

# *APPLYING A GENDER LENS TO THE UNGPS IN THE CONTEXT OF THAILAND*

WORKING PAPER

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**MANUSHYA**  
Empowering Communities • Advancing Social Justice

# APPLYING A GENDER LENS TO THE UNGPS IN THE CONTEXT OF THAILAND



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For more information, please contact :



### Emilie Pradichit

Founder & Director

Manushya Foundation

[emilie@manushyafoundation.org](mailto:emilie@manushyafoundation.org)



### Suphamat Phonphra

Community Outreach Coordinator

Manushya Foundation

[suphamat@manushyafoundation.org](mailto:suphamat@manushyafoundation.org)



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# 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>APWLD</b>	Asia Pacific Forum on Women, Land, and Development
<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>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CGA</b>	Country Gender Assessment
<b>CPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>CRC</b>	Committee on the Rights of the Child
<b>CrCF</b>	Cross Cultural Foundation
<b>CSO</b>	Civil Society Organisation
<b>CSR</b>	Corporate Social Responsibility
<b>EGAT</b>	Electricity Generating Authority of Thailand
<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>FPIC</b>	Free, Prior, and Informed Consent
<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>IWNT</b>	Indigenous Women's Network of Thailand
<b>KRBK</b>	Khon Rak Ban Kerd Group
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex
<b>MNRE</b>	Ministry of Natural Resources and the Environment

<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>OBE</b>	Other Business Enterprises
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>RCEP</b>	Regional Comprehensive Economic Partnership
<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>SLAPP</b>	Strategic Litigation Against Public Participation
<b>SMEs</b>	Small and Medium-Sized Enterprises
<b>SPFT</b>	Southern Peasants Federation of Thailand
<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>TBHRN</b>	Thai Business and Human Rights Network
<b>THB</b>	Thai Baht
<b>TLS</b>	Thai Labour Standards
<b>TNC</b>	Transnational Corporation
<b>UN</b>	United Nations
<b>UNDOC</b>	United Nations Office on Drugs and Crime
<b>UNDP</b>	United Nations Development Program
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UNGC</b>	UN Global Compact
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>UPR</b>	Universal Periodic Review
<b>US</b>	United States
<b>WHO</b>	World Health Organisation
<b>WHRD</b>	Women Human Rights Defenders
<b>WorLorPor Committee</b>	Committee on Consideration of Unfair Gender Discrimination

## Manushya's Role in Business and Human Rights process in Thailand

### **"Empowering local communities to be at the centre of BHR 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 victim of human rights abuses caused by business conducts. Our approach lies in the empowerment of invisible and marginalised communities, sharing knowledge with them so they can assert for their rights, facilitating their meaningful engagement in the NAP process so they can become 'Agents of Change,' and 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.

## 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 BHR obligations.

After the Thai government received, during its Second UPR, a recommendation from Sweden to develop a National Action Plan (NAP) on BHR with the view to implement the UNGPs on BHR, 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 which view CSOs as equal partners. For that purpose, in addition to building capacities on BHR knowledge, Manushya also provided 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 HRDs, and the impact of Thai outbound investments and trade agreements.*

As part of its BHR strategy and in order to inform the development of the independent CSO NBA, Manushya Foundation has supported the formation of the Thai BHR Network and has conducted a series of consultations to identify the key priority areas, as well as community-led recommendations: four Regional NBA Dialogues (January-March 2017),<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 the safety of local communities and HRDs engaging in Manushya's strategy, all these six consultations were co-organised with the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ), Thailand.

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

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

These four priority areas of focus influenced the content of the Government's NAP on BHR, following our four key priority areas. This Gender Lens Working Paper 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 BHR Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and non-governmental organisations (NGOs), together ensure that 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.

## Methodology

The methodology used in the research, analysis and writing for this Working Paper on applying a Gender Lens to the UNGPs on BHR in the Context of 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 BHR 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 Gender Lens Working Paper is based on desk-research conducted from January 2017 to March 2019, 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 United Nations (UN) human rights bodies' and NGOs' reports, observations and recommendations, online news articles, expert papers, and other publications.

### Limitations of the Gender Lens Working Paper

The Working Paper on 'Applying a Gender Lens to the UN Guiding Principles on Business & Human Rights in the context of Thailand' is informed by our desk research of existing secondary evidence, coupled with input and first-hand accounts gathered throughout Manushya Foundation's BHR strategy. This Working Paper 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 Gender Lens Working Paper 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 the Gender Lens Working Paper 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 Working Paper 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 Gender Lens Working Paper 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 Gender Lens Working Paper 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.

This **Gender Lens Working Paper applies to all four Priority Areas** of Manushya Foundation and the Thai BHR'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 LGBTI or SOGIESC communities, women with disabilities, and women survivors of violence and abuse.

# APPLYING A GENDER LENS TO THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN THE CONTEXT OF 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 at 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 at 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 at 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 at 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.

Concurrently, women face discrimination and other human rights violations outside the workplace as they are impacted by business activities. For example, women, especially rural women and indigenous women, are considered key players in managing land, water, natural resources for food, and agriculture; however, land rights are often not recognised to women. Thus, they are not consulted in land-related processes or on decisions that impacts natural resources, threatening their livelihoods as they depend on such resources. They are also usually not involved in compensation payments or resettlements agreements, further enhancing their marginalisation and poverty.<sup>33</sup> Additionally, environmental degradation and exploitation of natural resources caused by businesses activities put disproportional pressure on women and intensify existing gender inequalities.<sup>34</sup>

Development projects can intensify gender inequalities and power dynamics: agricultural workers in Asia are mostly women and they bear the burden of their crops and livelihood, despite not being recognised as heads of households and as such not being recognised any land rights.<sup>35</sup> Women are not explicitly consulted nor invited to participate in decision-making processes related to investments in land,<sup>36</sup> and trade agreements and investments can be detrimental for women who depend on land for their livelihood, such as indigenous women and women in rural areas. Currently, the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) trade agreements are particularly concerning for women in Thailand. They will, respectively, increase restrictions to use and develop traditional knowledge of local herbs, and prevent seed sharing amongst farmers - activities mainly undertaken by women - and will thus have a gendered impact. This shows how including the rights of women and girls in trade and investment policy and decision-making is fundamental in order to implement UNGPs with a gender-sensitive approach.<sup>37</sup>

Women human rights defenders (WHRDs) fighting for the right of women to use the land, and for the protection of the environment and natural resources are at high risk of violence and judicial harassment. For example, WHRDs fighting against exploitation of natural resources experience higher risks of reprisals due to the fact that they are not only challenging 'traditional gender roles,' but also "the power relations governing control of natural resources".<sup>38</sup> The specific threats that WHRDs face in this context are: sexual harassment, sexual violence and rape, discrimination, intimidation, surveillance, and extrajudicial killings. On top of this, they have been largely excluded from public consultations and decision-making processes, especially regarding issues that affect them such as land and natural resources, and their right to freedom of association and peaceful assembly has been severely compromised in Thailand.

Finally, women are adversely impacted by business activities with regards to their access to effective remedies: women and girls are discriminated and excluded from judicial and non-judicial remedy for business-related human rights abuses, while grievance mechanisms for sexual and gender-based violence are generally inadequate.<sup>39</sup> Additionally, a common obstacle to access to remedy is the lack of accountability for violations committed by businesses against women's human rights and the non-recognition of land rights to women, which allows corporations to exploit natural resources on their land.



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

### 1.1. International Human Rights Standards

#### 1.1.1. Legally Binding International Human Rights Treaties

##### (i) Core international human rights instruments

- ✓ International Covenant on Civil and Political Rights (ICCPR) (1966) – ratified by Thailand on 29 October 1996
- ✓ International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) – ratified by Thailand on 5 September 1999
- ✓ Convention on the Elimination of All Forms of Discrimination Against Women (1979) – ratified by Thailand on 9 August 1985
- ✓ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1966) – ratified by Thailand on 28 January 2003
- ✗ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990) – not ratified by Thailand
- ◻ International Convention for the Protection of All Persons from Enforced Disappearance (CED) (2006) – signed by Thailand on 9 January 2012, not ratified yet

##### (ii) ILO Conventions

- ✓ ILO Equal Remuneration Convention No. 100 – ratified by Thailand on 8 February 1999
- ✓ ILO Discrimination (Employment and Occupation) Convention No. 111 – ratified by Thailand on 13 June 2017
- ✓ ILO Declaration on the Fundamental Principles and Rights at Work – no need of ratification
- ✗ ILO Occupational Safety and Health Convention No. 155 – not ratified by Thailand
- ✗ ILO Workers with Family Responsibilities Convention No. 156 – not ratified By Thailand
- ✗ ILO Maternity Protection Convention No. 183 – not ratified by Thailand
- ✗ ILO Migration for Employment Convention No. 97 – not ratified by Thailand
- ✗ ILO Migrant Workers (Supplementary Provisions) Convention No. 143 – not ratified by Thailand
- ✗ ILO Domestic Workers Convention No. 189 – not ratified by Thailand

#### 1.1.2. Non-Binding Human Rights Instruments

- ✓ The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) – Thailand voted in favour



- ✓ UN Declaration on the Rights of Peasants and other People Working in Rural Areas – Thailand voted in favour
- ✓ The Beijing Declaration and Platform for Action (1995) – adopted by Thailand

### 1.1.3. The International Bill of Human 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 ICECSR 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>

