or hospitality, which are often low-paying, and offer minimal security or room for advancement.<sup>182</sup> As example of discrimination, transgender women in Pattaya are being discriminated against in the hotel industry, which has a negative effect on their job opportunities and access to safe working conditions.<sup>183</sup> Furthermore, while transgender people are widely stigmatised in Thailand, transgender sex workers face even double stigmatisation and have to be continuously subjected to police abuse and corruption.<sup>184</sup> This is coupled with negative media coverage that fuels prejudices against the LGBTI community and sex workers and exacerbates self-stigmatisation.<sup>185</sup> Recently, the nomination of a transgender candidate to run for Prime Minister in the next Thai elections gives hope for possible positive developments regarding discrimination against transgender people in Thailand.<sup>186</sup>

Definitions on discrimination relating to sexual minorities are also unclear. In the English-published version of the Gender Equality Act, Article 3 bans unfair discrimination against individuals due to that person's gender as male or female or an appearance [‘การแสดงออก’] that differs from that person's biological gender.<sup>187</sup> The Thai word, ‘การแสดงออก’ better translates, however, to ‘expression’ rather than ‘appearance’.<sup>188</sup> The language used in the Act, coupled with the tendency of Thai laws to conflate terminology and definitions in regards to SOGIESC, conveys a binary understanding of gender as being either male or female, with no room for intersex and non-binary gender identities and makes it unclear whether the Act covers all aspects of SOGIESC.<sup>189</sup>

#### **Case of Tanasanti, a transgender woman forced to wear a male uniform<sup>190</sup>**

Warat “Bai Thong” Tanasanti, a 24-year-old transgender woman, was a junior lawyer at Kamthorn Surachet & Somsak working towards the goal of becoming a prosecutor. The Thai court, however, required her to wear the male uniform when in Court, because it sees transgender persons who dress in accordance with their gender preference as ‘mocking’ the “sanctity of the Judge”. Before being hired at Kamthorn Surachet & Somsak, Tanasanti, she interviewed with ten other companies but was often put in difficult situations, such as being asked by many of her interviewers if she had “passed the operation” (undergone gender affirmation/sexual reassignment surgery). She relayed that it is most likely that she was offered the job at Kamthorn Surachet & Somsak because her mother, a lawyer, knew the company CEO. She did not think she could be hired without her mother's connection, even if she went to a famous law school and obtained good grades. Even once she was hired, she faced harassment from colleagues, one of whom tried to ban her from the Court because of her gender identity and decision to wear a women's suit. Because Tanasanti will not be able to pursue her dream of becoming a prosecutor, she has decided to move to the United Kingdom and study business, where she thinks she “will get better treatment” and “progress in the position”.

#### **Case of a teacher fired because of her gender identity<sup>191</sup>**

Pet James, a Filipino transgender woman, was hired in 2015 by Plearnpattana School, a private school in Thawi Wattana, Bangkok, to teach English reading and storytelling to grades 1-3. Despite doing well in her first term of teaching, in July of the second term, she was told she was being dismissed. James learned, during a meeting with school officials and human resources that she was being fired because she was a transgender person, a fact the school was not aware of upon hiring her despite all of her



documents stating she was assigned male at birth. According to James, the school told her that they preferred a teacher who would be “a good role model for the kids because our school is conservative”. The experience was very difficult for James, in her words: “they broke a part of me. The love, the heart, the passion for teaching the children, it all went after that. Do I have to wear a sign around my neck saying, ‘I am transgender and I want to be a teacher’”?

### Challenge 5: Discrimination and criminalisation of Sex Workers

The criminalisation of sex work in Thailand increases the human rights violations experienced by sex workers and creates a hostile environment against sex workers, who are often marginalised by society. Furthermore, it violates the duty to protect under the UNGPs.

#### Impact

Sex work, alongside other jobs such as waitressing, domestic work, and retail services, is one of the many forms of service-oriented employment available to female labour migrants within Thailand.<sup>192</sup> Estimates on the total number of sex workers in Thailand vary, with the WHO estimating the number to be between 150,000 and 200,000 women, and some sources estimating it to be as high as 300,000 women.<sup>193</sup> However, despite Thailand earning \$6.4 Billion (200 Billion THB) a year in revenue from prostitution,<sup>194</sup> selling sex is criminalised in Thailand under the Prevention and Suppression of Prostitution Act (1996). Sex work is not considered as a legitimate form of labour; and sex workers themselves are treated as second-class citizens, if citizens at all.<sup>195</sup> This socio-economic exclusion and prejudice compounds the intersectional discrimination many sex workers face as they come from communities that are already marginalised within society.<sup>196</sup> As a matter of fact, sex workers experience a number of human rights abuses as a result of the lack of recognition of sex work as work.

As the Committee on the Elimination of Discrimination against Women commented, in Thailand, “women working in the entertainment sector are presumed to be guilty of prostitution under the [Suppression and Prevention of Prostitution] Act. They are arrested and subjected to humiliating treatment following violent police raids and targeted in entrapment operations by police officers”, in addition to be at risk of exploitation and extortion from State officials.<sup>197</sup> The UN Working Group on BHR, during its Mission to Thailand, also recognised that the ‘main obstacle’ to protect sex workers against human rights abuses is the criminalisation of sex work, and the Working Group found that sex workers in the entertainment sector are at risk of trafficking and abuse. A large number of sex workers are undocumented migrants and sex workers under (or suspected of being under) the age of 18, and are automatically assumed to be trafficking victims.<sup>198</sup> These sex workers are taken into custody, subjected to medical tests to determine their age, and often held against their will in detention centres, resulting in numerous human rights violations.<sup>199</sup> Moreover, even women legally employed by entertainment enterprises do not have the protection of labour laws and other social benefits which are available to all other workers.<sup>200</sup>

Furthermore, in Pattaya, the existence of sex workers is denied; nonetheless, they are exploited and often forced to pay government employees, making it difficult for them to report or seek legal remedies. Consequently, human rights violations, abuse and mistreatment by government employees happens without access to grievance mechanisms. This indicates that the State's duty to protect is not being upheld equally for all groups.<sup>201</sup>

**The conflation between sex work and human trafficking** The term ‘sex work’ is defined as the exchange of sexual services between consenting adults for a form of remuneration; the terms of which are agreed between the seller and the buyer. Sex work can take different forms, it may vary between and within countries as well as communities, and it can be more or less formal or organised. Thus, sex work regards consensual commercial sex between adults and whenever consent is absent,



for reasons of “threat or use of force, deception, fraud, and abuse of power, or involvement of a child, such activity would constitute a human rights abuse, which must be treated as a criminal offence”.<sup>202</sup> A ‘sex worker’ is then an adult (aged 18 or above) of any gender receiving money or other remuneration in exchange for consensual sexual services.<sup>203</sup> Instead, ‘human trafficking’ or ‘trafficking in persons’ lacks the element of consent, has the purpose of exploitation and is achieved by means of coercion, threats, abduction or similar. Specifically, human trafficking is defined by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 as follows:

