

# THE PROTECTION OF MIGRANT WORKERS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS

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



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PRIORITY AREA 1: LABOUR RIGHTS & STANDARDS

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Manushya Foundation  
& Thai BHR Network,  
*The Protection of Migrant  
Workers in the Context of  
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## *About the Thai BHR Network*

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



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

**Emilie Palamy Pradichit**  
Founder & Executive Director  
Manushya Foundation



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## ABBREVIATIONS

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ASI</b>	Alþýðusamband Íslands Icelandic confederation of Labour
<b>BHR</b>	Business and Human Rights
<b>BWI</b>	Building and Wood Workers' International
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCPR</b>	Committee on Civil and Political Rights
<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>CEDAW</b>	Convention / Committee on the Elimination of All Forms of Discrimination Against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHRB</b>	Corporate Human Rights Benchmark
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisations
<b>CSR</b>	Corporate Social Responsibility
<b>EEC</b>	Eastern Economic Corridor
<b>EHRD</b>	Environmental Human Rights Defender
<b>EJF</b>	Environmental Justice Foundation
<b>ETI</b>	Ethical Trading Initiative
<b>EU</b>	European Union
<b>FIFA</b>	Fédération Internationale de Football Association
<b>GCM</b>	Global Compact on Safe, Regular, and Orderly Migration
<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>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>IDC</b>	Immigration Detention Centre
<b>IFC</b>	International Finance Corporation
<b>IHRL</b>	International Human Rights Law
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organisation for Migration
<b>IUU</b>	Illegal, Unreported and Unregulated fishing
<b>LGBTI/LGBTIQ</b>	Lesbian, Gay, Bisexual, Transgender, Intersex / Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
<b>MoFA</b>	Ministry of Foreign Affairs
<b>MoI</b>	Ministry of Interior
<b>MoJ</b>	Ministry of Justice
<b>MoL</b>	Ministry of Labour
<b>MoPH</b>	Ministry of Public Health
<b>MoU</b>	Memorandum of Understanding
<b>MSDHS</b>	Ministry of Social Development and Human Security
<b>NAP</b>	National Action Plan
<b>NBA</b>	National Baseline Assessment
<b>NCPs</b>	National Contact Points



<b>NGO</b>	Non-Governmental Organisation
<b>NHRCT</b>	The National Human Rights Commission of Thailand
<b>NHRI</b>	National
<b>NLA</b>	National Legislative Assembly
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OHCHR</b>	Office of the High Commissioner on Human Rights
<b>OSS</b>	One Stop Service
<b>RLPD</b>	Rights and Liberties Protection Department
<b>RTG</b>	Royal Thai Government
<b>SDG</b>	Sustainable Development Goals
<b>SSO</b>	Social Security Office Fund
<b>THB</b>	Thai Baht
<b>TLS</b>	Thai Labour Standard
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNGA</b>	United Nations General Assembly
<b>UNGC</b>	United Nations Global Compact
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNWG</b>	United Nations Working Group
<b>UPR</b>	Universal Periodic Review





## INTRODUCTION: Manushya Foundation's Business & Human Rights Strategy

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

After the Thai government received, during its second UPR, a recommendation from Sweden to develop a National Action Plan (NAP) on BHR with the view to implement the UNGPs, Manushya developed a strategy<sup>1</sup> aiming at empowering communities to be at the centre of the business and human rights response in Thailand, by guaranteeing their central role throughout the development, implementation and monitoring of the NAP. To this end, since the beginning of 2017, Manushya has reached out to local communities, national, regional and international experts on business and human rights to:

- Develop a CSO NBA on BHR, with communities' challenges and needs put at the centre of the assessment,
- Empower local communities to conduct evidence-based research and, together with academics, document Business and Human Rights issues they face, and
- Empower grass-root organisations to tip the balance of power between businesses and governments versus CSOs, and encourage more bottom-up approaches which view CSOs as equal partners. For that purpose, in addition to building capacities on BHR knowledge, Manushya also provides sub-grants to establish and sustain a national network on BHR comprising communities, academics and experts, called the "Thai BHR Network".<sup>2</sup> The Thai BHR Network is an inclusive and intersectional network of grassroots communities, civil society, academics and experts, including representatives from and/or working on the following issues: *rights of migrant workers, labour rights (formal and informal workers), trade unions, indigenous peoples, stateless persons, community rights, land-related rights, environmental rights, people with disabilities, Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders (HRDs), 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 key four priority areas. Thus, this Chapter falls under Priority Area 1 and is part of Manushya Foundation and the Thai BHR Network's Independent NBA on BHR in Thailand.<sup>5</sup>



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

### Role of Manushya

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

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

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



## METHODOLOGY

The methodology used in the research, analysis and writing for this Chapter on the Protection of Migrant Workers in the Context of BHR in Thailand relies on primary and secondary data and resources. Primary sources, including voices, concerns, cases, experiences and recommendations of local communities and experts, were collected directly from Manushya's BHR activities; including:

- Four Regional NBA Dialogues on BHR conducted from January to March 2017;<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) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018);<sup>8</sup> and
- The BHR Coalition Building Workshop held on 18-20 November 2017.<sup>9</sup>