Ratified by Thailand in 1999, the **ICECSR** sets forth the principle of non-discrimination, guaranteeing that the rights in the covenant must be able to 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 conditions of work.<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 at 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 with regards to sexual harassment. This includes the provision of an explicit definition of sexual harassment at the workplace, mandatory training for all employees, and ensuring that victims have access to justice.<sup>44</sup> On the subject of gender equality, the report notes that in order to ensure 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>

Specifically, on impacts of business activities, the Committee has commented gendered and intersectional discrimination and violations in BHR context in its General Comment No. 24 on State obligations under the ICESCR in the context of business activities. It highlighted that women are among the groups that are ‘disproportionately affected by the adverse impact of business activities,’ above all if they are intersecting with other affected groups, such as indigenous women, women working in rural areas, women of ethnic minorities, and peasants. Furthermore, intersectional discrimination also occurs in investment-linked evictions and displacement that mostly affect indigenous women and girls and often include sexual violence and inadequate compensation. The Committee reiterated the State’s obligation to protect and, as such, prevent violations of economic, social and cultural rights in the context of business activities and specifically, recommended member States to “address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights”.<sup>47</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 and provide them access to sexual and reproductive health-care services.<sup>48</sup>

### 1.1.4. 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 men and the elimination of discrimination against women. 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>49</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>50</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>51</sup> This means that States have a duty to address discriminatory laws and to take measures to halt discrimination against women committed by third parties, including by engaging with business enterprises for them to adopt measures towards this goal.<sup>52</sup> Article 11 deals explicitly with employment and work, considering 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 [...] the right to work”.<sup>53</sup> Finally, Article 14 specifically addresses discrimination against rural women, and provides that States should take necessary measures to ensure those women have equal access to economic opportunities through employment or self-employment, organising self-help groups and/or cooperatives.<sup>54</sup>

Furthermore, the Committee on the Elimination of Discrimination Against Women issued several recommendations that are relevant to women and BHR, among which there 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 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>55</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>56</sup> One mechanism that can be used to achieve this is the introduction of quota systems within public and private enterprises.<sup>57</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>58</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>59</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>60</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>61</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>62</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>63</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>64</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>65</sup> It explicitly considers “rural women’s rights to land, natural resources, seeds, forestry, and fisheries as fundamental human rights”.<sup>66</sup> It furthermore recognises the right to participate in decision-making for rural women whose livelihoods depend on natural resources.<sup>67</sup>

### 1.1.5. 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>68</sup> The ICERD is also important in this framework because, as the Committee on the Elimination of Racial Discrimination (CERD) has repeatedly stated that discrimination against indigenous peoples, including indigenous women, falls under the purview of the Convention.<sup>69</sup> In its General Recommendation No. 23 on the rights of indigenous peoples, the Committee called upon States to “recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories”.<sup>70</sup>

### 1.1.6. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

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>71</sup> In addition, the Convention recognises migrant workers as social entities and extends recognition of rights to members of their families.<sup>72</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>73</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).

### 1.1.7. The International Convention for the Protection of All Persons from Enforced Disappearance

This convention defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State [...], followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. State Parties have the obligation to investigate enforced disappearances and bring those responsible to justice.<sup>74</sup> This treaty is particularly relevant in the cases of enforced disappearance of WHRDs,

especially land rights defenders or defenders in the BHR context.

### 1.1.8. International Labour Organisation Conventions

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>75</sup>

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>76</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>77</sup>

Importantly, the ILO has recognised sex workers as workers within the informal economy in its discussions related to **Recommendation 200** (adopted in 2010),<sup>78</sup> which concerns HIV/AIDS and the world of work. The Recommendation applies to all workers working under all forms or 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>79</sup>

Thailand, however, did not ratify the following Conventions, applicable to women and BHR:

- the *ILO Occupational Safety and Health Convention No. 155*, which prescribes occupational safety and occupational health in all sectors of employment;<sup>80</sup>
- the *ILO Workers with Family Responsibilities Convention No. 156*, which applies to both men and women workers;<sup>81</sup>
- the *ILO Maternity Protection Convention No. 183*, which applies to all employed women, including those in atypical forms of dependent work, and sets out standards for maternity protections;<sup>82</sup>
- the *ILO Migration for Employment Convention No. 97*, which focuses on international migration for employment and focuses on the recruitment of migrants and conditions of work in the host country that include non-discrimination in wages, union activities and benefits, and social security;<sup>83</sup>
- the *ILO Migrant Workers (Supplementary Provisions) Convention No. 143*, which deals with rights of migrants in irregular situations and addresses issues such as abusive conditions;<sup>84</sup> and
- the *ILO Domestic Workers Convention No. 189*, which obliges States Parties to effectively promote and protect the human rights of all domestic workers, including providing decent working conditions, eliminating all forms of forced or compulsory labour, and eliminating discrimination in respect of employment and occupation.<sup>85</sup>

### 1.1.9. The ILO 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>86</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>87</sup>

Although the ILO does not have any explicit conventions on sexual harassment at 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>88</sup>

Thailand has not ratified two of the eight conventions.<sup>89</sup> However, as a Member State, Thailand is obliged to uphold the four central principles enlisted in this Declaration.<sup>90</sup>

### 1.1.10. The United Nations Declaration on the Rights of Indigenous Peoples

UNDRIP is the most important UN instrument on indigenous peoples and sets out minimum standards for the survival, dignity and well-being of indigenous peoples in a comprehensive manner. The declaration recognises the collective rights of indigenous peoples;<sup>91</sup> including the right to equality and non-discrimination,<sup>92</sup> the right to self-determination,<sup>93</sup> the rights to lands, territories and resources,<sup>94</sup> and their economic, social and cultural rights such as those highlighting cultural equality and distinctiveness.<sup>95</sup> The Declaration also calls upon States to ensure free, prior and informed consent (FPIC)<sup>96</sup> of indigenous peoples prior to undertaking an act which could have a direct impact on them, such as: removal of indigenous peoples from their land or territories;<sup>97</sup> adoption and implementation of legislative or administrative measures that may affect them;<sup>98</sup> storage or disposal of hazardous material on their land and territories;<sup>99</sup> and approval of any project affecting their land, territory or other resources.<sup>100</sup> This is very relevant for BHR because the Declaration states that indigenous peoples have to be consulted by the State, which should cooperate in good faith with them through their own representatives and should “provide effective mechanisms for just and fair redress” as well as measures to “mitigate adverse environmental, economic, social, cultural or spiritual impact”.<sup>101</sup> Although Thailand voted in favour of the adoption of the UNDRIP, it maintains that it does not have indigenous peoples in the country if it follows the commonly used definition of ‘pre-colonial or pre-settler societies’.<sup>102</sup>

### 1.1.11. UN Declaration on the Rights of Peasants and other People Working in Rural Areas

The Declaration was adopted in 2018 by the Third Committee of the UN General Assembly, with Thailand as one of the 119 countries that voted in favour of the adoption of this resolution.<sup>103</sup> It recognises ‘the special relationship and interaction between peasants and other people working in rural areas, and the land, water, nature, and territory to which they are attached and on which they depend for their livelihood’ and recognises their right to land, both individually or collectively.<sup>104</sup> Furthermore, it sets out the State’s duty to ‘respect, protect and fulfil the rights of peasants and other peoples working in rural areas,’ before adopting and implementing legislation, programmes, policies, international agreements or any other decision-making processes that may affect the rights of peasants, their lives, land, and livelihoods.<sup>105</sup> According to this, the government is mandated to ‘consult and cooperate in good faith with peasants and other people working in rural areas through their representatives’ in order to obtain their active, free, effective, meaningful, and informed participation; to provide redress and remedy for actions that violate peasants’ human rights and that deprive them of their land and natural resources or means of subsistence; and to protect them from evictions or displacement from their land.<sup>106</sup> States shall also take ‘all necessary measures to ensure that non-State actors that they are in a position to regulate (...) respect and strengthen the rights of peasants and other people working in rural areas.’ Finally, it reiterates the equality of men and women in accessing to, using of and managing of, land and natural resources as well as ‘equal or priority treatment in land and agrarian reform and in land resettlement schemes’.<sup>107</sup>

### 1.1.12. 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>108</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>109</sup>

### 1.1.13. Other UN Human Rights Bodies related to women and BHR

Some of the special procedures of the Human Rights Council (HRC) are dedicated to women’s rights and related to BHR.<sup>110</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>111</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>112</sup>

Finally, more related to the BHR framework, the Special Rapporteur on the right to food, Olivier de Schutter, published a set of minimum principles and measures to address the human rights challenges within the large-scale land acquisitions and leases. He recognised that land rights, including the use of land, are particularly “critical sources of livelihood” for women.<sup>113</sup> In these regards, Principle 6 reminds that States and investors should cooperate in ensuring the respect of the environment and in preventing the acceleration of climate change, soil depletion, and the exhaustion of freshwater reserves. Furthermore, countries with important levels of rural poverty and absence of other employment opportunities, together with investors, “should establish and promote farming systems that are sufficiently labour-intensive to contribute to employment creation”; under Principle 5, investment agreements should aim at “reinforcing local livelihood options” to the “fullest extent possible”, including by providing access to a living wage.<sup>114</sup> Other relevant principles are, for example, Principle 9, which provides for “a participatory impact assessment prior to the conclusion” of land-scale investment agreements; and Principle 2, which reiterates that any “shifts in land use can only take place with the FPIC of the local communities concerned”.<sup>115</sup>