*“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*<sup>204</sup>

### **Sex Work and UNGPs**

Both the State and businesses involved in the sex industry often fail to protect and respect the rights of sex workers and there is a symbiotic relationship between the State, businesses, and sex workers’ human rights: a lack of State recognition for sex work as work creates conditions in which businesses are able to violate sex workers’ rights. These include occupational health and safety standards and employee benefits such as sick pay, annual leave and contracted hours.<sup>205</sup> In addition to this, by exempting sex work from traditional forms of labour regulations, sex work businesses are able to operate with little to no oversight. This is in violation of the UNGPs: Thailand fails to meet its duty to protect human rights against violations by third parties as well as to ensure that businesses respect human rights under Pillar 1.<sup>206</sup> Thus, by criminalising sex work, businesses in the sex industry are not legally required to respect human rights and are exempted from any legal responsibility for sex workers. Thus, exempting sex work from formal labour standards, recognition, and regulations means that sex industries are also exempted from the requirement to carry out any sort of due diligence with regards to the impact of the business activities, let alone specific HRDD, violating Pillar 2 of the UNGPs. Another consequence is that sex workers’ ability to seek remediation for these abuses is extremely limited. This is in contravention of Pillar 3 of the UNGPs ‘access to remedy’, in which Principle 25 sets forth that States have a responsibility to take the necessary steps to ensure those affected by business related human rights violations have access to appropriate judicial and non-judicial remedies.<sup>207</sup> Sex workers are unable to challenge practices that violate their human rights through employment tribunals or other grievance mechanisms, and thus their right to access justice is curtailed.<sup>208</sup> If a sex worker tried to use the legal system to achieve remedy for rights violations they have suffered, there is a significant possibility they themselves could be arrested<sup>209</sup> and charged with a crime under the Prevention and Suppression of Prostitution Act or the Penal Code. As such, sex workers are de facto excluded from achieving justice using judicial mechanisms. The recognition of sex work as a form of legitimate labour is an essential step towards protecting and promoting the rights of sex workers all over the world, and must be the foundation of any business and human rights approach to sex work.

### **What do sex workers in Thailand want?**

The sex workers’ led organisation EMPOWER has systematically called for decriminalisation of sex work in Thailand through the abolition of the Prevention and Suppression of Prostitution Act, advocating for the recognition of sex work as work and reiterating that the criminalisation of sex work has ‘failed to protect women from exploitation’ as well as to end prostitution in Thailand.<sup>210</sup> This inefficiency shows that there is a need to reform the law, to regulate rather than criminalise sex work, providing the same human rights and protections to sex workers as to all workers. The legal reform should include labour rights for sex workers; labour inspections, led by a team composed of both sex

worker organisations and law enforcement; the introduction of good labour practices for decent sex work, and improvement of occupational safety and health.<sup>211</sup>

Another obstacle to the achievement of the recognition of sex work as work or simply of decent sex work, is the idea that sex work is more “inherently abusive or automatically criminally exploitative” than any other type of work. However, exploitation is present in any industry,<sup>212</sup> and thus, the State cannot deny its responsibility to protect a category of workers’ rights, including their right to seek recognition or redress as a worker.<sup>213</sup> Regarding exploitation, EMPOWER suggests that it should be defined by sex workers according to how they perceive or experience it; and that they should be consulted on how to address or measure exploitation in the sex industry.<sup>214</sup> For example, sex workers find unacceptable the following forms of exploitation, which they consider to be urgently addressed: salary cuts, compulsory alcohol consumption, interference with their freedom to choose or refuse customers,, and receiving any less than 50% share of the earnings.<sup>215</sup> While for migrant sex workers, the additional elements of retention of passports and/or restriction of movements can also be signs of forced labour.<sup>216</sup>

### **Voices from the ground**

“My work is good work. I have been working for about ten years already. Because of sex work I have bought land. I have savings to live on when I retire.”<sup>217</sup>

Dao, Sex Worker – Empower (December 2015)

### **Case on arbitrary arrest and detention of migrant sex workers**

On 16 March 2011, 17 migrant sex workers from Myanmar were working at a Mae Sot brothel. At 11 pm, a group made up of armed police, immigration officers, and anti-trafficking NGO staff came in and arrested all the women. The women were taken to a police station and questioned by police with poor translation provided by an untrained NGO staff member who translated things incorrectly to the police. None of the women were informed of their charges or rights. Ten of the women had documentation and appeared over 18 years of age, and so were charged with immigration offenses and with associating for prostitution. They were deported back to Myanmar after being held for two days and charged 2,350 THB (\$75) in fines and service fees. The other seven women all stated that they were over the age of 18 and were in sex work voluntarily, but none of them had documentation. They were not believed by officials, and so were driven five hours and detained at a centre in Phitsanulok province without being given any explanation. The women were forced to undergo mandatory medical examinations, including vaginal examinations, blood tests, dental examinations, and bone X-rays, without being asked for their consent or given any information. Two women were judged to be underaged, and the other five women were held at the centre as witnesses for trafficking prosecution. The women were not allowed to have any contact with friends or family and were not given independent legal aid. When interviewed, inadequate translation services were provided, and the court case was delayed four times due to translation issues. No official translators were provided at the first session, and translation was inadequate at the second session, causing court to be adjourned until a replacement translator was located. The third session was also adjourned as a result of the women refuting the statements police had written out for them on the night of their arrest. After six months of detention, one of the women was nearly eight months pregnant with her third child, and EMPOWER Foundation was asked to assist in finding her family. Officials would not release her unless it was into the hands of a guardian, despite her clearly being over 18. When EMPOWER was able to contact the woman’s mother, she was greatly concerned with the well-being of her daughter in the shelter, and of her ability to support her two grandchildren with their mother in detention, and she described threatening phone calls made to her by Burmese authorities. While in detention, the pregnant woman was denied regular antenatal checkups, was not given adequate food as a Muslim and so just ate rice, was not given any pre-natal supplements, and was denied the opportunity to practice her religion. The women also had concerns about the court proceedings as they stated that

the prosecutor pressured them to identify a man they did not recognise as having brought them to work in Thailand and forcing them to work in his brothel. The true owner of the brothel they had worked at had escaped during the raid. By early 2012, at the time of EMPOWER's report, all seven of the women had been in detention for a duration of ten months, with restricted communication.<sup>218</sup>

#### Case on sex workers' working conditions

In 2017, an independent researcher interviewed 47 female sex workers in Chiang Mai province and Mahachai district in Samut Sakhon province, and learned of the unfair working conditions faced by sex workers because they are not guaranteed protection under Thai labour laws. The standard time off as described by the women was two days per month on average, which is only half of what is required under Thai labour law. If the women were absent from work for more than two days per month, they faced salary deductions of 700 to 1000 THB (\$22-\$32) per day. At one location, one of the interviewed sex workers said she had never received her full salary in the seven years of regular employment at that location. If women are late, weigh over the limit, wear the incorrect uniform, lack proof of regular sexually transmitted diseases (STI) testing, or meet with clients outside of the established working hours, they also face salary deductions. Interviewed women described a working environment in which they take unsafe weight-loss drugs or drink more than they want to in order to keep their jobs or not be subjected to salary deductions. In order to meet quotas on the number of drinks customers buy for them, one woman described drinking until she was sick, while another was in a motorcycle accident as a result of these quotas.<sup>219</sup>

#### Case on rapes and killings of sex workers

33-year-old sex worker Samorn Klangdet worked at a beer bar in Chiangmai province. In April 2015, Samorn was assaulted, raped, and left to die in a hotel room. Her killer was arrested and later charged with several similar murders and rapes committed against sex workers over a nine-year period. Those who had survived his brutal assaults had not reported him to the police because they were afraid of being charged under the Prevention and Suppression of Prostitution Act or of being dismissed from their work places.<sup>220</sup>