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



## THE PROTECTION OF MIGRANT WORKERS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS IN THAILAND

### CONTEXT

The International Labour Organisation (ILO) defines international labour migration as ‘the movement of people from one country to another for the purpose of employment.’<sup>10</sup> At present, the RTG has registered more than two million migrant workers, who have undergone the national verification process.<sup>11</sup> Although there have been efforts to ensure their protection, migrant workers remain vulnerable and are exposed to significant risks while they migrate.<sup>12</sup> The legal status of migrant workers and their families, especially those who migrate irregularly, makes them particularly vulnerable to abuse and exploitation.<sup>13</sup> Migrant workers in certain sectors, and in particular those who are undocumented, face specific challenges. Migrant domestic workers, that is migrant workers who are employed and perform work in or for a private household(s), are particularly vulnerable to exploitative working conditions, which may resemble slavery or slavery-like conditions, as well as to discrimination, verbal, physical or sexual abuse, and have limited if not any access to social protection.<sup>14</sup> Female migrant domestic workers are also vulnerable to sexual and gender-based violence and are unable to move in and out of the workplace freely.<sup>15</sup> Migrant workers in the fishing industry are also at risk, as they might work in areas beyond the jurisdiction of any state, such as international waters, or may operate under specific visa requirements in territorial waters; which prevents them from effectively seeking support for human rights abuses.<sup>16</sup>

In Thailand, a number of rights’ violations cases against migrants have been documented.<sup>17</sup> These violations include ‘assault and killing by government security forces and private individuals, extensive use of torture and ill treatment in detention, sexual abuse, widespread labour rights abuses, and pervasive extortion.’<sup>18</sup> Also, migrant workers’ passports and work permits are still being confiscated by many of their employers. In addition, when submitting grievances, migrant workers often encounter retaliation from the police, state officials, and their employers.<sup>19</sup> On top of that, there is an overall problem regarding the migrant workers’ rights strategy in the context of BHR in Asia. Indeed, considering the rights and protections guaranteed in the region, it seems that state actors prioritise the act of migration and its’ sustainability; rather than the individual rights of affected migrant workers.<sup>20</sup>

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

#### 1.1. International Human Rights Standards

Core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC); are all applicable with respect to the rights of migrants and migrant workers. In addition, labour legislations such as the Forced Labour Convention (No. 29), the Labour Inspection Convention (No. 81), the Freedom of Association and Protection of the Right to Organise Convention (No. 87), the Right to Organise and Collective Bargaining Convention (No. 98), the Equal Remuneration Convention (No. 100), the Abolition of Forced Labour Convention (No. 105), the Discrimination (Employment and Occupation) Convention (No. 111), the Minimum Age Convention (No. 138), the Private Employment Agencies Convention (No. 181), the Worst Forms of Child Labour Convention (No. 182), and the Domestic Workers Convention (No. 189), guarantee rights and protections that



are applicable to migrant workers as well. However, the specific legislations on migrant workers, as discussed below, are seldom ratified by the RTG.

#### **1.1.1. The International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)<sup>21</sup> – Thailand has not ratified it**

This Convention is a comprehensive international treaty that seeks to protect migrant workers and their families from exploitation and violations of their rights. It emphasises the connection and relationship between migration, migrants, and human rights, by providing guidance on the promotion of migrant rights in each country. Although Thailand has not ratified the treaty, the Convention applies to the State regardless, as this legislation does not create any new rights for migrants. Instead, it just requires equality of treatments between workers and migrants, by mandating that the same rights and protections be guaranteed to both groups.

#### **1.1.2. The ILO Migration for Employment Convention (C097)<sup>22</sup> – Thailand has not ratified it**

It requires signatory parties to facilitate international migration for employment purposes, by establishing and maintaining free assistance and information services for migrant workers; and to take measures against misleading propaganda relating to both emigration and immigration. It includes provisions on appropriate medical services for migrant workers and the transfer of earnings and savings. States must apply treatment that are no less favourable than that applying to their own nationals in respect to a number of matters, including conditions of employment, freedom of association and social security.

#### **1.1.3. The ILO Migrant Workers (Supplementary Provisions) Convention (C143)<sup>23</sup> – Thailand has not ratified it**

This Convention provides measures to combat clandestine and illegal migration, while setting forth the general obligation to respect the basic human rights of all migrant workers. It also extends the scope of equality between legally resident migrant workers and national workers, beyond the provisions of the 1949 Convention. This ensures equality of opportunity and treatment regarding employment and occupation, social security, trade union and cultural rights, as well as individual and collective freedoms for migrant workers and members of their families who are lawfully located within a signatory state's territory. It calls upon ratifying states to facilitate the reunification of migrant workers' families legally residing in their territory.