#### 1.1.14. 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>116</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>117</sup>

#### 1.1.15. 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>118</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>119</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>120</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>121</sup> Finally, Goal 10 can be applied in the women and BHR contexts as it aims at reducing inequalities.<sup>122</sup>

The UN refers to combatting LGBTI marginalisation as a “development imperative” and a “human rights priority”.<sup>123</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>124</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>125</sup>

#### 1.1.16. 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>126</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>127</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>128</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>129</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>130</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>131</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>132</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>133</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>134</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>135</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>136</sup> In addition, this document reiterates that migrant workers should be treated with respect, dignity and equality, “without discrimination, exploitation, abuse, or violence”.<sup>137</sup>

## 1.3. National Constitution, Legislations & Policies

### 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>138</sup> It also prohibits discrimination on the basis of sex (‘phet’), stating: “Men and women shall enjoy equal rights”.<sup>139</sup> This offers a binary understanding of gender, excluding non-binary and intersex persons and also does not provide protection of LGBTIQ+ 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>140</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>141</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>142</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>143</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>144</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>145</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>146</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>147</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>148</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 gap.<sup>149</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>150</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>151</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>152</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>153</sup> The TLS, however, are not binding for companies and are only voluntarily certified by employers.<sup>154</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>155</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>156</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>157</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>158</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>159</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>160</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>161</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>162</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>163</sup>

## **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>164</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>165</sup> It also urges States to guide businesses in recognising the specific challenges that women, amongst others, face.<sup>166</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>167</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>168</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>169</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>170</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>171</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>172</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>173</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>174</sup>

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

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

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

The individual's rights to liberty, work, and safety are violated when a company fails to address sexual harassment at 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 at the workplace.<sup>175</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>176</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 Thai Labour Standards 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>177</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.

#### Case of sexual harassment at the workplace by a manager<sup>178</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>179</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>180</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>181</sup> Indigenous peoples, ethnic minorities, and people living with HIV currently have no formal protections under Thai law.<sup>182</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>183</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>184</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>185</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>186</sup> Furthermore, they are requested to take a blood test prior to employment.<sup>187</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>188</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>189</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>190</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>191</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>192</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>193</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>194</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>195</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>196</sup> However, despite these protections, violations are common, particularly for those working in the informal sector, which is currently unregulated under Thai law.<sup>197</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>198</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>199</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>200</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>201</sup> The situation of abuse of women domestic workers has even been presented in advertisements, showing how normalised this practice is.<sup>202</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>203</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>204</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>205</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>206</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>207</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>208</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>209</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>210</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>211</sup>

#### Challenge 4 : LGBTIQ+ 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 at 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 LGBTIQ+ anti-discrimination policies in their workplace, with only 17% stating that their workplace had an official procedure for complaints when it comes to LGBTIQ+ discrimination in the workplace.<sup>212</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>213</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>214</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>215</sup> This is coupled with negative media coverage that fuels prejudices against the LGBTIQ+ community and sex workers and exacerbates self-stigmatisation.<sup>216</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>217</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>218</sup> The Thai word, ‘การแสดงออก’ better translates, however, to ‘expression’ rather than ‘appearance’.<sup>219</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>220</sup>

#### Case of Tanasanti, a transgender woman forced to wear a male uniform <sup>221</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 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>222</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>223</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>224</sup> However, despite Thailand earning \$6.4 Billion (200 Billion THB) a year in revenue from prostitution,<sup>225</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>226</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>227</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>228</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>229</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>230</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>231</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>232</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>233</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>234</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>235</sup>*

### **Sex Work and the 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>236</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>237</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>238</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>239</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>240</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 the 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>241</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>242</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>243</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>244</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>245</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>246</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>247</sup>

### Voice from the Ground

💬 *My work is good work. I have been working about ten years already. Because of sex work I have bought land. I have savings to live on when I retire.*<sup>248</sup> 💬

Dao, Sex worker – Empower (December 2015)

### Case of 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>249</sup>

#### Case of sex workers' unsafe 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>250</sup>

#### Case of 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>251</sup>

#### Case of difficult access to remedy

In response to the detention of 121 sex workers after a raid on Ntaree 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>252</sup>

### 3.2. Impacts of Business Conducts on the Rights & Livelihoods of Women

#### Voice from Human Rights Expert

“Among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, indigenous peoples, particularly in relation to the development, utilisation or exploitation of lands and natural resources...”

The Committee on Economic, Social and Cultural Rights – General Comment No. 24 (2017)

## Challenge 1: Business' impacts on the rights of livelihood, food security and access to water for women

### Impact

The environmental disasters caused by development-related projects have negatively impacted the rights of the communities in the enjoyment of their land. Because many women depend on agriculture and the use of land for their livelihood,<sup>253</sup> their right to life is threatened when there are hazardous substances that are emitted from industries of mining, which have an impact on the right to food, water, livelihood and a safe environment. In fact, extractive industries' effects are devastating to the communities of rural Thailand. The devastation caused is severe in most cases and directly affects the health and environment of communities and individuals. According to the NHRCT report to the UN HRC following the Second Cycle of the UPR, "[p]eople in certain localities have suffered from illnesses believed to be caused by the pollution emanating from industrial activities for many years, while the government has failed to solve the problem".<sup>254</sup> There are multiple negative impacts in a poorly managed and operationalised extractive industry, including: increased risks to the communities' health due to air, water, and land pollution caused by the tailings and gases emitted, besides the contribution to global warming and ultimately climate change;<sup>255</sup> hazardous substances emitted as tailings contaminate the water and land, causing a decrease in food production and consequential harm when produced and consumed by communities;<sup>256</sup> deforestation causes soil erosion that affects the agricultural lands leading to loss of livelihood;<sup>257</sup> and all the aforementioned impacts lead to social disruption, poverty, displacement and forced relocation.<sup>258</sup> The principle of FPIC which is included in the UNDRIP, is 'rarely observed': indigenous women are not involved in the negotiations affecting their land and resources and companies have seldom structures or capacity designed to mitigate or address risks and thus, indigenous peoples', especially women, complaints are responded to violently.<sup>259</sup>

Development projects causing damages or restrictions to the access to natural resources, water and food security often have a gendered impact: women usually are responsible for food for the whole family, and any changes in the access to such goods can have a detrimental effect on their lives and families.<sup>260</sup> Thus, environmental degradation and exploitation of natural resources caused by businesses activities put disproportional pressure on women and intensify existing gender inequalities.<sup>261</sup>

Finally, as will be discussed further below, trade agreements and investments can also be detrimental for the livelihood of women who depend on land. For instance, current negotiations are underway for two trade agreements that can have a huge impact on Thai women: the use of traditional herbs and seed-sharing, activities mostly undertaken by women, will be restricted and will affect their food security.

### Case of Pak Mun Dam and its impact on the role of women

The Pak Mun Dam, completed in 1994, is a dam used as a run-of-the-river hydropower plant, which was built on the Mun river in Ubon Ratchathani province in North-Eastern Thailand, by the Electricity Generating Authority of Thailand (EGAT). No villagers were consulted nor involved in the decision-making process of this dam.<sup>262</sup> Since its construction, the dam has been highly criticised for its impact on fisheries and on local communities living in the area, and for its minimal energy benefits.<sup>263</sup> Considered an example of a "failed development policy", the dam caused severe damages to approximately 20,000 people<sup>264</sup> and affected the rights and the role of women in the affected communities.<sup>265</sup>

Fishing being the main source of income to sustain the life of Pak Mun residents, women had the role of wives and daughters of the fishermen and had the duty to manage the fish caught by them. They had the responsibility to decide which fish to keep for food and to preserve in the preservation process, in order for the consumption by the family or for sale, which can be for cash or exchange with other necessary goods.<sup>266</sup> Furthermore, the area around the river was used to grow vegetables and other plants.<sup>267</sup> However, the construction of the dam caused such an extensive ecological damage that the natural resources could no longer be used by the villagers.<sup>268</sup> In fact, the production of vegetables was also damaged, together with fishing; and thus, the needed goods for their livelihoods had to be purchased, increasing the expenses the family had to bear and forcing women to seek jobs in order to sustain the family.<sup>269</sup> The loss of natural

resources from the Mun river changed the role of Pak Mun women and impacted their mental and physical stability, affecting their families and communities.<sup>270</sup> As an additional consequence, due to traditional social norms, women were blamed for dedicating less time to their roles of mothers and wives.<sup>271</sup> Pak Mun women subsequently had to fight for their new role in the community and started to work in administrative sectors countrywide.<sup>272</sup>

### **Women affected by the Pak Mun Dam**

#### **Story of Boon Mee Wangpon**

Boon Mee Wangpon, daughter of a fisherman, started protesting against the government as young as 15 years old because of the damages caused by the dam and the lack of fish the dam had caused. When she grew up, she had to work in road constructions and then in rice fields to provide for her family. Her hard work, balancing several manual-labour jobs, and years of protesting caused her mental and physical strain. However, she became village leader and the key figure of the protests against the Pak Mun Dam. She commented that she just wants the government to respect their way of life and culture, and to have their old way of life back.<sup>273</sup>

#### **Story of Nao Thong-on**

Nao Thong-on moved with her husband, Samniang Thong-on, near the Mun River because its fisheries appeared more productive, selling their lands on the banks of the Mekong River. However, both being fisherfolks, they did not know about the construction of the dam before moving. Once the Dam was constructed, they could not survive on the Mun river's natural resources and struggled to find food, also being unable to produce enough income to buy goods. Nao developed peptic ulcers, attributed to stress and malnourishment. In fact, unable to provide fish for the family, their diet had been very unhealthy. In addition, to increase their income, Nao also produced handicrafts to sell.<sup>274</sup>

#### **Story of Sompong Wiengjun**

Sompong Wiengjun is a 64-year-old woman resident of a village near the Mun River and a protest leader who had been campaigning against the Pak Mun Dam for years. Her whole village was depending on fishing the river and had been living in misery for two decades because of the Dam. She was a fisherwoman herself, since the age of 14 when her father, also a fisherman, died, she then became a fish vendor and supported her five younger siblings.