#### Case on access to remedy

In response to the detention of 121 sex workers after a raid on Nataree Massage, a brothel located in Bangkok, relatives of 20 of those detained submitted a complaint to the NHRCT. The relatives stated that they wanted the women to be released as soon as possible, as the case against them had already been finalised by a court order, ordering them to pay fines. In response to the complaint, an NHRCT member stated they would investigate the case with the police and immigration, and if the women were being detained as witnesses for a trafficking case, authorities would be requested to deliver suitable care.<sup>221</sup>

### 3.2. Access to remedy

The Committee on the Elimination of Discrimination against Women, in its concluding observations on Thailand, expressed concerns about the existence of barriers to access of justice and effective remedies for violations of the rights of women and girls, especially in regards of rural women, indigenous women, women belonging to ethnic and religious minority groups, and women with disabilities. It lists the main barriers as following:

- a) "Social and cultural stigma, which deter women and girls from registering their complaints, in particular with regard to sexual and gender-based violence;
- b) Limited legal literacy and access to information on remedies that are available;
- c) Lack of gender sensitivity in the justice system, including negative attitudes of law enforcement

- officials towards women denouncing violations of their rights, leading to frequent failures to register and investigate complaints, and
- d) Widespread and pervasive corruption, which continues to impede women's access to justice."<sup>222</sup>

### **Challenge 1: Lack of remedies and grievance mechanisms within business frameworks**

Currently, Thailand lacks policy provisions that prevent discrimination and harassment, especially against women and LGBTI, in the workplace<sup>223</sup> and there is often a lack of accountability for violations that are committed.

#### **Impact**

The 2017 Constitution states that men and women have equal rights and that "unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view not inconsistent with the provisions of the Constitution, shall not be permitted."<sup>224</sup> Also, the Labour Protection Act prohibits discrimination against women in the workplace. However, its clauses are limited for the nature of work a woman is allowed to perform and in the circumstance of a pregnancy, and they do not provide protection to LGBTI people.<sup>225</sup> With regard to sexual harassment in the workplace, the Labour Protection Act prescribes in Section 16 that "an employer, a chief, a supervisor or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee."<sup>226</sup> However, this is only applicable if a senior staff harasses a junior staff. Cases in which an employee harasses another employee would fall under the Criminal Code's chapter "Offences relating to sexuality".<sup>227</sup> Further, considering civil servants, the Civil Service Act B.E. 2551 lays out in Section 83(8) that "a civil servant must not commit acts which amount to sexual violation or harassment".<sup>228</sup> However, even though such laws are in place, victims of sexual harassment in the workplace do not have access to effective remedy as there are no grievance mechanisms in place at the company level. There are obstacles in women's and LGBTI people's access to justice and remedy, above all in instances of sexual and gender-based violence within business frameworks.<sup>229</sup> Instead, victims can bring their perpetrator to court, but the process is lengthy, complicated, and costly. A law firm stated that they receive allegations with regards to sexual harassment in the workplace about twice a month, but cases are rarely litigated because all parties prefer to resolve the case quietly without going to court.<sup>230</sup> In fact, access to remedy as it stands currently is not sufficient: grievance mechanisms should also take into account unequal power relations in corporate abuses, women's stigma, reprisals, and job insecurity.<sup>231</sup> Remedies need to be gender-sensitive and give an effective gender response adequate to women's and LGBTI people's social contexts and the status of their legal rights.<sup>232</sup>

The lack of accountability for abuses and violations against women in business contexts enhances the climate of impunity. The above mentioned cases, such as women sexually abused or harassed by their supervisors, who did not face any disciplinary action or consequence for such behaviour, (the employer who physically abused a domestic migrant worker was released on bail; arbitrary arrest and detention of sex workers; the persecution and harassment of WHRDs without being addressed or remedied), are already self-evident of the lack of accountability of corporate and state human rights violations and abuses against women in Thailand.

#### **Case on Victoria's Secret impeding NHRCT to investigate human rights violations**

The current 2017 Constitution gives the NHRCT the right to visit facilities where human rights violations have occurred. If the violations have occurred in government facilities, the NHRCT can access the site directly. However, if they have occurred on business sites, the NHRCT needs to have a court order to access the facilities.

In Victoria's Secret facilities, women were thought to be victims of human trafficking. However, when the NHRCT requested to visit the facilities, access was denied and thus, there was no possibility to verify the allegations.<sup>233</sup>

#### **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. Community-led Good Practices**

###### **4.1.1. CSO creating an entertainment bar that respects labour standards and sex workers' rights**

In 2006, sex workers together with Empower Foundation created a just and fair workplace for sex workers, called the 'Can Do Bar' in Chiangmai province located in Northern Thailand. The 'Can Do Bar' is an entertainment place unique in Thailand, as it provides sex workers with Thai Occupational Health & Safety Standards; employment in accordance with the Thai Labour Protection Act; enrollment in the National Social Security Scheme, and opportunities for skill advancement and promotion.<sup>234</sup>

###### **4.1.2. Workers and CSOs initiatives towards the respect of their labour rights**

An organisation of home-based informal workers in Thailand persuaded government authorities to have appropriate transportation from the main market area to their resettlement area, located in the periphery of the city. These included two buses to do the route and a promise to build a pedestrian bridge to cross a dangerous road on their route. Advocacy work in Thailand also brought to the Homeworkers Protection Act and Domestic Workers Ministerial Regulation to provide home-based and domestic workers with a minimum wage, health and safety protections, and fundamental labour rights.<sup>235</sup>

Participation of women was achieved in Ghana with the Newmont's Ahafo project, established by a 95-member Women Consultative Committee, to review matters affecting women, including employment and grievance mechanisms.<sup>236</sup>

##### **4.2. Government-led Good Practices & Legislation**

###### **4.2.1. Good practices in regards to discrimination in the workplace**

In recent years the European Union's approach to discrimination has shifted away from the unitary approach of addressing inequalities as mutually exclusive towards a more integrated approach.<sup>237</sup> This intersectional approach recognises that social categories of difference such as gender, sexuality, race, and class do not exist separately, but interact with one another as multiple and overlapping oppressions within social institutions and as experienced in the lives of individuals.<sup>238</sup> In particular, Portugal's multiple approach can serve as an institutional model in terms of equality policies. This more balanced approach recognises both the importance of addressing intersecting inequalities as well as upholding single-issue discrimination policies.<sup>239</sup> The success of Portugal may reflect the government's historical willingness to involve CSOs in the drafting of equality policies.<sup>240</sup>

###### **4.2.2. Good practices in regards to sexual harassment in the workplace**

Under Indian law, employers face penalties if they fail to carry out their responsibilities under laws related to sexual harassment in the workplace.<sup>241</sup>





Kenya also enacted the Sexual Offences Act to oblige the adoption of an anti-sexual harassment policy by any employer with at least 20 employees, which should include training, procedures, and provisions for non-retaliation.<sup>242</sup> Further, the Institute for Gender Equality Promotion and Education in South Korea gives public officials training in sexual harassment and sexual violence prevention education and sexual harassment counselling education.<sup>243</sup> In South Korea, it is also mandatory for employers to have in place and implement sexual harassment prevention education programs yearly, to promptly investigate reported sexual harassment cases that occurred in the workplace, and to take measures against perpetrators as well as provide redress to victims. Failure of the employer to carry out investigations results in fines or other penalties.<sup>244</sup>

Under European Union law harassment is treated as a specific type of discrimination. Further, after facts have shown that discrimination may have occurred, the burden of proof is placed on the defendant.<sup>245</sup>

In Canada, different provinces enacted legislation on sexual violence and harassment and introduced harassment and violence in the workplace as hazards of their occupational health and safety systems.<sup>246</sup>