#### **1.1.4. ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration<sup>24</sup>**

The Multilateral Framework developed by the ILO provides guidelines for 'the development, strengthening, implementation, and evaluation of national, regional, and international labour migration policies and practices' in order to improve the governance, promotion, and protection of migrant rights.<sup>25</sup> It also promotes linkages between migration and development. Made up of 15 principles, the Multilateral Framework offers an understanding of the practical effects of its principles. It also incorporates references to other international instruments on migrant rights, such as ILO Conventions 97,<sup>26</sup> 143,<sup>27</sup> and 181,<sup>28</sup> and ICMW.<sup>29</sup> In addition, the second annex to the Multilateral Framework compiles best practices on migration and migrant rights, therefore clarifying the practical application and the goals of the principles.<sup>30</sup>

#### **1.1.5. 2030 Agenda for Sustainable Development<sup>31</sup>**

Under the 2030 Agenda for Sustainable Development, targets 4.5, 5.2, 8.7, 8.8, 10.7, 10.c, 16.2 and 17.18 on the Sustainable Development Goals (SDGs) of 'quality education', 'gender equality', 'decent work and economic growth', 'reduced inequalities', 'peace, justice and strong institutions', and 'partnerships for the goals'; directly or indirectly address migrants and their rights. Target 10.7, is particularly important, as it requires the facilitation of 'orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies', therefore directly addressing the core of migration.

#### **1.1.6. The Maritime Labour Convention<sup>32</sup> – Thailand has ratified it**

The Maritime Labour Convention is a global standard document establishing working and living conditions, as well as enforcement mechanisms regarding those who work at sea. This includes aspects such as requirements for employment; working conditions necessary during the employment; living conditions (accommodation,



recreation, and food); health protection, medical care, and other social security protections; and measures to ensure compliance to these aspects.

#### **1.1.7. The ILO Working in Fishing Convention (C. 188)<sup>33</sup> – Thailand has ratified it**

This Convention establishes decent working conditions for those involved in the fishing industry, notably with respect to minimum requirements for work; conditions of undertaking service; accommodation and food; occupational health and safety; medical care, and other social security measures. Thailand's ratification has been hailed as a commendable step, since it is the first Asian country to have ratified this convention, as of 30 January 2019<sup>34</sup>. Yet, the specific aspects in this convention that prevent labour violation both in the in a country's territorial waters and in businesses' supply chain, must be strictly enforced and monitored on a regular basis.<sup>35</sup> To achieve the complete enforcement of this Convention, businesses must comply with international standards and respect workers' rights to freedom of association, collective bargaining, and prevention of exploitative labour practices in all its forms, before and after it comes into force on 30 January 2020.<sup>36</sup>

### **1.2. Regional Commitments**

#### **1.2.1. The Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers<sup>37</sup>**

Adopted in 2007, this Declaration highlights the commitments of ASEAN member states to promote decent, humane, and dignified employment of migrant workers, amongst other aspects. It also helps prevent and deter smuggling and trafficking of migrants.

#### **1.2.2. The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers<sup>38</sup>**

The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers was established as a framework for increased cooperation amongst ASEAN member states in addressing migrant workers' issues in the region. It includes general principles, fundamental rights of migrant workers and their families, specific rights of migrant workers, obligations of sending and receiving states, and principles as well as commitments of ASEAN member states towards the protection and promotion of the rights of migrant workers. Through the ASEAN Committee on migrant rights, it also synthesises a NAP, in order to implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, as well as this Consensus Framework; to ensure implementation oversight and to share best practices in managing migration.

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

#### **1.3.1. The Constitution of Thailand<sup>39</sup>**

While the Constitution of Thailand of 2017 sets out the State's obligations to protect the human dignity, rights, liberties, and equality of the people, these rights only extend to Thai nationals, leaving migrant workers unprotected under the constitution. However, there are labour protections guaranteed under national legislations, and human rights protections ensuing from Thailand's international obligations.

#### **1.3.2. The Labour Protection Act B.E. 2541 (1998)<sup>40</sup>**

It ensures that fundamental protections for labour are in place. The Act imposes certain duties on employers, such as not infringing upon their workers' rights during the course of work, regardless of their nationality and legal status. Upholding the principle of equality all migrant workers, whether they have entered Thailand legally or illegally, are entitled to be protected under the Labour Protection Act. However, there are circumstances under which certain employers are exempt from complying with obligations under the Labour Protection Act.

#### **1.3.3. The Labour Relations Act B.E. 2518 (1975)<sup>41</sup>**

The Labour Relations Act establishes the Labour Relations Committee, consisting of both employers and employees' representatives, with the authority to make decisions on employment conflicts. It requires companies with more than 20 staff to have agreed upon written conditions of employment, which are in accordance with the standards set out in the Act, and establishes the duty of the employers to transfer money to the Social Security Office Fund (SSO).<sup>42</sup> Furthermore, the Act also stipulates that companies have a

mechanism to enable employers' and employees' negotiations in case of disputes, including in the form of employee associations and trade unions. This Act and its requirement for written conditions of employment and social security benefits, are particularly important for migrant workers that are part of the informal economy.