She asserted that EGAT sponsored the dam as a beneficial project for the water and farmlands in the surroundings of the river. However, already from the first year of construction, the villagers could see that the fishes 'were gone'. Sompong led the first protests of at least 60 women and children, lying down on dynamites to prevent the rapids to be blown up. Despite a lot of villagers having to move and resettle, including her children, she decided to stay and fight, gathering over 10,000 people during the years. Although she has been accused of 'being a communist' and 'criminal conspiracy charges' were filed against her, she is not willing to give up her fight to have the river back.<sup>275</sup>

### **Voice from the Ground**

 *In the past our lives were free, but things have changed and our freedom has disappeared. [...] We could survive, but not in a healthy balance. The loss was too great.* 

Boon Mee Wangpon, Pak Mun villager – ESCR Mobilisation Project (2008)

## **Challenge 2: Non-recognition of women's rights over land and natural resources**

### **Impact**

Land is considered fundamental for poverty reduction, food security, and rural development; nevertheless, men and women do not enjoy the same rights to land.<sup>277</sup> In fact, gender inequalities in land rights are widespread: women have less access to land compared to men and they are often restricted in the so-called 'secondary

land rights' (land rights through male family members). Women risk losing their land titles in cases of divorce, widowhood or migration of husbands. Additionally, women's access to land is also linked with hunger and poverty.<sup>278</sup> The CEDAW Committee expressed concerns over the situation of rural women, including indigenous women and women from ethnic minority groups, in Thailand because, not only are they disproportionately affected by poverty and have limited economic opportunities, they also endure restrictions to their right to land and natural resources, "owing to land acquisition for development projects, use of land and natural resources by mining and other extractive industries, and zoning of national parks"<sup>279</sup> Land and property rights are essential for women who work the land and depend on it to produce food for themselves and their families and generate family income, and as such to support the health care, educational and nutritional needs of the whole family.<sup>280</sup> Moreover, for the majority of women, land is fundamental for a dignified life, economic independence, and personal empowerment, and is strictly intertwined with the achievement of other human rights. Thus, when a business acquires or uses land, women are significantly affected,<sup>281</sup> and the non-recognition of their land rights makes it even more difficult for them to fight for their entitlements with business companies or corporate actors, easily losing access and control over their land and natural resources.<sup>282</sup>

In addition to fighting extreme hunger and poverty, secure tenure rights for women also promote gender equality because the recognition of their rights to land and resource often establish personal agency and empowerment, produce women's economic security and decision-making power, and serve as a shield from injustices and domestic violence.<sup>283</sup>

In many cases, women are lacking secure tenure rights to the land they "depend on for livelihood, shelter, and identity". On top of this, rural women face systemic discrimination in access to land and natural resources and are frequently excluded from community decisions about land use and investment. Besides being more likely to lose access to land and resources, they are even less likely to receive profits from the sale of crops, and less likely to be considered for employment after an investment.<sup>284</sup>

#### Case of non-recognition of indigenous women's land rights

Indigenous peoples are the most affected by land disputes of their lands because they often do not have citizenship or do not own land titles. Katima Leeja, an indigenous woman, WHRD and member of the Indigenous Women's Network of Thailand (IWNT), suffered on her skin the consequences of being denied the land rights of her community, which had their lands confiscated. When she was young, her father was killed as he was accused of encroaching a forest and ended up in an armed fight with State officials. Her father's death was not investigated and she then filed a complaint with the NHRCT, suspecting that her father's death was an act of intimidation or discrimination.

Furthermore, years later, investors came to her community's land, cut down trees and divided the land, stating that their land deeds were legitimate. Thus, the community was left without land or access to natural resources of the forest that they were dependent on. Katima suspected that those land deeds were not the issue and that the land grabbing occurred because her community belongs to the Lisu ethnic group and had no citizenship. She also witnessed more than one case of mothers being arrested and imprisoned because they owned 'too much land' in the forests.<sup>285</sup>

### Voice from the Ground - Community Expert Voice

💬 *The people who know the problem best is us, the people living with the problem, not the government. So the people who have to live with the impact of business conducts should have a chance to participate.* 💬

Katima Leeja, IWNT  
 Mansuhya's Second Experts Meeting on CSO NBA  
 (28 February – 1 March 2018)

### Challenge 3: Investment & Trade

#### Impact

Thailand is part of a number of international investment agreements which draws on investors and trade.<sup>286</sup> However, such business activities can affect women more adversely than men. Development projects can intensify gender inequalities and power dynamics: agricultural workers in Asia are mostly women and they bear the burden of their crops and livelihood, despite not being recognised as heads of households and as such not being recognised any land rights. Another burden that women and girls face is related to resettlement because their right to the land is often “unrecognised or diluted by law or practice”. Additionally, physical and sexual violence against women and girls is often a consequence of investment-linked evictions and displacements.<sup>287</sup>

Women need to be explicitly consulted and participate in decision-making processes related to investments in land, as well as related to grievance mechanisms and remedies so that these are tailored to their interests and needs. Their participation has to be accessible, culturally-appropriate and gender-sensitive; and thus, measures should be taken to ensure such environment, such as explicitly inviting women to meetings and holding separate meetings when needed.<sup>288</sup> Without being included in decision-making processes that affect them, women remain compelled within unjust laws and practices.<sup>289</sup>

Furthermore, there are also strong concerns about actual and potential impacts of free trade agreements on the rights of indigenous women. The UN Special Rapporteur on the rights of indigenous peoples has contended that the way they are currently conceptualised and implemented, international investment agreements, including bilateral, regional and multilateral investment treaties and free trade agreements, cause direct adverse impacts on the rights of indigenous peoples, particularly on their rights to self-determination; land, territories and resources; participation and FPIC, with documented cases of violations.<sup>290</sup>

Currently, there have been specific concerns regarding the impact on food security and traditional knowledge of indigenous peoples in the context of ongoing negotiations of the RCEP –a free trade agreement involving ten ASEAN countries and its six free trade partners, Australia, China, India, Japan, South Korea, and New Zealand. The negotiations have been criticised for their lack of transparency and independent socio-economic and environmental assessments, being plagued by vested interests of corporate entities and devoid of public participation or effective representation of elected officials.<sup>291</sup> Amidst the RCEP negotiations, Thailand has recently introduced an amendment to its 1999 Plant Varieties Protection Act, which threatens the control of seeds by women, farmers, and indigenous peoples, according to the Indigenous Women’s Network of Thailand.<sup>292</sup> The Act which claims that it provides a balance between communities’ rights and the interests of corporations has enabled Thailand to be the largest seed exporter in the ASEAN and the fourth largest in the Asia-Pacific region.<sup>293</sup> The amendment to the Act, if adopted, can result in criminalisation of the practice of indigenous peoples, particularly women, of preserving, sharing and diversifying seeds, which might be punished by a penalty in the form of a fine and a jail sentence; as well as the destruction of their crops if found to be in violation of a corporation’s intellectual property rights to the seeds.<sup>294</sup>

#### Voice from the Ground - Community Expert Voice

“Seeds are our food security, our identities, and our lives. We indigenous peoples have our own seeds and our own ways to preserve the seeds for the next planting seasons. So we should be consulted if laws relating to seeds are going to be drafted and enforced in our country.”<sup>295</sup>

Noraeri Thungmueangthong,  
Vice Chairwoman of IWNT

#### The Specific Case of RCEP

Concerns have been raised about the potential increase in restrictions to use and develop traditional knowledge of local herbs, which corporations have already begun patenting for profit under the RCEP trade

agreement. An example are the patent rights acquired by a company over *Pueraria mirifica*, a plant that local women in Thailand have used for decades, but now they can no longer do so as they risk violating the patent rights, which is punishable with a jail sentence and fine.<sup>296</sup> Similarly, potential impacts of large-scale land investments under RCEP on women's subsistence farming and land rights, the privatisation of health services and intellectual property rights on medicines, on health rights as well as overall possible consequences of investor/State dispute mechanisms on public expenditure have also been issues of concern, among others aspects.<sup>297</sup>

#### Case of the CPTPP and the opposition of Thai Women's Groups

Throughout 2018, the Department of Trade Negotiations had been considering joining the CPTPP, which is expected to "boost competitiveness for Thai entrepreneurs".<sup>298</sup> However, Asia Pacific Forum on Women, Law and Development (APWLD) and 50 other feminist groups and allies from 10 Trans Pacific Partnership countries are opposing this free trade agreement.<sup>299</sup> According to them, this agreement aims at treating foreign companies identically to local ones and the agreement would benefit large multinational corporations, which will further monopolise the agricultural sector. The agreement is detrimental for rural women and farmers because women, —who are the majority of small-scale subsistence farmers — will have to compete against huge agro-businesses, and they will be prevented from seed sharing amongst farmers due to strengthened companies' intellectual property rights. The CPTPP agreement will dismiss women, who are the 'custodian of seeds' them from their farms and the local economy. The impact assessments of CPTPP were also found problematic because they were conducted by big companies, marginalising women and peasants even more.<sup>300</sup>

At public hearings held by the Government over the CPTPP, Thai local farmers expressed their concerns about their access to seeds and their rights to collect and exchange seeds for collective use as well as on the disposal of other countries' agricultural products. The Director of Plant Variety Protection Office, Department of Agriculture, replied that the farmers will still have access to seeds that are not subject to patents from seeds companies.<sup>301</sup>

### 3.3. Women Human Rights Defenders

HRDs at large face specific and additional stigmatisation for their work as shown by the significant increase in reported attacks against them since the coup. WHRDs are even more vulnerable as no steps have been taken to legitimise their work. Instead, measures (such as National Council for Peace and Order (NCPO) orders and announcements, the Public Assembly Act, the Computer Crime Act etc.) are being adopted that put them further at risk.