#### **4.2.3. Good practices in regards to gender equality in parental leave**

In Ukraine, the Centre for CSR; the Ministry for Social Policy and Labour; the Ministry for Family, Youth, and Sports, and the State Committee for Regulatory Policy and Entrepreneurship Development, initiated the 'Best Family-Friendly Enterprise' Contest and published a Practical Guidebook. The intention of the initiative is to support gender equality in the workplace and encourage companies to have good working conditions, be conscious of the caring responsibilities of employees, and improve public awareness on finding a work life/family life balance.<sup>247</sup>

The 'Right to Flexible Working' Law in Austria ensures that parents have the right to flexible working hours if they work in a company of 20 or more employees. Smaller companies that follow this law voluntarily are eligible to receive financial support from the government. 64% of businesses affected gave the law a positive evaluation.<sup>248</sup>

#### **4.2.4. Good practices towards equal pay and enforcement of minimum wages**

Iceland is the first country that enforced equal pay and made the gender pay gap illegal, providing penalties for public or private agencies that do not comply with the national equal pay standards.<sup>249</sup>

In Brazil, when the minimum wage was doubled in 2000, the gender pay gap also declined with 10%.<sup>250</sup>

In Brazil, Costa Rica, Mexico, and Peru, minimum wages are provided for all workers, regardless of the sector they are employed in, and Chile, Kenya, Portugal, Trinidad, and Tobago have provided minimum wages to domestic workers as well.<sup>251</sup>

#### **4.2.5. Gender quotas for women's participation and representation in boards**

After the introduction of a 40% quota for women on corporate boards, the quota was achieved in two years in Norway.<sup>252</sup>

In Denmark, since 2013, companies have "a legal obligation to set a target figure and establish a policy for the gender composition of management unless they have an equal distribution of men and women on the board of directors or in the other management". Such targets and policies need to be reported annually in the companies' management reports; otherwise they will be subjected to fines.<sup>253</sup>

#### 4.2.6. Good practices in regards to migrant workers' rights

Under the 1995 Migrant Workers Act, a fund was established in the Philippines to provide migrant workers with access to legal services in cases of violations or disputes with employers.<sup>254</sup>

### 4.3. Business-led Good Practices and Guidelines

#### 4.3.1. Company's initiative to launch recruitment programmes for women

A Georgian company introduced an exclusive employment programme for women, in order to defeat stereotypes in the male-dominated construction industry. It resulted in having women in managerial positions, previously occupied by men, and complete gender balance in top management.<sup>255</sup>

### 4.4. Good Practices & Guidelines led by Multilateral Initiatives

#### 4.4.1. FAO's Country Gender Assessment in agriculture in Nepal

The Country Gender Assessment (CGA) for agriculture and rural development in Nepal had the scope of informing gender-sensitive country-level planning and programming of FAO. The CGA analyses 'existing gender relations and inequalities in various agricultural subsectors, their causes, and their impacts on the social and economic development of agriculture and the rural economy'. The CGA also provides strategies and underlines 'key elements for the promotion of gender equality in agriculture and rural development, and for strengthening rural women's social and economic empowerment'.<sup>256</sup>

#### 4.4.2. OECD Due Diligence Guidance for Responsible Business Conduct

The Organisation for Economic Co-operation and Development (OECD) Council of Ministers adopted the 'Due Diligence Guidance for Responsible Business Conduct', which aims at guiding companies in their due diligence responsibilities under the OECD Guidelines for Multinational Enterprises. The OECD also developed '14 Strong Principles and Concepts Useful for Civil Society' based on the Guidance, which include gender perspective as a critical element, and the need for companies to assess gender-based risks and impacts. It thus provides recommendations on how to address and integrate a gender lens in companies' due diligence, such as: developing gender-sensitive and gender-responsive policies and plans; identifying overlapping vulnerabilities; supporting women's equal participation in consultations and negotiations; assessing women's equal access to compensation, and other forms of reparation.<sup>257</sup>

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

### 5.1. PILLAR I: STATE DUTY TO PROTECT

Priority Area 1	Resolution of challenges in terms of law and policy		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Repeal or amend laws and policies that allow for gender discrimination in the workplace.	Amend the Gender Equality Act to revoke the exemption in section 17, paragraph 2 of the Gender Equality Act that allows gender-based discrimination for reasons of national security and religion.	Ministry of Social Development and Human Security (MSDHS), MoJ	Provisions should align the Gender Equality Act with international obligations under CEDAW, ILO Convention No. 111, and accepted UPR Recommendations.  Timeline: 1 year - 2019
Ratify the ICMW.	Following ratification, adopt human rights treaties into national law in order to further enhance women's enjoyment of their human rights as recommended by the CEDAW Committee.	National Council for Peace and Order (NCPO), National Legislative Assembly (NLA)	Effective ratification of the ICMW and the International Convention for the Protection of all Victims of Enforced Disappearance (CED), shown through enactment of related laws.  Timeline: 1 year - 2019
Hold all government offices, including the Royal Thai Police Office, accountable to the Gender Equality Act.	Mandate the reversal of the recent decisions banning women from police stations and police cadet academies.	MSDHS; MoJ, Ministry of Labour (MoL)	Policies of all government offices, including Royal Thai Police Office, align with CEDAW and the Gender Equality Act by 2019.  Women make up 25% of the Royal Thai Police Force or police cadet academies by 2021.  Timeline: 3 years – 2019-2021



Strengthen the WorLorPor Committee.	Put into place mandatory qualifications for WorLorPor members to ensure they are well informed and sensitised to gender issues.	MSDHS	100% of WorLorPor members receive training on gender issues, including gender sensitisation, and addressing indigenous women, LGBTI people, sex workers, ethnic minorities etc.  Timeline: 1 year – 2019
	Ensure WorLorPor members have sovereign immunity from lawsuits related to their rulings.		Inclusion of provisions in the Gender Equality Act which guarantee sovereign immunity from lawsuits to WorLorPor members in retaliation.  Timeline: 1 year – 2019
Enact a law on sexual harassment.	Clearly define sexual harassment with inclusion of verbal harassment, expressly prohibit sexual harassment in the workplace, and ensure that proper redress mechanisms are in place to provide remedy to victims of sexual harassment.	MSDHS, MoJ	Law on sexual harassment enacted, inclusive of physical, verbal, and psychological harassment, violence, and coercion, along with implementation mechanisms.  Timeline: 1 year – 2019
	The legislation shall also define the penalties for perpetrators of sexual harassment in the workplace.		Clear penalties introduced into Thai Penal Code or Labour Law.  Timeline: 2 years – 2019-2020
Amend the Labour Protection Act No. 2, Section 16.	Amend the Labour Protection Act No. 2, Section 16, to clearly define harassment and sexual harassment based on the ILO Declaration on Fundamental Principles and Rights at Work, and to cover harassment among employees of the same ranking.	MSDHS; MoJ, MoL	Definitions of harassment and sexual harassment in the Labour Protection Act No. 2 align with the ILO Declaration on Fundamental Principles and Rights at Work.  Timeline: 1 year – 2019