#### **1.3.4. The Social Security Act B.E. 2533 (1990, amended in 2015)<sup>43</sup>**

This Act guarantees social security entitlements for workers in Thailand. It sets out the payment of a monthly contribution to the Social Security Fund by workers, which is complemented by contributions from the employer and the government. Workers are then able to access a number of benefits and protections from the fund, including 'injury or sickness benefits [...], maternity benefits, invalidity benefits, death benefits, child benefits, old-age benefits, and unemployment benefits except' for those who are uninsured.<sup>44</sup>

#### **1.3.5. The Immigration Act (1979)<sup>45</sup>**

The Act describes who and how foreigners enter, depart or reside in Thailand, and who is restricted from entering. The Act bars workers who have entered to work 'as labourers, or to be hired to do physical work and unskilled or technical work or to do any other work that is in violation of alien working laws'.<sup>46</sup>

#### **1.3.6. The Alien Working Act B.E. 2551 (2008)<sup>47</sup>**

The Act regulates the work performed by foreigners in Thailand and outlines the necessity for them to obtain a work permit, except under extraordinary circumstances. It also sets forth penalties for violating the law. The Act does not apply to all migrants, and includes exemptions for certain workers. While the Royal Decree on Managing the Work of Aliens<sup>48</sup> repealed this act, most of its provisions are included in the new Decree.

#### **1.3.7. The Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with Employers in the Kingdom B.E. 2559 (2016)<sup>49</sup>**

This law aims at improving Thailand's management of recruitment agencies in order to prevent migrant workers from being exploited, and from becoming victims of forced labour or debt bondage. This Ordinance addresses the loopholes on trafficking in persons and provides additional protection to migrant workers by enabling oversight of the recruitment process, imposing stringent punishment for illegal recruitment practices, regulating recruitment fees to prevent debt bondage, and improving workers' well-being and welfare.

#### **1.3.8. The Foreigners' Working Management Emergency Decree B.E. 2560 (2017)<sup>50</sup>**

In accordance with this decree, the government must provide for the registration of all foreign employees that were not previously recognised as such. It also indicates a timeline for registration to take place. The period provided under this decree has been extended on several occasions, owing to the volume of foreign workers both working within Thailand and on its territorial waters. Yet, instead of enacting more laws, it would be better to replace them with a more migrant-friendly policy.

#### **1.3.9. The Royal Ordinance on Managing the Work of Aliens B.E. 2560 (2017)<sup>51</sup>**

This Ordinance aims to improve Thailand's management of recruitment agencies and to prevent migrant workers from being exploited. It improves the administration processes involved in the recruitment of migrant workers and enhances protections of worker's rights in accordance with international standards. The Ordinance stipulates that only a Thai employer or a licensed operator can bring in migrant workers to work in Thailand. This is done by first making a request to the authority for the authorisation to hire a specified number of migrant workers. Once the quota is granted, the employer or licensed operator can submit a request to bring workers into Thailand for working purposes and, subsequently request work permits. It also prescribes the qualifications of an operator and requirements for operating a business of recruiting migrant workers in Thailand. In 2018, the Cabinet approved amendments to this ordinance, aimed at responding to the opposition, who criticised the overly strict and punitive measures targeting migrant workers.<sup>52</sup> The amendments also oblige employers to inform authorities on the employment of a migrant worker and if he/she changes his place of work.<sup>53</sup>

### 1.3.10. The Migrant Worker Registration Fee

The Migrant Worker Registration Fee includes provisions for a work permit, physical checks, and health insurance, with the amount depending upon the worker's occupation, and whether he or she is eligible to apply for social security.<sup>54</sup>

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

### 2.1. Pillar I & Pillar III - The duty of the State to protect the rights of migrant workers, and to ensure effective access to remedy

Under Pillar 1 of the UNGPs, the State has a duty to protect the rights of migrant workers.<sup>55</sup> Principle 3 sets out the need for States to 'enforce laws that are aimed at, or have the effect of requiring business enterprises to respect human rights'.<sup>56</sup> While migrant workers are technically covered under the Labour Protection Act,<sup>57</sup> that encompasses all persons who agree to work for an employer in return for wages, there are no specific laws guaranteeing the rights of migrant workers. Additionally, the rights set out in the Constitution<sup>58</sup> do not specifically include migrant workers. While the Royal Decree on Managing the Work of Migrant Workers does offer protection to migrant workers in the form of criminalising the seizure of work permits and other important documents,<sup>59</sup> this is only one of the issues faced by migrant workers. Businesses' regulations regarding migrant workers primarily focus on logistic issues and migrants' management, such as the necessity to obtain work permits, quotas of migrant workers, and penalties for employing migrants illegally.<sup>60</sup> Under the Labour Protection Act, which includes provisions on working hours, holiday, and minimum wage, businesses have a duty to respect migrant workers' rights.<sup>61</sup> However, migrants who are working illegally are exempt from many of the provisions under the Act, such as the right to minimum wage, and thus businesses can exempt themselves from the need to respect the rights of many migrant workers.<sup>62</sup>

Additionally, Principle 2 of the UNGPs sets out the need for States to lay out 'clear expectations that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations'.<sup>63</sup> The lack of specific robust legal frameworks to protect the rights of migrant workers, coupled with their exclusion from other laws, such as the Constitution, fails to strongly signify to businesses their obligation to respect migrant rights. Since forced labour and human trafficking are a significant area of focus for Thailand, migrants experiencing these forms of labour exploitation are well protected.<sup>64</sup> This sends a clear message to businesses that these practices will not be tolerated. However, migrant workers who experience rights' violations without being victims of forced labour or human trafficking are ignored,<sup>65</sup> thus conveying the impression that other violations are not being accounted for by the law. This is compounded by the fact that Thailand has not signed or ratified any of the major international conventions on migrant workers' rights, which contravenes Guiding Principle 2.