#### Challenge 1: Women's lack of participation

Women in Thailand, including WHRDs, are generally excluded from political and decision-making processes. Furthermore, HRDs also face restrictions on their right to freedom of assembly.

##### Impact

WHRDs have traditionally been largely excluded from public consultations and decision-making processes, especially regarding issues related to land and natural resources. Excluded from participation in political and economic processes, WHRDs and rural women are amongst the most marginalised sections of the Thai population. Because of poverty, lack of access to essential services, lack of protection of their human rights, and discrimination, they face numerous abuses and persistent barriers to the full enjoyment of their rights.<sup>302</sup>

The Constitution of Thailand of 2017 does not comply with Article 7(b) of CEDAW, which demands equality of men and women in political participation. In order to achieve equality, CEDAW recommends a quota system or similar provisions to ensure the presence of women in public affairs and decision-making positions; however, this is absent in the Thai system and men are overwhelmingly appointed for such positions.<sup>303</sup> The NCPO, whose members are all men, directly appoints representatives in the executive and legislative bodies and

mostly favours men. Out of 250 National Legislative Assembly (NLA) members, only 11 (equal to 4%) are women. Within the Cabinet, four out of 36 (equal to 11%) are women; at the National Reform Steering Assembly 17 out of 200 are women (equal to 9%), and only three out of 24 (equal to 13%) were on the Constitution Drafting Committee.<sup>304</sup>

CEDAW also observed this trend in Thailand in its Concluding Observations of 2017 in which it stated that “no temporary special measures have been adopted with a view to achieving substantive equality of women and men in all areas where women are underrepresented or disadvantaged”, including women’s participation in decision-making bodies, especially with regards to women with disabilities, women from ethnic and religious minority groups, indigenous women, rural women, and older women.<sup>305</sup> As the Special Rapporteur on the situation of HRDs recommends, there is a need of a higher number of women defenders to be represented in decision-making bodies at all levels of government, civil society, and business contexts, and for them to meaningfully participate in decision-making processes.<sup>306</sup>

Additionally, WHRDs are not only discriminated in participation processes because of their gender but they also face restrictions and violations because of their status as HRD. In fact, as HRD, their capacity to challenge State shortcomings in taking the necessary steps to realise economic, social and cultural rights has been severely undermined since the coup. The realisation of these rights is essentially a political activity which involves negotiation, divergence, trade-offs, and cooperation. Regressive trends under the NCPO largely prevent HRDs from engaging effectively in political participation and accessing information. Further, the absence of transparency in decision-making bodies excluded community-based HRDs from national reform processes. The lack of freedom of expression combined with the criminalisation of advocacy activities disempower HRDs in their fight to restore rights, which have been institutionally weakened in the current political climate.<sup>307</sup>

Since HRDs are often prevented from meaningfully participating in the decision-making of development projects that affect their lives, the only resort they are left with is to assemble and hold public protests, which is within their right to freedom of association and peaceful assembly, recognised both at the national and international levels. However, since the coup, State authorities have severely restricted this right to clamp down on political activists and HRDs. The right to freedom of assembly is essential to the work of community-based HRDs as it enables them to organise their activities related to the conservation of livelihood, the protection of the environment, sustainability, women empowerment, social justice, right to redress, self-determination etc. It is also a pre-requisite that guarantees the right to civil and political participation, which allows community-based HRDs to get involved in public debates regarding development project that affect the livelihood of local communities. Thus, severe restrictions on the right to peaceful assembly puts community-based HRDs at higher risk, it largely prevents them from carrying out their work, and the charges related to assembly filed against HRDs have a chilling effect on defenders.

#### **Case of State authorities cancelling meetings of local communities organising their opposition to a development project**

On 11 November 2014, a private meeting between WHRD Sor Rattanamenee Polkla (human rights lawyer) and members of local communities in Udon Thani province was interrupted by military and police officers. They met to discuss the environmental impact of the construction of the Xayaburi hydroelectric dam in the Lower Mekong River and its possible consequence of forcibly evicting over 200,000 people. The military then forced Sor to sign a letter, forcing her to ask for permission for any further meetings.<sup>308</sup>

#### **Case of State authorities obstructing public hearings with HRDs**

On 11 September 2015, WHRD Ms. Manee Boonrawd received a letter from authorities of Udon Thani province to inform the Anurak Udon Thani Conservation Group that the village’s ‘public hearing’ would be held in a military camp. Despite this was considered an attempt to intimidate the community members from participating to such meeting, on 15 September 2015, 20 HRDs from the Group gathered in front of the designated military camp to hold their meeting. However, at their arrival, there were around 60 security officers in front of the camp, and another 100 to 200 inside the camp. Thus, the HRDs had to submit a complaint to the army, refusing to attend a ‘public hearing’ in those conditions.<sup>309</sup>

### Case of authorities charging WHRDs for peaceful protest

On 8 March 2017, the police in Wang Sa Pung District, in Loei Province, charged seven WHRDs, members of the community-based environmental rights Khon Rak Ban Kerd Group (KRBK), for allegedly violating Section 309 of the Penal Code, after peacefully protesting. In fact, in November 2016, the KRBK's peaceful sit-in protest constituting of more than 200 community members took place outside the Khoa Luang Administrative Council Office meeting room to demand community participation in decision-making processes regarding rights granted to gold mining company Tungkum Ltd. Furthermore, one of the WHRDs, Ms. Pornthip Hongchai, a leader of the KRBK Group, was additionally charged for allegedly violating Articles 10 and 28 of the Public Assembly Act, for failing to notify the authorities 24 hours prior to engaging in a protest. On 13 June 2017, the police also charged the seven women for violating Articles 8 and 27 of the Public Assembly Act, for blocking entries and disrupting government services. If convicted, these women would face five years and six months in prison and/or a fine of up to 100,000 THB (\$3220). Ms. Pornthip faces an additional fine of 10,000 THB (\$320) for violating Article 10. The indictment of these seven women was postponed several times since 25 May 2017, when it was originally scheduled.<sup>310</sup> On 19 April 2018, the Loei Provincial Court dismissed the case on the basis that the WHRDs were simply attending a public hearing, and that they practiced their right to freedom of expression guaranteed under the Constitution of Thailand of 2017.<sup>311</sup>

## Challenge 2: Persecution of WHRDs

WHRDs are often persecuted and face several human rights abuses, such as intimidation, harassment, arbitrary arrest and detention, extra-judicial killing, surveillance, and unfair charges in Strategic Litigation Against Participation (SLAPP) cases against them.

### Impact

Despite their marginalisation, rural WHRDs are often at the forefront of human rights advocacy in a number of fields including land use and protection of the environment and natural resources. The issues they focus on put them at increasing risk of violence and judicial harassment. Issues such as land confiscation, forced evictions, unfair land distribution, infrastructure projects, and extractive industries are highly sensitive in Thailand and many WHRDs who fight against them ended up suffering extreme, and sometimes fatal, violence.<sup>312</sup> Women defending their lands and environmental rights are not only disadvantaged because they are excluded from negotiations and decision-making processes regarding their territories as well as from land ownership, but also because they are targeted to intimidate them and to create fear.<sup>313</sup> WHRDs fighting against exploitation of natural resources experience higher risks of reprisals due to the fact that they are not only challenging 'traditional gender roles', but also "the power relations governing control of natural resources".<sup>314</sup> Additionally, women defenders of sex workers' rights are also mistreated, subjected to sexual violence, and have to endure smear campaigns, threats, and attacks.<sup>315</sup>

When it comes to discrimination, more insidious ways are also faced. WHRDs, as women, face traditional expectations from society; they are expected to fulfill their role as primary caretaker of the family, and demonstrate restraint and a spirit of cooperation. In light of traditional social norms, a woman with a defiant character is viewed as an unnatural and "bad" woman. Women tend to have more responsibilities than men, but their political, economic and social statuses are traditionally weaker.<sup>316</sup> For example, women land rights defenders are often shamed for neglecting their 'domestic duties and endangering their families' to carry out their activism.<sup>317</sup> Thus, because they challenge gender roles and patriarchal traditions, WHRDs face gendered and intersectional risks and challenges. Some of the most common tactics to attack and demean them is, in fact, sexuality baiting and public shaming.<sup>318</sup> NHRCT has found that there has been a large amount of sexual harassment (verbally or/and physically) towards WHRDs.<sup>319</sup> Even within local movements, the specific threats faced by community-based WHRDs, such as sexual harassment, sexual violence and rape, are often unspoken. For WHRDs, the presence of armed men combined with a lack of State protection and safeguards increases the risk of being subjected to these abuses.<sup>320</sup> It might not be possible to prove that every attack against WHRDs is gender-related, but institutionalised discrimination against women lead, in many cases, authorities

and other assailants to think they can easily get away with intimidating and attacking WHRDs.<sup>321</sup> Since the last CEDAW review of Thailand in 2006, Thai authorities have failed to conduct prompt, impartial and thorough investigations into cases of extrajudicial killings of WHRDs. Consequently, this failure to investigate has resulted in a lack of accountability for perpetrators, and authorities also failed to provide adequate compensation to the victims. Community-based WHRDs and local activists make up a significant share of those who have been extrajudicially killed.<sup>322</sup>