Review civil service dress codes.	Change civil service dress codes to ensure that transgender or non-binary employees can dress in ways that align with their gender identity.	MoL	<p>Reviews and changes must be carried out in consultation with the transgender and non-binary community by 2019.</p> <p>At least 50% of transgender or non-binary civil service employees dressing in accordance with their gender identity by 2021.</p> <p>Timeline: 3 years – 2019-2021</p>
Adopt consistent terminology relating to LGBTI identities and issues within law and policy.	Adopt consistent definitions to describe transgender persons, stop conflation of transgender with intersex, and conflation of gender identity, gender expression, and sexual orientation.	MSDHS; MoJ, MoL	<p>Adopted definitions must be established by the LGBTI and SOGIESC communities, and applied to laws and policies in consultation with said communities.</p> <p>Timeline: 1 year – 2019</p>
	Publish a 'glossary of definitions to describe transgender persons, stop conflation of transgender with intersex, and conflation of gender identity, gender expression, and sexual orientation' and ensure it is annexed to the 2017 Constitution.		<p>Publication of 'Glossary of Definitions' released by 2019 and annexed to the 2017 Constitution by 2020.</p> <p>Timeline: 2 years – 2019 - 2020</p>
Repeal the criminalisation of sex work and adopt laws against the arbitrary arrest and detention of sex workers.	The fight against human trafficking and exploitation should not affect sex workers that willingly choose to work in the entertainment sector and provide them with rights, social benefits and protection as any other worker.	NCPO, NLA	<p>Effective decriminalisation of sex work legally and in practice, with measures provided to eliminate arrest and detention for sex work, and at least 50% of sex workers having access to labour rights by 2021.</p> <p>Timeline: 3 years – 2019-2021</p>





Adopt laws and policies that ensure effective participation of women in public and political life and their access to decision-making positions.	Adopt gender quotas or similar temporary special measures as recommended by the CEDAW Committee to accelerate the realisation of women’s substantive equality.	NCPO; NLA, MoL	Positive discrimination measures benefiting women developed by 2020, with an increase to at least 45% of women in decision-making positions by 2021.
			Timeline: 3 years – 2019-2021
	Ensure all women are represented, including women in disadvantaged situations.		At least 50% of women in high-profile positions are women from marginalised backgrounds, including indigenous, ethnic minority, migrant, LGBTI, and SOGIESC women.
			Timeline: 3 years – 2019 – 2021
Priority Area 2	Implement and institutionalise a policy for non-discrimination		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Dedicate an institution to promote the right of non-discrimination on the basis of gender in all activities including employment.	Establish an independent organisation funded by the government to promote gender equality and protect the rights of women, girls, and LGBTI individuals.	MSDHS	Establishment of the independent organisation in consultation with and led by women promoting gender equality, with adequate funding and resources.
			Timeline: 1 year - 2019
Express the government’s commitment to the rights of non-discrimination and protecting the liberty and security of its employees.	The NAP on BHR should include a non-discrimination principle based on gender as one of the strong principles guiding all laws and policies.	MSDHS; MoJ, National Committee on Gender Equality	The NAP on BHR should explicitly include the overarching principle of non-discrimination based on gender, in line with CEDAW and the ILO Convention No. 111.
			Timeline: 1 year - 2019



Develop public campaigns to ensure access to information about anti-discrimination employment rights and SOGIE and LGBTI rights.	Implement anti-discrimination training for government employees and other public sector workers and raise awareness about LGBTI issues, laws, and policies within areas of health, education, labour, and other services provided by government agencies and ministries.	MSDHS; MoL, National Committee on Gender Equality	100% of government employees and at least 50% of public sector workers partake in anti-discrimination training, covering LGBTI issues, laws, and policies within the government and public sectors.  Timeline: 2 years – 2019-2020
	Make information about the Gender Equality Act and its grievance mechanisms more accessible to marginalised communities by partnering with regional government entities and CSOs.		At least 50% of regional government entities and CSOs receive anti-discrimination training, focusing on the Gender Equality Act and its grievance mechanisms.  Timeline: 2 years – 2019-2020
Increase awareness of the ASEAN Regional Plan of Action on the Elimination of Violence Against Women (RPA on EVAW) to address issues of violence against marginalised groups such as indigenous women and LGBTI persons.	The MSDHS should facilitate meetings to spread awareness about the RPA on EVAW, published by the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2015.	MSDHS	At least 2 meetings held with community groups and CSOs on the RPA on EVAW.  Timeline: 1 year - 2019
Create a complaint mechanism for violations against women and children of ASEAN.	Work with CSOs and ACWC to collect data and monitor violations to provide input into the CEDAW and Convention on the Rights of the Child (CRC) civil society shadow report.	MSDHS, MoJ	The complaint mechanisms must be established in accordance with ACWC and CSO recommendations, ensuring it is accessible to the target population and adequately captures the on-the-ground human rights situation.  Timeline: 1 year – 2019



Give support to ACWC to improve its work.	Give sufficient assistance in terms of funding to allow ACWC to hire permanent full-time staff with one regional staff member to support ACWC's work and encourage foreign donors to join the Thai government in providing financial assistance.	MSDHS; MoJ	Increase in funding provided to the ACWC by both government and foreign donors. ACWC should have the financial resources to employ permanent full-time staff, including a regional staff member, by 2019.  Timeline: 1 year – 2019
<b>Priority Area 3</b>	<b>Implement and institutionalise policy for gender parity and alignment with international labour standards for workers</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Ensure diversity, gender equality, and inclusion within leadership and management roles in public and private enterprises.	Recognise companies for their efforts on inclusivity and diversity by granting workplace diversity awards or publishing an 'Inclusivity Index' in public media.	MoL	Create and grant at least five awards for workplace diversity.  Create and publish an 'Inclusivity Index', recognising companies which have shown high levels of inclusivity and diversity.  Timeline: 1 year - 2019
Incentivise companies to hire more female workers into Science, Technology, Engineering and Mathematics (STEM) positions to promote gender equality within STEM.	Provide hiring grants and wage subsidies to companies who hire recent post-secondary STEM students and graduates who are women or LGBTI persons..	MoL	Provision of at least five hiring grants and wage subsidies to companies who hire female post-secondary STEM students and graduates who are women and LGBTI persons.  Timeline: 1 year – 2019
Ensure enterprises meet international labour standards.	Further incentivise enterprises to seek TLS certification to promote the physical and mental health and safety of women, LGBTI persons, and minority groups in the workplace.	MoL, MoJ	Provision of incentives to at least 2,500 enterprises to obtain TLS certification.  Timeline: 1 year – 2019



Remove barriers to ensure the equal participation of women and men in the workforce by ensuring support for workers with family and caring responsibilities by upholding ILO Convention No. 111 and ratifying ILO Convention No. 156 (ILO Workers with Family Responsibilities Convention).	Enact legislation on government funded parental leave scheme for primary and secondary caretakers (regardless of gender), in line with ILO Convention No. 111, ILO Convention No. 156, and the SDGs 2030 Agenda.	MoJ; MoL; MSDHS, National Committee on Gender Equality	At least 50% of eligible primary and secondary caretakers have accessed the enacted government funded parental leave scheme.  Timeline: 2 years – 2019-2020
Take steps to ensure that women’s freedom of association and assembly in the workplace is protected.	Women should freely join trade unions and organise collectively to promote their rights, without fear of intimidation or retaliation.	MoL	At least 40% of trade union members are women, with women playing a key role in decision making processes.  Timeline: 3 years – 2019-2021
Remove barriers to ensure the equal participation of women and men in the workforce by ensuring support for workers with family and caring responsibilities and alleviating the burden of Unpaid Care Work on women, upholding ILO Convention No. 111, ratifying ILO Convention No. 156 (ILO Workers With Family Responsibilities Convention), and in line with SDGs 2030 Agenda.	Through social welfare measures, implement government subsidised childcare for working caretakers.  Amend the Labour Protection Act of 1998 on Maternity Leave to include Paternity Leave.	MoJ; MoL; MSDHS; National Committee on Gender Equality	At least 50% of eligible families have access to government subsidies for childcare.  Timeline: 2 years – 2019-2020  The Labour Protection Act of 1998 on Maternity Leave is amended to include Paternity Leave.  Timeline: 1 year – 2019