With respect to Pillar 3 of the UNGPs, Principle 26 stipulates that States must ensure the 'effectiveness of domestic judicial mechanisms [...], including [by] considering ways to reduce legal, practical and other relevant barriers' to access remedy.<sup>66</sup> The commentary applies this specifically to migrants, stating that they are often excluded from enjoying the same level of legal protection as the wider population.<sup>67</sup> This can be seen in migrant workers' exclusion from legal protection under the constitution, and in the fact that migrants working illegally are unable to access protections under the Labour Protection Act. In Thailand, remedies such as the Workmen's Compensation Fund offers compensation for migrant workers; however, its scope is limited.<sup>68</sup> The fund does not cover workers employed illegally, and a number of industries are exempted from it, including the fishing and agricultural sectors, as well as the domestic sector. A migrant worker's ability to access remedies in Thailand is also hampered by limitations on their ability to join labour unions. The amendments of the Labour Relations Act<sup>69</sup> and the State Enterprise Labour Relations Act<sup>70</sup> place restriction on the right of workers to form a union, due to the categorisation of labour groups.<sup>71</sup> Collective bargaining and belonging to a union are essential tools





required to access remedy in case of business related human rights violations, and the limitations placed on this right therefore hinder the ability of migrant workers to achieve this under Pillar 3 of the UNGPs.

## **2.2. Pillar II & Pillar III - The corporate responsibility to respect the rights of migrant workers, and to ensure effective access to remedy**

Under Pillar 2 of the UNGPs, Principle 12 sets out the need for businesses to respect human rights, over and above compliance with national legislations and regulations protecting human rights.<sup>72</sup> As such, while the legal framework has significant gaps with regard to the rights of migrant workers, that does not exempt businesses from considering and responding to the human rights impacts of their business operations on migrant workers. Principle 13 reaffirms this and specifies in the commentary that business enterprises may need to consider additional standards beyond core human rights treaties,<sup>73</sup> including those concerning migrant workers and their families. However, instead of protecting them, businesses in Thailand can often take advantage of migrant workers, due to the workers' limited understanding of labour laws and regulations, language barriers, and a desperation to find paid employment due to financial dependence or lack of economic opportunities in their home country.<sup>74</sup> This can often lead to exploitative working conditions in which migrants' rights are violated.

Additionally, Principles 17 to 21 of the UNGPs set out the need for Human Rights Due Diligence (HRDD).<sup>75</sup> Thus, companies in Thailand have a responsibility under the UNGPs, not only to analyse the rights of migrants in line with Thai law, to ensure their actions align with the legal obligations and standards set out by domestic law, regional commitments and international legislation; but also to conduct an effective assessment of the human rights impacts that their business operations are having on migrant workers. However, with respect to migrant workers in Thailand, the focus of businesses' remains on compliance with law and legal obligations regarding the status of migrant workers<sup>76</sup> instead of studying the rights and protections they are entitled to and their associated adverse impacts.

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

#### Challenge 1: There is an absence of sufficient labour rights protection in domestic legislations and policies regarding migrant workers

##### Impact

Migrant workers have limited rights in Thailand, particularly undocumented migrants. The government has no standard policy on the treatment of migrant workers. For instance, the Certification of Registration Records of Aliens Granted Residency in the Kingdom under Special Circumstances (Tor Ror 38/1) for migrant workers registered with the Ministry of Interior (MoI) cannot be used for claiming social security rights from the Ministry of Labour (MoL).<sup>77</sup> The categorisation of types of labour under the Social Security Act B.E. 2533 (1990)<sup>78</sup> has resulted in the unequal protection of migrant workers and has also led to discrimination against them, which is not in line with the legislation's initial intent. Migrant workers are not entitled to all rights provided under the Social Security Fund.<sup>79</sup> For example, migrant workers cannot claim social security benefits for child allowance in the same way as Thai workers.<sup>80</sup> Migrant workers are also not entitled to annual holidays (six days per year), traditional holidays (13 days per year), paid sick leave (30 days per year), sterilisation leave, education and training leave or paid maternity leave (45 days per year), under labour protection laws.<sup>81</sup> Additionally, an employer is required by law to pay a 'minimum wage of \$10 per day regardless of the worker's nationality and immigration status', but in reality, gaps can be found and migrant workers are not paid the minimum wage as provided for.<sup>82</sup> Many employers also believe that migrant workers do not need be paid as much as their Thai counterparts.<sup>83</sup> Children of migrant workers cannot enjoy their right to education and health. There is also no policy granting rights to the dependents of migrant workers.<sup>84</sup>