### Cases of harassment of WHRDs

An example of a WHRD targeted with verbal attacks and harassment online is Ms. Pornpen from the Cross-Cultural Foundation (CrCF), who received more than once 'hateful and derogatory' as well as gender-specific online comments regarding her activism. The anonymous internet users were accusing her of supporting armed groups for calling out arbitrary arrests and of being a political enemy trying to undermine national unity. They also criticised her, as a woman, for disclosing the torture perpetrated by female officers.<sup>323</sup>

Also, WHRD Oranut Phonphinyo, coordinator of Rak Khon San (a group of villagers from Khon San district, Chaiyaphum province, located in Northeastern Thailand, opposing the construction of a rubber plantation) has faced intimidation resulting from her activism since 2013. On 13 October 2013, she received a letter informing her that a land broker buying land for the company Sri Trang Agro-Industry PCL, had filed a defamation complaint against her and three other Rak Khon San members. A month later, the Phu Khiao Provincial Court dropped the case. Since the coup, Ms. Oranut has been summoned several times and was asked about her 'activities'. In 2016, she also reported that she was confronted by a group of men, supposedly related to the Sri Trang Agro-Industry PCL, who tried to bribe her in exchange for the villagers' land.<sup>324</sup>

### Case of arbitrary killings of WHRDs

In November 2012, two WHRDs from the Southern Peasants Federation of Thailand (SPFT), Montha Chukaew and Pranee Boonrat, were shot dead on their way to a local market, 800 meters away from the Klong Sai Pattana Community.<sup>325</sup>

### Case of surveillance and intimidation of WHRDs

Since 9 November 2014, WHRD Waewrin Buangern, coordinator of the Rak Baan Hang Conservation Group which is opposing a mining project in Lampang province, has been under constant surveillance. On 11 November 2014, after her group participated in the Walk for Land Reform in Chiangmai province, she was threatened with enforced disappearance by high-ranking officials. Since then, she has been closely monitored and intimidated not to pursue the Rak Baan Hang petitions and on 19 August 2015, she reported the continued surveillance of her home by plain-clothes police officers.<sup>326</sup>

### Case of unfair exercise of government power: the sentencing and incarceration of WHRDs on a land rights issue

On 27 July 2017, Suphap Khamlae, WHRD and wife of disappeared HRD Den Kamlae, was condemned to six months in prison for land encroachment under the National Forest Reserve Act. The sentence was given by a court in Chaiyaphum province in Northeastern Thailand, and confirmed by the Supreme Court. Suphap is a 65-year-old land rights defender and since 2015, she has been advocating for her community's right to a legal land title. Finally, she was released on 6 January 2018.<sup>327</sup>

### Examples of judicial harassment and SLAPP cases against WHRDs

The company Siam Energy Co. Ltd sued energy activist and WHRD Watcharee Phaoluangthong for alleged defamation after she provided an analysis of the energy policies and regulations during an interview. She discussed the concession of the Independent Power Producers of the National Energy Policy Council, the inappropriate role of the higher-ranked authorities in the Ministry of Energy, and the lack of transparency on the concession process and the Environmental Impact Assessment (EIA) process of Siam Energy Ltd. Company.

The plaintiff sued Ms. Watcharee both with defamation and civil charges, demanding over 300 million-THB (\$9.65 million) compensation. Fortunately, she was found not guilty and the Court dismissed the case.<sup>328</sup>

On 12 October 2018, the Thai company Thammakaset Co. Ltd., operating chicken farms in Lopburi province,

filed a defamation complaint at the Bangkok Criminal Court against Ms. Sutharee Wannasiri, WHRD and former Thailand human rights specialist at the NGO Fortify Rights. The defamation charges were related to three comments on Twitter that Ms. Sutharee Wannasiri made one year earlier, about a video on previous defamation complaints brought by the same company against 14 of its former workers from Myanmar, published by Fortify Rights. These charges alone bring a possible sentence of six years of imprisonment and/or a fine up to 600,000 THB (\$19,300) under Articles 326 and 328 of the Criminal Code. However, on 26 October 2018, the company filed another defamation complaint, this time at the Civil Court in Bangkok, against the WHRD for damaging the company's reputation, requesting 5 million THB (161,000) of compensation as well as a public apology. The preliminary hearing at the Civil Court in Bangkok were scheduled for the end of December 2018.<sup>329</sup> Several organisations condemned the judicial harassment against WHRD Sutharee Wannasiri.<sup>330</sup>

Furthermore, in the case of the Pak Mun Dam, WHRD Sompong was also affected by a 30-year-old case against her, and she has been facing continuous harassment throughout her life because she has been fighting for the protection of human rights.<sup>331</sup>

### 3.4. Access to Remedy

The Committee on the Elimination of Discrimination against Women, in its Concluding Observations on Thailand, expressed its concerns about the existing barriers for women and girls to access of justice and effective remedies for violations, especially for rural women, indigenous women, women belonging to ethnic and religious minority groups, and women with disabilities. The Committee 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;
- d) Widespread and pervasive corruption, which continues to impede women's access to justice".<sup>332</sup>

#### Challenge 1: Lack of accountability of business activities affecting women's rights

##### Impact

In the context of natural resource exploitation, there is often a lack of accountability for the violations committed by businesses against women's human rights. The non-recognition of land rights to women also leads to unaccountability for violations women have to endure when corporations exploit the natural resources on their land. Furthermore, there are obstacles in women's access to justice and remedy, above all in cases of sexual and gender-based violence within business frameworks.<sup>333</sup>

Women experience greater challenges in accessing redress and justice, including inadequate compensation for loss of crops and other forms of livelihood, or absence of reparations when their subsistence agriculture is affected or impacted by business activities.<sup>334</sup> While the State has been unsuccessful to protect human rights in business contexts and even caused human rights impacts through its agencies, the corporate responsibility of business enterprises to respect human rights has also been unmet. Most often, the affected communities are denied access to effective remedy, in which both the State and the business enterprises play complementary roles. A range of judicial and non-judicial mechanisms exists in Thailand's State structure for victims of human rights abuses to file complaints and seek redressal. Those include the Court, the NHRCT, and provincial Damrongdhama Centres. However, even if women are able to access remedy, the results are often disappointing due to gender-neutral procedures that ignore the needs of women in resettlement schemes, livelihood restoration or cash compensation, leaving women poorer or further marginalised.<sup>335</sup> In fact, access to remedies are insufficient: grievance mechanisms should take into account unequal power relations in

corporate abuses, women's stigma, reprisals, and job insecurity.<sup>336</sup> Remedies need to be gender-sensitive and provide effective gender responses adequate to women's social contexts and legal rights status.<sup>337</sup>

The lack of accountability of abuses and violations against women in business context 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 of Victoria's Secret impeding the 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>338</sup>



## 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 respecting 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>339</sup>

#### 4.1.2. Workers and CSOs initiatives towards the respect of their worker 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>340</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>341</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>342</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>343</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>344</sup> The success of Portugal may reflect the government's historical willingness to involve CSOs in the drafting of equality policies.<sup>345</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 at the workplace.<sup>346</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>347</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>348</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 at 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>349</sup>

Under the 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>350</sup>

In Canada, different provinces enacted legislation on sexual violence and harassment and introduced harassment and violence at the workplace as hazards of their occupational health and safety systems.<sup>351</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 at 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>352</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>353</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>354</sup>

In Brazil, when the minimum wage was doubled in 2000, the gender pay gap also declined with 10%.<sup>355</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>356</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>357</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>358</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>359</sup>

#### 4.2.7. Provisions for equal land rights and women’s participation in land issues

The Constitutions of Bolivia, Brazil, Ecuador, Kenya, Malawi, and Namibia provide for the state’s responsibility to secure both women and men equal land rights, including, for example, fair allocation of property in case of divorce under Malawian law. Women’s right to land was improved in Mozambique too, abolishing marital power which entitled the husband to the couple’s properties, and guaranteed oral testimony as proof of land rights of communities or individuals.<sup>360</sup>

An Agricultural Sector Gender Policy Framework was issued in Botswana by the Ministry of Agriculture to ensure the participation of women in agriculture-related decision-making processes and improve “gender equality in ‘all agricultural development processes’”.<sup>361</sup>

The Philippines’ 2009 Magna Carta of Women is another example of legal provisions on equal rights to men and women, including indigenous peoples, in land titling, use and management of land, water and other natural resources, and on the protection of women’s traditional knowledge.<sup>362</sup>

#### 4.2.8. Trade agreements’ impacts on women

Canada is seeking to add gender mainstreaming considerations in its free trade agreements, applying a gender and trade approach that includes a ‘standalone chapter on trade and gender’ and other gender-related provisions.<sup>363</sup>