Promote women's economic empowerment, reduce levels of violence against women, and decrease the gender pay gap through incorporation of Unpaid Care Work into policy on labour and gender equality.	Implement policy on Unpaid Care Work with the aim of recognition, reduction, and redistribution of women's Unpaid Care Work.	MoJ; MoL; MSDHS, National Committee on Gender Equality	Implementation of a policy on Unpaid Care Work, developed in consultation with women from all backgrounds and experts specialised in this area.  Timeline: 1 year – 2019
Ensure that the rights of women in the informal employment sector as well as the rights of women migrant workers are protected.	Provide social security and labour standards protections and strengthen efforts to protect these categories of workers from abuse and exploitation.	MoL	Increase the provision of social security and labour standards protection by at least 35% across the informal employment sector, ensuring they target the industries with high numbers of women and migrant worker employees.  Timeline: 3 years – 2019-2021
<b>Priority Area 4</b>	<b>Intersectional Discrimination</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Protect the employment opportunities of migrants.	Repeal the Royal Decree on Managing the Work of Aliens (2017).	MSDHS; MoJ; MoL	Royal Decree on Managing the Work of Aliens (2017) is repealed, with any replacements or amendments involving extensive consultation with the migrant population.  Timeline: 1 year – 2019
Undertake increased action on implementing ILO Recommendation No. 204 on the formalisation of the informal economy.	Extend social security benefits to homeworkers and informal workers.	MSDHS; MoJ, MoL	Social security benefits are extended to the informal sector, reaching 50% of homeworkers and informal workers.  Timeline: 3 years – 2019-2021





	Provide greater training and resources to increase access to opportunities for women working as homeworkers or in the informal sector to allow integration into the formal sector and economy.		<p>At least 15 trainings conducted across Thailand for women working in the informal sector, including homeworkers, focusing on increasing opportunities to join the formal sector and be part of the formal economy.</p> <p>At least 35% increase in women in the formal sector.</p> <p>Timeline: 3 years – 2019-2021</p>
Protect the employment rights of sex workers and others employed within the entertainment industry.	Enforce labour protections within entertainment places.	MoJ, MoL	<p>At least 75% of entertainment venues have enforced labour protections and standards for their employees.</p> <p>Timeline: 3 years – 2019-2021</p>
Uphold Thai Criminal Code regulating police practice for the protection of sex workers' human rights.	Eradicate practices of unlawful entrapment, unjustified prosecution, and corruption against sex workers by police officers.	MoJ, MSDHS	<p>Reduction of at least 75% of formal and informal reports of unlawful police activity against sex workers. As sex work is criminalised, it is vital that statistics are collected on the ground, in full cooperation with and preferably led by people in the sex work industry.</p> <p>Increase in 50% of police officers prosecuted after formal complaints.</p> <p>Timeline: 2 years – 2019-2020</p>

Protect the equal employment rights of disabled women.	Repeal Section 15, Paragraph 3 of the Persons with Disabilities Empowerment Act allowing exemptions in the legal protection of persons with disabilities from being subjected to discrimination.	MoJ; MoL, MSDHS	Complete removal of Section 15, paragraph 3 of the Act.  Timeline: 1 year – 2019
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## 5.2. PILLAR III: ACCESS TO REMEDY

Priority Area 1	Access to effective remedies and compensation		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Ensure the WorLorPor Committee, established under the Gender Equality Act (2015), processes complaints effectively and in a timely manner.	Strengthen the WorLorPor Committee through capacity, resource, and knowledge building on BHR, to address gender-based discrimination and sexual harassment in the workplace effectively and in a timely manner.	MSDHS; MoJ, National Committee on Gender Equality	100% of the WorLorPor Committee receive annual training on addressing gender-based discrimination and sexual harassment complaints.  At least 50% increase in successfully processed complaints regarding gender-based discrimination and sexual harassment in the workplace.  Timeline: 2 years – 2019-2020
Ensure effective access to justice and remedy for all women, including rural and indigenous women, and remove all barriers to their full enjoyment of remedies and grievance mechanisms.	Simplify the procedure to access to the Justice Fund.	MSDHS, MoJ	Amend the procedure to access the Justice Fund through extensive consultation with local communities, including indigenous women and women from remote areas, ensuring all barriers are understood and addressed.  Timeline: 2 years – 2019-2020



	Disseminate information to all women regarding legal remedies to violations of their rights.		<p>At least 15 community forums on accessing legal remedies and mechanisms to rights violations held across Thailand, at least 50% of which must take place with indigenous and rural communities. Forums should provide all participants with documents summarising the information, which should be available in easy-to-read format and in local languages. These should also be disseminated to the wider communities.</p> <p>Timeline: 2 years – 2019-2020</p>
Provide appropriate and gender-sensitive remedies as well as work-specific grievances.	Take into account women's needs and requests in addressing violations.	MoJ, MoL	<p>Consult women who have received or requested remedies to assess their appropriateness, where changes need to be made, and/or if changes already made are satisfactory.</p> <p>Timeline: 1 year – 2019</p>
Set up a remedy fund in accordance with the Gender Equality Act.	The remedy fund should provide for injured parties and it must be used appropriately.	MSDHS and MoJ	<p>A remedy fund should be established in accordance with the Gender Equality Act and with extensive consultation with the targeted community to ensure it meets the needs of the injured parties in an effective manner and within a specific timeframe.</p> <p>The remedy fund has been provided to at least 75% of the injured parties who have requested it.</p> <p>Timeline: 2 years – 2019-2020</p>



<p>Ensure appropriate remedies for victims of sexual abuse or violence, committed in the workplace at in business-related activities.</p>	<p>Increase the availability, accessibility, and quality of essential services and support to victims of gender-based violence, including legal assistance and appropriate health-care services and psychosocial support.</p>	<p>MoJ; MoL, Ministry of Public Health (MoPH)</p>	<p>Existing services and support need to be assessed in consultation with victims of gender-based violence to ensure they are meeting the actual needs of the victims, and appropriate plans for change need to be developed where needed.</p> <p>Increase in funds allocated to services and support in consultation with the targeted population, to ensure resources are being allocated most effectively.</p> <p>Timeline: 2 years – 2019-2020</p>
<p>Strengthen the justice system in its gender sensitivity and gender responsiveness.</p>	<p>Provide gender training to judges, prosecutors, lawyers, police officers, and law enforcement officers.</p>	<p>MoJ</p>	<p>100% of people working in the justice system receive yearly training on gender sensitivity and gender responsiveness in the justice system.</p> <p>Periodically monitor gender mainstreaming in the judicial system.</p> <p>Timeline: 2 years – 2019-2020</p>
	<p>Increase the number of women employed in the justice system.</p>		<p>Increase of women employed in the justice system, to reach at least 25% of total employees.</p> <p>Timeline: 3 years – 2019-2021</p>
	<p>Implement capacity building for judiciary in relation to business-related human rights complaints, including gender dimensions.</p>		<p>100% of the judiciary receive training on BHR and BHR complaints, including extensive coverage of gender dimensions.</p> <p>Timeline: 1 year – 2019</p>