#### Voices from the Ground <sup>85</sup>

*"I am Burmese and a migrant worker, that is why the police don't care about this case... [M]y husband and I are only migrant workers and we have no rights here".*

Aye Aye Ma, from Burma  
Raped by two unknown Thai assailants after they shot and killed her husband  
Phang Nga province

#### Challenge 2: Abuse and exploitation of migrant workers persists due to the violations of their rights before, during, and after the recruitment process

##### Impact

The Myanmar-Thailand border has been described as a hotspot for unregistered private recruitment agencies, resulting in an increased movement of undocumented migrants.<sup>86</sup> Informal recruitment agencies represent an alternative channel for migrants to avoid formal public regulated recruitment processes, which are often seen as slower and costlier, due to bribes.<sup>87</sup> Nonetheless, the use of smuggling networks expose migrants to greater risk in the form of 'blackmail, kidnapping, violence, and even death'.<sup>88</sup> Once migrant workers arrive at their destination as undocumented immigrants, they face detention, deportation, lack of social services, legal protection, aid, and other support in the destination country.<sup>89</sup> Migrants are also often persuaded by agents, recruitment networks or individuals to work and are promised good salaries and working conditions.<sup>90</sup> Migrants enter the workplace without accurate information about the type of work, working hours and conditions, and salaries.<sup>91</sup>

##### Cases

- A study conducted by Vérité and the Freedom Fund highlights extensive abuse and exploitation of migrant workers.<sup>92</sup> The report claims to contribute to nuancing the risks faced by migrants, by 'describing how corruption and fraud by private recruitment agents, employers, governments, and intermediaries along the many stages of the recruitment process mitigate the impact of established protections, undermine the rule of law, and reduce the economic and social benefits of migration'.<sup>93</sup> These costs are 'borne largely by the

vulnerable migrants themselves, whose indebtedness and exploitation due to prevailing recruitment schemes, are well known'.<sup>94</sup>

- An Environmental Justice Foundation (EJF) in-depth research<sup>95</sup> interviewed six victims of slavery who had escaped from five different Boonlarp fishing vessels in 2015. One victim, Aung Kyi, was taken out for drinks by a taxi driver. Aung only remembers that once they were drunk, the taxi driver offered him a place to stay and brought him to the riverbank to get on a taxi boat. The following morning, Aung found himself in a room with 20 other people. He was then transported by boat, truck, and on foot to Kantang, where a broker selected Aung and claimed he owed him 30,000 Thai Baht (THB) (\$960). He worked three years on a fishing boat to pay off the debt. Afterwards, he took a job on a carrier to earn enough money to return home. In seven months, he only earned 7,000 THB (\$225), and his supervisor blamed him for the escape of four of his colleagues, resulting in a new debt he would have to pay off. Later on, Aung fell into the hands of another exploitative band, who threatened to kill him. After another four years on a fishing boat, Aung escaped.
- The Mae Sot police received a complaint from a 14-year old, on 22 January 2008. It was alleged by the complainant that he was lured to work in Thailand, by brokers in Myanmar. When arriving in Thailand, he was forced to work all night on Khao San Road in Bangkok. However, he managed to escape and was assisted in approaching the police with his complaint. On 17 September 2018, the perpetrators in the case were convicted for human trafficking by the Mae Sot Provincial Court.<sup>96</sup>

### Voices from the Ground<sup>97</sup>

*"I'd been working [at Boonlarp] for many years, I didn't get any money. Luckily, I didn't die. Here are the wounds that I got, where they stabbed me with their knives... I'd tried to escape from them ever since I was sent to the sea. But I was captured again, I was beaten. Since then, I decided that, whatever happens, I would run away when I went back to port".*

Thein Myat,  
Escaped trafficking victim

### Challenge 3: The Migrant Registration Programme is ineffective

#### Impact<sup>98</sup>

The RTG's migrant registration program is both ineffective and exclusive of migrants and their family members. Besides, as of now, Thailand falls short of making this legislation permanent. In addition, illegal agents are charging an extra fee to register illegal immigrants. To prove their citizenship status, migrant workers in Thailand are therefore forced to pay very high amounts.

#### Case

The Myanmar government estimates that the migrant registration programme costs 3,550 THB (\$113). Yet, it appears that, on the ground, migrant workers from Myanmar have to pay a much higher price, ranging between 8000 and 16,000 THB (\$250-500), or more.<sup>99</sup> Multiple cases of blackmailing during national verification processes have also been reported, whereby migrant workers from Myanmar are forced to pay five to ten times more than the official fee of 1,050 THB (\$33).<sup>100</sup>

### Voices from the Ground<sup>101</sup>

*"It feels like I'm caged here. I have gone to Bangkok on a few trips... but I am worried that if I am stopped by a police checkpoint... I will be arrested because I am not Thai".*