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

#### 4.3.1. Company’s involvement of women in negotiations for the compensations of operations that affected their villages

In Papua New Guinea, the Ok Tedi mine company persuaded the State to include women in the negotiations regarding the ‘community mine continuation agreement’, which defined issues such as compensation, investments, and development payments to the villages affected by their operations. Women could meet separately to strategise and discuss their approach to the negotiations, while independent facilitators supported the company in the consultations of women affected. This resulted in an agreement granting women “10% of all compensation, 50% of scholarships, cash payments into family bank accounts (to which many women are cosignatories), and mandated seats on the governing bodies implementing the agreement”. Furthermore, women’s entitlements were legally enforceable in agreements between the State and the company, which is an unprecedented arrangement worldwide.<sup>364</sup>

#### 4.3.2. 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>365</sup>

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

The Food and Agriculture Organisation of the UN’s (FAO) 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>366</sup>

The Organisation for Economic Co-operation and Development (OECD) created a guidance for responsible business conduct and principles useful for CSOs:

➔ The 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>367</sup>

## 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 ICMW and the CED.	Following ratification, adopt human rights treaties into national law in order to enhance further the enjoyment by women of their human rights as recommended by the CEDAW.	NCPO, NLA	Effective ratification of the ICMW and the CED, shown through enactment of related laws.  Timeline: 1 year - 2019
Hold all government offices, including the Royal Thai Police Office, accountable under 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 the Royal Thai Police Office, align with CEDAW and the Gender Equality Act by 2019.

			<p>Women make up 25% of in Royal Thai Police Force or police cadet academies by 2021.</p> <p>Timeline: 3 years – 2019-2021</p>
Strengthen the WorLorPor Committee.	Put into place mandatory qualifications for WorLorPor members to ensure they are well informed and sensitised to gender issues.	MSDHS	<p>100% of WorLorPor members receive training on gender issues, including gender sensitisation, and addressing indigenous women, LGBTI, sex workers, ethnic minorities, etc.</p> <p>Timeline: 1 year – 2019</p>
	Ensure WorLorPor members have sovereign immunity from lawsuits related to their rulings.		<p>Inclusion of provisions in Gender Equality Act which guarantee sovereign immunity from lawsuits to WorLorPor members in retaliation.</p> <p>Timeline: 1 year – 2019</p>
Enact a law on sexual harassment.	Clearly define sexual harassment with inclusion of verbal harassment, expressly prohibit sexual harassment at the workplace, and ensure that proper redress mechanisms are in place to provide remedy to victims of sexual harassment.	MSDHS; MoJ	<p>Law on sexual harassment enacted, inclusive of physical, verbal, and psychological harassment, violence, and coercion, along with implementation mechanisms.</p> <p>Timeline: 1 year – 2019</p>
	The legislation shall also define the penalties for perpetrators of sexual harassment in the workplace.		<p>Clear penalties introduced into Thai Penal Code or Labour Law.</p> <p>Timeline: 2 years – 2019-2020</p>
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	MSDHS; MoJ; MoL	<p>Definitions of harassment and sexual harassment in the Labour Protection Act No. 2 align with the ILO Declaration on Fundamental Principles</p>

	to cover harassment among employees of the same ranking.		and Rights at Work.  Timeline: 1 year – 2019
Review civil service dress codes.	Change civil service dress codes to ensure that transgender and non-binary employees can dress in ways that align with their gender identity.	MoL	Reviews and changes must be carried out in consultation with the transgender and non-binary community by 2019.  At least 50% of transgender or non-binary civil service employees dress in accordance with their gender identity by 2021.  Timeline: 3 years – 2019-2021
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	Adopted definitions must be established by the LGBTI and SOGIESC communities, and applied to laws and policies in consultation with said communities.  Timeline: 1 year – 2019
	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.		Publication of a 'Glossary of Definitions' released by 2019 And annexed to the 2017 Constitution by 2020.  Timeline: 2 years – 2019 to 2020
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; they must be provided with rights, social benefits and protection as any other worker.	NCPO, NLA	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 worker's rights by 2021.  Timeline: 3 years – 2019-2021

			Timeline: 1 year
Adopt laws and policies that ensure effective participation of women in the 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.
	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
			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 the protection of 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
Hold Trans National Corporations (TNCs) and other business enterprises (OBEs) in Thailand accountable	Obligate OBEs and TNCs in Thailand to conduct HRDD and conduct gender impact assessments, report annually on actions taken to address human	MoJ	Develop a policy obligating all OBEs and TNCs in Thailand to conduct HRDD and gender impact



to uphold international human rights standards and measure the impact of operations on human rights, in line with UNGP Pillar 2(B).	rights impacts of their operations on a yearly basis, and make that information publicly available.		assessments, and report annually on the actions they took to address human rights impacts of their operations.  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 participate 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
Implement measures for the protection of WHRDs and their work, so they are free of harassment, threats, and intimidation.	Protect the rights of women defenders; take a public stand against all State and non-State actors who violate their rights, cease all attacks and threats against women defenders and investigate all that occur, and ensure that impunity does not prevail.	NLA; MoJ, NCPO	Release a public statement condemning attacks and threats against WHRDs, accompanied by a drop of at least 70% in attacks and threats against WHRDs, and an increase of at least 50% in full investigations into cases of attacks and threats against WHRDs.  Timeline: 2 years – 2019-2020
	Stop harassment of WHRDs and interference with their activities and ensure that businesses do not violate WHRDs' rights or file SLAPP cases against them.		At least 70% drop in cases of harassment and interference of WHRD activities from State actors.

			<p>At least 70% drop in rights violations and SLAPP cases against WHRDs.</p> <p>Timeline: 3 years – 2019-2021</p>
<p>Increase awareness of the ASEAN Regional Plan of Action on the Elimination of Violence Against Women (RPA on ERAW) to address issues of violence against marginalised groups such as indigenous women and LGBTI persons.</p>	<p>MSDHS should facilitate meetings to spread awareness about the RPA on ERAW, published by the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2015.</p>	MSDHS	<p>At least two meetings held with community groups and CSOs on the RPA on ERAW.</p> <p>Timeline: 1 year - 2019</p>
<p>Create a complaint mechanism for violations against women and children of ASEAN.</p>	<p>Work with CSOs and ACWC to collect data and monitor violations to provide input into the civil society shadow reports of CEDAW and Convention on the Rights of the Child (CRC).</p>	MSDHS; MoJ	<p>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 human rights situation on the ground.</p> <p>Timeline: 1 year – 2019</p>
<p>Give support to ACWC to improve its work.</p>	<p>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.</p>	MSDHS; MoJ	<p>Increase in funding provided to the ACWC by both the government and foreign donors. ACWC should have the financial resources to employ permanent full-time staff, including a regional staff member, by 2019.</p> <p>Timeline: 1 year – 2019</p>
<p>Take measures to ensure equal land rights of both men and women and address gendered implications of trade agreements and land use by</p>	<p>Recognise women's rights to land and property, involve women in planning and management of business-related land ownership and use, and ensure FPIC in case of land acquisition or use by corporations.</p>	NLA, MSDHS	<p>Law to promote and protect women's access to land and property, involving women in planning management of business-related land ownership, respecting</p>

foreign or domestic businesses/investors.			FPIC, to be developed by end of 2020.
	Provide human rights analyses of trade and investment proposals and evaluate gendered adverse impacts.		Within 2 years: 2019-2020  Conduct human rights analyses of trade and investment proposals, ensuring data collection on adverse impacts is fully inclusive of affected communities and gender-specific.  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.	Praise 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 Math (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 TLScertification to promote the physical and mental health and safety of women, LGBTI persons, and minority groups at 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 carers (regardless of gender), in line with ILO Convention No. 111, ILO Convention No. 156, and the SDGs 2030 Agenda.	MoJ; MoJ; 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.  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 gender pay	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

gap through incorporation of Unpaid Care Work into policies on labour and gender equality.			this area.  Timeline: 1 year – 2019
Ensure effective participation of women in the formulation and implementation of policies on climate change and risk reduction.	Ensure women affected by environmental damage are consulted and their voices and needs are taken into account.	Ministry of Natural Resources and the Environment (MNRE)	Any consultations regarding climate change and environmental damage must ensure equal inclusion of women.  Timeline: 1 years – 2019
Ensure that the rights of women in the informal 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 sector, and ensure they target industries employing high numbers of women and migrant workers.  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
Recognise indigenous peoples and ethnic minorities as legally protected groups.	Amend the Constitution and Labour Protection Act to include indigenous peoples and ethnic minorities as groups explicitly protected from discrimination.	MSDHS; MoJ	The Constitution and the Labour Protection Act must be amended to recognise indigenous peoples and ethnic minorities as legally protected groups, with explicit protection from discrimination. Any

			<p>amendments must be made with extensive consultation with the relevant group.</p> <p>Timeline: 1 year – 2019</p>
Take 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	<p>Social security benefits are extended to the informal sector, reaching 50% of homeworkers and informal workers.</p> <p>Timeline: 3 years – 2019-2021</p>
	Provide greater training and resources to increase access to opportunities for women working as homeworkers or employed in the informal sector, to allow integration into formal sector and formal 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</p>

			<p>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	<p>Complete removal of Section 15, paragraph 3 of the Act.</p> <p>Timeline: 1 year – 2019</p>