Report on the situation of employment of LGBTI individuals and women.	Information must be published in a report that is available and accessible.	MoL, MSDHS	<p>The situational report must be written in extensive consultation with the LGBTI community, and ideally written by a member or members of said community. It must be updated on a yearly basis, freely available, available in an easy-to-read format, and available in local languages.</p> <p>The report should be disseminated widely, shown through 5,000 physical copies distributed, and 25,000 digital downloads.</p> <p>Timeline: 1 year - 2019</p>
<b>Priority Area 2</b>	<b>Accountability</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Hold accountable perpetrators of sexual, psychological, and physical violence, abuse, and harassment in the workplace.	Ensure penalties are enforced for such behaviours and monitor the non-repetition of similar incidents.	MoJ	<p>At least 50% of offenders officially prosecuted after complaints are found valid, ensuring all who are prosecuted receive the legal penalties.</p> <p>Timeline: 2 years – 2019-2020</p>
Hold accountable business enterprises for violations of women’s human rights and labour standards.	Improve investigation of violations and crimes related to business entities.	MoJ	<p>At least 50% of reported violations and crimes fully investigated.</p> <p>Timeline: 2 years – 2019-2020</p>
	Prosecute those responsible for abusive and exploitative conditions of work.		<p>Prosecution of at least 50% of people reported for abusive and exploitative working conditions.</p> <p>Timeline: 2 years – 2019-2020</p>



	Adopt exemplar fines or penalties for businesses or employers that violate labour standards and human rights.		Exemplar fine or penalties paid by at least 70% of businesses or employees found guilty of violating labour standards and human rights.  Timeline: 2 years – 2019-2020
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## 6. RECOMMENDATIONS AND ACTION PLAN FOR BUSINESSES: PILLAR II AND PILLAR III

6.1. PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT			
Priority Area 1	Fulfilment of International Obligations, including those under the UNGPs and SDGs		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Businesses should include workplace diversity in their corporate core values and express their commitment to the right of non-discrimination and protecting the liberty and security of its employees.	Enact formalised corporate policy and issue a policy statement that identifies the company's commitment to non-discrimination and zero tolerance of sexual harassment in the workplace.	Businesses	Policy commitments related to non-discrimination on all grounds in the workplace are immediately developed by high-income companies; and by 2020 for SMEs.  Timeline: 2 years – 2019-2020
Provide clear definition of sexual harassment in company policy based on ILO CEACR definition and training to employees.	Conduct specific training for managers on sexual harassment and mandatory workshops on sexual harassment for all employees.	Businesses	At least 60% of businesses conduct training and workshops on an annual basis for 100% of their employees, with targeted training for managers.  Timeline: 3 years – 2019-2021



Adopt practices to implement policy commitments.	Conduct HRDD of internal corporate operations, including an externally facilitated gender audit to identify and address practices that directly or indirectly promote discrimination based on gender or SOGIESC.	Businesses	<p>At least 50% of businesses in Thailand have conducted HRDD, including an externally facilitated gender audit.</p> <p>At least 75% of those who have conducted due diligence have amended practices found to directly or indirectly promote discrimination.</p> <p>This should begin immediately after the adoption of policies and on a continuous basis.</p> <p>Timeline: 2 years – 2019-2020</p>
<b>Priority Area 2</b>	<b>Create a working environment promoting equity and diversity free of gender discrimination and sexual harassment</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Remove barriers to ensure the equal participation of women in the workforce by ensuring support for workers with family and caring responsibilities.	Enact policy providing employer funded paid parental leave for primary and secondary caretakers (regardless of gender).	Businesses	<p>At least 75% of businesses have enacted employer funded paid parental leave for primary and secondary caretakers, regardless of gender.</p> <p>Timeline: 2 years – 2019-2020</p>



Enact anti-harassment policies.	Implement a zero-tolerance policy for sexual and other types of harassment in the workplace and ensure relevant consequences/penalties if such episodes occur.	Businesses	<p>At least 75% of businesses have a zero-tolerance policy effectively enacted, shown through 100% of complaints officially investigated and those found guilty facing official consequences.</p> <p>Effectiveness of these policies should be determined both internally and through external investigation.</p> <p>Timeline: 2 years – 2019-2020</p>
Ensure a safe and equal working environment for sexual minority groups.	Formally allow workers to identify and express themselves in terms of title and dress in ways that align with their gender identity.	Businesses	<p>At least 50% of businesses have policies and practices allowing employees to choose and express their own gender identity.</p> <p>Timeline: 3 years – 2019-2021</p>
	Offer equal employment benefits to LGBTI employees as heterosexual and cisgender employees.		<p>At least 75% of businesses offer equal employment benefits to LGBTI employees, as determined through external investigation and documentation carried out in consultation with, and preferably led by, members of the LGBTI community.</p> <p>Timeline: 3 years – 2019-2021</p>



	Address gender stereotypes.		<p>At least 75% of businesses have 100% of staff participate in externally facilitated gender equality training on an annual basis.</p> <p>At least 50% of businesses conduct a gender audit, to identify and address discriminatory practices.</p> <p>Timeline: 2 years – 2019-2020</p>
Implement inclusive human resource policies with transparent and clearly articulated procedures and practices in the <b>recruitment and hiring</b> of workers.	Ensure that recruitment postings include “sexual orientation and gender identity or gender expression” as protected classes.	Businesses	<p>At least 75% of businesses include “sexual orientation and gender identity or gender expression” in their recruitment postings.</p> <p>Timeline: 1 year – 2019</p>
	Include reference to LGBTI people and gender discrimination free environment in any documents discussing the work environment.		<p>At least 75% of businesses include direct reference to having an LGBTI and gender discrimination free environment in all documents referring to their work environment.</p> <p>Timeline: 1 year – 2019</p>
	Implement anti-discrimination policies for recruiting, interviewing, and hiring.		<p>At least 50% of businesses must have specific anti-discrimination policies in place for recruiting, interviewing, and hiring.</p> <p>Timeline: 1 year – 2019</p>
	Provide training to management and hiring board on anti-discrimination practices within these processes.		<p>At least 50% of businesses have conducted externally facilitated trainings with 100% of management and members of their hiring board.</p> <p>Timeline: 1 year – 2019</p>



Implement inclusive human resource policies with transparent and clearly articulated procedures and practices in the <b>remuneration</b> of workers, in line with ILO Equal Remuneration Convention No. 100.	Include gender pay equity objectives in formal policy on remuneration.	Businesses	At least 50% of businesses have gender pay equity objectives in their formal policies on remuneration.  Timeline: 2 years – 2019-2020
	Undertake gender remuneration gap analysis.		At least 50% of businesses undertake externally facilitated remuneration gap analysis.  Timeline: 2 years – 2019-2020
Implement inclusive human resource policies with transparent and clearly articulated procedures and practices in the <b>promotion</b> of workers and composition of management, in line with General Comment No. 23 of Article 7 of the ICESCR.	Require 40% of board directorship positions in public enterprises and large private enterprises to be occupied by women, with special attention to the percentage of women from diverse backgrounds, especially those from sexual and ethnic minority groups.	Businesses	At least 40% of board of directorship positions in public enterprises and large private enterprises to be occupied by women.  At least 50% of women in these positions should be from marginalised backgrounds, including indigenous, ethnic minority, migrant, LGBTI, and SOGIESC women.  Timeline: 3 years – 2019-2021
Ensure safety and health of employees of all genders.	Provide safe, sanitary, and disability friendly women's changing rooms and toilets and gender-neutral changing rooms and toilets.	Businesses	At least 50% of businesses have changing rooms and toilets for women which are safe, sanitary, and accessible for people living with disabilities.  At least 50% of businesses have gender-neutral changing rooms and toilets.  Timeline: 2 years – 2019-2020