Say Sorn,  
Burmese worker in Thailand

#### Challenge 4: Migrant workers suffer due to poor working conditions and discrimination at work

##### Impact

Thai industries benefit from cheap and low-skilled workers; thanks to the influx of migrant workers in the country.<sup>102</sup> A report by the Migrant Working Group, a coalition of CSOs tackling migrant issues in Thailand, highlights human rights challenges and issues, as well as legal frameworks and gaps between theory and practice related to migrant workers in Thailand.<sup>103</sup> The report notes that the government's implementation of criminal penalties targeting unregistered migrants, caused thousands of families to flee the country. The majority of human rights issues faced by migrant workers in Thailand are linked to labour protection, which should legally apply to migrant workers. Migrant workers lack information about their rights and have no official contract.<sup>104</sup> When they do have contracts, these are often written in a language that migrants do not understand.<sup>105</sup> Many employers take advantage of language barriers and of 'employee's limited understanding of the terms in their contracts' to establish exploitative and unfair contracts including 'illegal conditions'.<sup>106</sup> In addition, while many migrant workers failed to receive fair wages or even the minimum wage, some have never received wages at all and are overworked..<sup>107</sup> These abuses are perpetrated up until migrant workers' dismissal, since many of them are unfairly dismissed, without receiving early notice or compensation.<sup>108</sup> Additionally, the lack of policy granting rights to migrant labourer's family members, especially their children, leads children to be deprived of health and education.<sup>109</sup> Taken together, these factors further pressure and, in some cases, force migrant children to work in informal and weakly regulated enterprises, leading to a downward falling spiral with limited social security for migrants in Thailand.

##### Cases of poor working conditions and discrimination

- Schyst resande and Fair Action published a report in 2015 examining the working conditions of Burmese migrants contracted by three Swedish operators to work in hotels.<sup>110</sup> It found that the workers received below minimum wages, worked overtime without compensation, and faced discrimination. Furthermore, the majority of the surveyed migrant labourers worked up to 19 hours per day, with only two days off per month. Such practices represent a violation of both the Thai labour law and international conventions.<sup>111</sup> The Burmese migrant workers surveyed are living in small overcrowded houses they had built themselves, using corrugated metal and pieces of wood.<sup>112</sup> Residents had to use tainted water from a lake that was polluted.<sup>113</sup> Twenty-three Burmese staff shared two toilets and one kitchen and were not allowed to use the better-quality toilets reserved for Thai staff.<sup>114</sup> In contrast, the same employer placed Thai workers in houses of greater quality, with concrete toilets in the vicinity.<sup>115</sup>
- A study conducted by Finnwatch in 2015<sup>116</sup> outlined that all eight interviewed Myanmar employees at the Thai Union Manufacturing in Samut Sakhon, had witnessed and/or faced some kind of discrimination at work. For instance, errors made at work by Thai workers are more tolerated than errors made by migrant workers. Similarly, migrant workers are more likely to get fired for certain mistakes in comparison with Thai workers.<sup>117</sup>

#### Voices from the Ground<sup>118</sup>

***"The fishing boat was very dangerous. We were surrounded by dangerous machines, and they became even more dangerous because we weren't trained properly on how to operate them".***

Chan Myae Aung, Burmese former fisher in Thailand

#### Challenge 5: Migrant workers are unable to access healthcare.

##### Impact

Migrant workers' health is often put at risk, due to a sub-standard working environment. For example, migrant workers in the agricultural sector face risks because the equipment used is not safe, with workers often being required to use pesticides that are toxic.<sup>119</sup> These inadequate conditions flourish due to the lack of qualified staff or security, and ineffective monitoring of working conditions and workplace safety.<sup>120</sup> Even worse, duty bearers such as government officials and employers take no responsibility to compensate workers when their health suffers because of their work.<sup>121</sup> This is also due to the fact that migrant workers are subject to discrimination



and are not entitled to all rights outlined in the Social Security Act.<sup>122</sup> Thus, migrant workers are not entitled to annual or traditional holidays, and are not paid maternity/education or sick leave.

### Cases of denial of healthcare

A Swedwatch study from 2015 analysed interviews from 98 migrant workers employed by four different Thai poultry producers.<sup>123</sup> According to the study, workers at all factories stated that they were not paid when on sick leave, since they did not have a medical certificate to prove their one to two days of sick leave, despite the fact that Thai law only requires sick leave certificates for medical leaves of three days or more.<sup>124</sup> Workers at all factories testified that at least one of their original documents, such as ID card, passport or work permit, were confiscated by brokers or employers.<sup>125</sup> Moreover, only a small fraction of the 98 migrant workers interviewed were in possession of social security cards.<sup>126</sup> However, despite being deducted 5% on their pay checks for the SSO, many workers indicated that no official payments were made by their employer to the SSO on their behalf, as required by law.<sup>127</sup> Therefore, they are unable to access benefits such as healthcare.

### Voices from the Ground

***“It is really unfair. We pay for years but get no cover by the SSO. We need help”.***

Anonymous 33 years-old Burmese worker,  
Employed by Laemthong<sup>128</sup>

***“My stomach and back pain continued to grow worse. She [the employer] joined me to the doctor several times, but she did not listen when he said that I could not continue to carry heavy loads”.***

Burmese laundry worker in Thailand, working 16 hours a day<sup>129</sup>

### Challenge 6: There are barriers and limitations on the ability of migrant workers to travel

#### Impact<sup>130</sup>

Employers prevent migrant employees from going outside the assigned area or from changing employers, often by confiscating their passports and work permits. This is exacerbated by the fact that many migrant workers are victims of gross rights abuses in the form of forced labour and human trafficking.