## 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 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 at the workplace effectively and in a timely manner.	MSDHS; MoJ, National Committee on Gender Equality	<p>100% of the WorLorPor Committee receives annual training on addressing gender-based discrimination and sexual harassment complaints.</p> <p>At least 50% increase in successfully processed complaints regarding gender-based discrimination and sexual harassment in the workplace.</p> <p>Timeline: 2 years – 2019-2020</p>
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 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 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 while 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, 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>

			Timeline: 2 years – 2019-2020
Ensure appropriate remedies for victims of sexual abuse or violence, committed at the workplace or business-related activities.	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 psycho-social support.	MoJ, MoL, and the Ministry of Public Health (MoPH)	<p>Existing services and support need to be assessed through 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>
Strengthen the justice system in its gender sensitivity and gender responsiveness.	Provide gender training to judges, prosecutors, lawyers, police officers, and law enforcement.	MoJ	<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>
	Increase the number of women employed in the justice system.		<p>Increase of number of women employed in the justice system, to reach at least 25% of total employees.</p> <p>Timeline: 3 years – 2019-2021</p>
	Implement capacity building for judiciary in relation to business-related human rights complaints, including gender dimensions.		<p>100% of the judiciary receive training on BHR and BHR complaints, including extensive</p>

			coverage of gender dimensions.  Timeline: 1 year – 2019
Report on the situation of employment of LGBTI individuals and women.	The information must be published in a report that is available and accessible.	MoL, MSDHS	<p>The situational report must be written with extensive consultation with the LGBTI community, and ideally written by members of said community. It must be updated on a yearly basis, and must be freely available in an easy-to-read format 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 perpetrators of sexual, psychological, and physical violence, abuse, and harassment at the workplace accountable.	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 legal penalties.</p> <p>Timeline: 2 years – 2019-2020</p>
Hold business enterprises accountable 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.		Prosecution of at least 50% of people reported for abusive and exploitative working



			conditions.  Timeline: 2 years – 2019-2020
	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
Effectively investigate, prosecute, and adequately punish all cases of harassment, violence, forced disappearances, killings and intimidations against WHRDs.	Document, monitor and denounce the threats and attacks faced by women defenders.	MoJ	Extensive documentation of threats faced by WHRDs must be carried out by WHRDs, as they have unique insights and access to the situation. The documented threats must be taken seriously, with the MoJ taking an official stand against said threats, monitoring the situation closely and on an ongoing basis.  Timeline: 1 year – 2019
	Bring perpetrators to justice and provide effective remedies to victims.		Where documentation is sufficient, 100% of those found to have perpetrated the crimes must face full legal prosecution.  100% of WHRDs found to be victims of said crimes must receive full and effective remedies, in line with ICCPR.  Timeline: 2 years – 2019-2020



## 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 rights of non-discrimination and protection of liberty and security of employees.	Enact formalised corporate policy and issue a policy statement that identifies the company's commitment to non-discrimination and zero tolerance for sexual harassment at 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	At least 50% of businesses in Thailand have conducted HRDD, including an externally facilitated gender audit.  At least 75% of those who have conducted HRDD have amended practices found to directly or indirectly promote discrimination.  This should begin immediately after the adoption of policies and on a continuous basis.

			Timeline: 2 years – 2019-2020
Take steps to fully protect, respect, and remedy women's rights violations.	Conduct HRDD and analyse the gendered impacts of their activities.	Businesses	Results of at least 70% of HRDD undertaken should be specifically analysed for gender disparities, by an external source specialised in this area.  Timeline: 2 years – 2019-2020
<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	At least 75% of businesses have enacted employer funded paid parental leave for primary and secondary caretakers, regardless of gender.  Timeline: 2 years – 2019-2020
Enact anti-harassment policies.	Implement a zero tolerance for sexual and other types of harassment at the workplace and ensure relevant consequences/penalties if such incidents occur.	Businesses	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.  Effectiveness of these policies should be determined both internally and through external investigation.  Timeline: 2 years – 2019-2020
Ensure 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	At least 50% of businesses have policies and practices allowing employees to choose and express their own gender

			identity.
			Timeline: 3 years – 2019-2021
	Offer equal employment benefits to LGBTI employees as heterosexual and cisgender employees.		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.
			Timeline: 3 years – 2019-2021
	Address gender stereotypes.		At least 75% of businesses have 100% of staff participate in externally facilitated gender equality training on an annual basis.
			At least 50% of businesses conduct a gender audit, to identify and address discriminatory practices.
			Timeline: 2 years – 2019-2020
Implement inclusive human resources policies with transparent and clearly articulated procedures and practices in the recruitment and hiring of workers.	Ensure that recruitment postings include “sexual orientation and gender identity or gender expression” as protected classes.	Businesses	At least 75% of businesses include “sexual orientation and gender identity or gender expression” in their recruitment postings.
	Include reference to LGBTI and gender discrimination free environment on any documents discussing work environment.		Timeline: 1 year – 2019
			At least 75% of businesses include direct reference to having an LGBTI and gender discrimination free environment on all documents referring to their work environment.

			Timeline: 1 year – 2019
	Implement anti-discrimination policies for recruiting, interviewing, and hiring.		At least 50% of businesses must have specific anti-discrimination policies in place for recruiting, interviewing, and hiring.  Timeline: 1 year – 2019
	Provide training to management and hiring board on anti-discrimination practices within these processes.		At least 50% of businesses have conducted externally facilitated trainings with 100% of management and members of their hiring board.  Timeline: 1 year – 2019
Implement inclusive human resources policies with transparent and clearly articulated procedures and practices in the remuneration 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 resources policies with transparent and clearly articulated procedures and practices in the promotion 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	<p>At least 50% of businesses have changing rooms and toilets for women which are safe, sanitary, and accessible for people living with disabilities.</p> <p>At least 50% of businesses have gender-neutral changing rooms and toilets.</p> <p>Timeline: 2 years – 2019-2020</p>
Protect LGBTI migrant workers.	Enact policies that protect LGBTI migrant workers which are not covered by Thai labour laws.	Businesses	<p>At least 50% of businesses have explicit policies which protect LGBTI migrant workers which are not covered by Thai labour laws.</p> <p>Timeline: 2 years – 2019-2020</p>

## 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 at the workplace.	Provide for an adequate grievance redress mechanism to victims affected by discrimination or sexual harassment at the workplace. Complaint procedures should allow accusers 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.

		<p>100% of complaints made through these mechanisms must be taken seriously, and follow the implemented protocol.</p> <p>100% of managers in businesses with implemented grievance redress mechanisms must receive training on handling complaints.</p> <p>Timeline: 2 years – 2019-2020</p>
	Shift the burden of proof for sexual harassment and gender discrimination at the workplace from employees to employers.	<p>For at least 75% of businesses, where complaints are addressed formally, requiring evidence and verification, the burden of proof must lie on employers.</p> <p>Timeline: 2 years – 2019-2020</p>
	Create a remedy fund accessible to victims of discrimination and harassment.	<p>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.</p> <p>At least 50% of victims in these organisations have been able to access the remedy fund when appropriate.</p> <p>Timeline: 2 years – 2019-2020</p>
	Provide referral to counselling services for victims of sexual	At least 50% of businesses provide



	assault and discrimination paid for out of the remedy fund.		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

- 1 Manushya Foundation, Business and Human Rights, available at: <https://www.manushyafoundation.org/business-human-rights>
- 2 Manushya Foundation, *Meeting Report: Coalition Building Workshop on Business & Human Rights – Towards a 'Thai BHR Network', 18-20 November 2018*, (2018) available at: <https://www.manushyafoundation.org/coalition-building-workshop-report>
- 3 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>
- 4 Manushya Foundation conducted two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the National Action Plan on Business and Human Rights. The First Experts' Meeting aimed at Informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018). Please see: Manushya Foundation, *Executive Summary: First Experts Meeting to inform the independent national baseline assessment on business and human rights in Thailand, 2-3 September 2017*, (2017), available at: <https://www.manushyafoundation.org/single-post/RELEASE-OF-FIRST-BHR-NBA-EXPERTS-MEETING>; and: Manushya Foundation, *Executive Summary: Second Experts Meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand, 28 February-1 March 2018*, (2018), available at: <https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-SECOND-BHR-NBA-EXPERTS-MEETING>
- 5 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>
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- 7 Manushya Foundation, *Regional BHR workshops held to demystify corporate accountability concepts with HRDs, May-June 2017*, (2017), available at: <https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-BHR-WORKSHOPS>
- 8 Manushya Foundation, *Executive Summary: First Experts Meeting to inform the independent national baseline assessment on business and human rights in Thailand, 2-3 September 2017*, (2017), available at: <https://www.manushyafoundation.org/single-post/RELEASE-OF-FIRST-BHR-NBA-EXPERTS-MEETING>
- 9 Manushya Foundation, *Executive Summary: Second Experts Meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand, 28 February-1 March 2018*, (2018), available at: <https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-SECOND-BHR-NBA-EXPERTS-MEETING>
- 10 Manushya Foundation, *Meeting Report: Coalition Building Workshop on Business & Human Rights – Towards a 'Thai BHR Network', 18-20 November 2018*, (2018), available at: <https://www.manushyafoundation.org/coalition-building-workshop-report>
- 11 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>
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- 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)

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# NOTES





### About Manushya Foundation

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.

## CONTACT US

5/4 Thanon Sutthisan Winitchai 1, Samsen Nai,  
Phayathai, Bangkok 10400, Thailand

contact@manushyafoundation.org

+66 (0) 994432563

www.manushyafoundation.org



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