Protect LGBTI migrant workers.	Enact policies that protect LGBTI migrant workers not covered by Thai labour laws.	Businesses	At least 50% of businesses have explicit policies which protect LGBTI migrant workers not covered by Thai labour laws.  Timeline: 2 years – 2019-2020
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## 6.2. PILLAR III: ACCESS TO REMEDY

Priority Area 1	Access to remedies and compensation		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Businesses should provide a redress mechanism to address human rights violations in the workplace.	Provide for an adequate grievance redress mechanism to victims affected by discrimination or sexual harassment in the workplace. Complaint procedure should allow accuser to bypass the chain of command.	Businesses	At least 50% of businesses have a redress mechanism that is effective and accessible, developed through extensive consultation with WorLorPor and Sexual harassment experts, in line with international standards, and with a complaint procedure that allows accusers to bypass the chain of command.  100% of complaints made through these mechanisms must be taken seriously, and follow the implemented protocol.  100% of managers in businesses with implemented grievance redress mechanisms must receive training on handling complaints.  Timeline: 2 years – 2019-2020



	Shift the burden of proof for sexual harassment and gender discrimination in the workplace from employees to employers.	For at least 75% of businesses, where complaints are addressed formally, requiring evidence and verification, the burden of proof must lie on employers.  Timeline: 2 years – 2019-2020
	Create a remedy fund accessible to victims of discrimination and harassment.	At least 50% of businesses must develop a remedy fund through extensive consultation with women, including experts and those with discrimination or harassment experience, ensuring the fund is easy to access and the remedy is appropriate to each individual case.  At least 50% of victims in these organisations have been able to access the remedy fund when appropriate.  Timeline: 2 years – 2019-2020
	Provide referral to counselling services for victims of sexual assault and discrimination paid for out of remedy fund.	At least 50% of businesses provide referrals and full financial support for access to counselling services to victims of sexual assault and discrimination. This should be funded through a designated remedy fund, established through extensive consultation with women, including experts and those with discrimination or harassment experience.  Timeline: 2 years – 2019-2020



Ensure that gender-related aspects of non-judicial mechanisms are adequately addressed.	Involve women in the design and implementation of non-judicial grievance mechanisms.	Businesses	At least 75% of businesses develop non-judicial grievance mechanisms through extensive consultation with women, including experts and those with discrimination or harassment experience.  Timeline: 2 years – 2019-2020
Document the situation of employment of LGBTI individuals and women.	The document must be published in a report that is available and accessible to the public.	Businesses	At least 50% of businesses must report on their employment of LGBTI individuals and women on a yearly basis. These reports must be freely available and accessible to the public.  Timeline: 1 year – 2019



## ENDNOTES

- <sup>1</sup> Manushya Foundation, *Business & Human Rights Strategy*, (2017), available at: <https://www.manushyafoundation.org/business-human-rights>
- <sup>2</sup> Manushya Foundation, *Meeting Report: Coalition Building Workshop on Business & Human Rights – Towards a ‘Thai BHR Network’*, (18-20 November 2018), available at: <https://www.manushyafoundation.org/coalition-building-workshop-report>
- <sup>3</sup> The four regional NBA dialogues were conducted by Manushya Foundation as follows: The Northern Regional NBA Dialogue in Chiang Mai (29 - 30 January 2017), The Northeastern Regional NBA Dialogue in Khon Kaen (23 - 24 February 2017), The Southern Regional NBA Dialogue in Hat Yai (20 - 21 March 2017) and The Eastern and Central Regional NBA Dialogue in Rayong (30 - 31 March 2017). Please access the NBA Regional Dialogues Report here: Manushya Foundation, *Meeting Report: Regional Dialogues for the CSO National Baseline Assessment (NBA) on Business and Human Rights*, (2017), available at: <https://www.manushyafoundation.org/nba-dialogues-report>
- <sup>4</sup> 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/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/post/2018/07/31/release-of-second-bhr-nba-experts-meeting>
- <sup>5</sup> Manushya Foundation & Thai BHR Network, *Independent CSO National Baseline Assessment on Business and Human Rights in Thailand*, (2019), available at: <https://www.manushyafoundation.org/bhr-cso-nba-thailand>
- <sup>6</sup> The four regional NBA dialogues were conducted by Manushya Foundation as follows: The Northern Regional NBA Dialogue in Chiang Mai (29 - 30 January 2017), The Northeastern Regional NBA Dialogue in Khon Kaen (23 - 24 February 2017), The Southern Regional NBA Dialogue in Hat Yai (20 - 21 March 2017) and The Eastern and Central Regional NBA Dialogue in Rayong (30 - 31 March 2017). Please access the NBA Regional Dialogues Report here: Manushya Foundation, *Meeting Report: Regional Dialogues for the CSO National Baseline Assessment (NBA) on Business and Human Rights*, (2017), available at: <https://www.manushyafoundation.org/nba-dialogues-report>
- <sup>7</sup> Manushya Foundation, *Regional BHR workshops held to demystify corporate accountability concepts with HRDs, May-June 2017*, (2017), available at: <https://www.manushyafoundation.org/post/2018/07/31/release-of-bhr-workshops>
- <sup>8</sup> 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/post/release-of-first-bhr-nba-experts-meeting>
- <sup>9</sup> 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/post/2018/07/31/release-of-second-bhr-nba-experts-meeting>
- <sup>10</sup> Manushya Foundation, *Meeting Report: Coalition Building Workshop on Business & Human Rights – Towards a ‘Thai BHR Network’*, (18-20 November 2018), available at: <https://www.manushyafoundation.org/post/2018/07/30/release-of-coalition-building-workshop-meeting-report>
- <sup>11</sup> Manushya Foundation & Thai BHR Network, *Independent CSO National Baseline Assessment on Business and Human Rights in Thailand*, (2019), available at: <https://www.manushyafoundation.org/bhr-cso-nba-thailand>
- <sup>12</sup> Danish Institute for Human Rights, *Women in Business and Human Rights: A Mapping of Topics for State Attention in United Nations Guiding Principles on Business and Human Rights Implementation Processes*, (21 November 2018), p. 7, available at: <https://www.humanrights.dk/publications/women-business-human-rights>



- 13 Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, CEDAW/C/THA/CO/6-7, (24 July 2017), para. 36, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/THA/CO/6-7&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/THA/CO/6-7&Lang=En)
- 14 World Health Organisation (WHO), *National Report on Violence and Health: Thailand*, WHO Kobe Centre For Health Development, (2007), p. 46, available at: [http://www.who.int/violence\\_injury\\_prevention/violence/national\\_activities/report\\_violence\\_and\\_health\\_in\\_thailand.pdf?ua=1](http://www.who.int/violence_injury_prevention/violence/national_activities/report_violence_and_health_in_thailand.pdf?ua=1)
- 15 World Health Organisation (WHO), *National Report on Violence and Health: Thailand*, WHO Kobe Centre For Health Development, (2007), p. 46, available at: [http://www.who.int/violence\\_injury\\_prevention/violence/national\\_activities/report\\_violence\\_and\\_health\\_in\\_thailand.pdf?ua=1](http://www.who.int/violence_injury_prevention/violence/national_activities/report_violence_and_health_in_thailand.pdf?ua=1)
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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.