#### Case of Nam from Cambodia<sup>131</sup>

Nam from Cambodia worked in a restaurant from four am to six pm for a wage of 150 THB (\$5) a day. After one year, she was promoted to be a cook and earned 350 THB (\$11) a day. She was severely controlled by her employer, not allowed to leave the premises, and threatened to be deported if she tried to leave the house. Her employer continuously deducted increasingly higher amounts from her wage to bribe police officers, or to allegedly pay for her work permit, which she never received. After five years, Nam decided to escape and returned back to Cambodia.

### Voices from the Ground<sup>132</sup>

***“I worked without protection equipment for two months from six am to seven or eight pm. I was confined and not allowed to leave the workplace, which was an abandoned house – the same place where the garbage was stored. My employer brought me food but without rice. I had to ask for rice from a nearby monastery and some days I never received any food”.***

Nam, a Cambodian worker  
Employed in a recycling centre in Wang Noi in Ayutthaya province

**Challenge 7: Detention of migrant workers without due process persists. Poor conditions inside the Immigration Detention Centre (IDC) not only violate the rights of migrant workers, but also exacerbate their suffering.****Impact**

Undocumented migrants in Thailand are often detained for extended periods of time, and without being able to contact their embassies, counsel or CSOs.<sup>133</sup> In addition to this, detention centres often have substandard living conditions and are overcrowded.<sup>134</sup> Migrants who are detained often suffer from malnutrition and a lack of healthcare, due to lengthy or, in some cases, indefinite detention.

**Case of Mr. Ijaz from Pakistan<sup>135</sup>**

On 6 June 2016, a Pakistani national, Mr. Ijaz along with his relatives, was arrested at the apartment they rented in Bangkok, by local immigration police officers, based on allegations that their entry into Thailand was illegal. Following their arrest, the immigration police officers brought Mr. Ijaz and his relatives to Suan Plu Immigration Detention Centre (IDC), the biggest centre in Bangkok, and detained them at that location, pending deportation. On the same day, Mr. Ijaz had a preliminary medical check-up with medical professionals at the detention centre, and the results showed that he had hypertension. Despite this, he was placed in a crowded cell. For his condition, Mr Ijaz received medical treatment from the healthcare staff at the IDC, but it was very basic. He continued to report the chest pains he was suffering from, and following a doctor's appointment, it was suggested that he be taken to the hospital and treated for his pain. The staff at the IDC dismissed these instructions and failed to take him to the hospital. He continued to complain about pain in his chest, and two days later, this pain turned into a heart attack. Only when this happened did the staff attempt to provide him with the required medical attention he needed, by taking him to the hospital, where he remained for a week. However, doctors at the hospital only provided him with pain killers.

On his return to the IDC, Mr. Ijaz was asked by an officer to provide a payment of 10,000 THB (\$320) to cover for his medical costs, an amount which he did not have with him. Furthermore, while his chest pains persisted, he did not receive any form of treatment but painkillers. This was the only treatment he could afford, due to his inability to pay for the previous hospital fees. To compound his suffering, Mr. Ijaz was also placed in solitary confinement, as a penalty for not having paid the previous medical expense. He was confined in Room 4 of the IDC, which has been labelled as 'the torture or punishment room'. He was detained there for four months and was not allowed to exercise nor to have visitors. In February 2017, Mr. Ijaz called to notify his wife that he had been moved to a common detention facility, but was still denied permission to meet visitors, owing to his pending payment for the previous medical expenses. He was only allowed to exercise and communicate with his family members over the telephone once in two days, for an hour. During this time, he informed his wife of the persistence of his chest pains and the continued scepticism of the officers on the veracity of his claims. As a result, he was not allowed to seek treatment for his pains.

Mr. Ijaz called his wife in May 2017 to inform her of the extreme pain he was in, warning her that he might die. On hearing this, she requested the room leader of the IDC to assist her in collecting donations, that she wanted to use to convince the officers to take her husband to the hospital. She collected 2,000 THB (\$65) from others detained in the same room as Mr. Ijaz, and gave this to the officers to persuade them to take Mr. Ijaz to the hospital. However, they continued to deny him treatment or access to a qualified medical facility, as they remained unconvinced about his condition. His wife also attempted to call the United Nations High Commissioner for Refugees (UNHCR) hotline, to ensure his husband received the necessary medical treatment at the hospital, but there was no response, as it was Saturday. The same night, Mr. Ijaz died in his cell at the immigration detention facility.

Records show that between the months of January and August 2017, five other similar cases took place, where asylum seekers died in Thai detention centres, due to their inability to access any form of adequate healthcare.

**Voices from the Ground<sup>136</sup>**

***“I had to use the toilet water tap to take showers; we had to buy drinking water and food by ourselves”.***

Anonymous Burmese fishery worker  
Phang Nga province

**Challenge 8: Women migrant workers are particularly vulnerable to abuse and exploitation, due to the challenges they face in obtaining work****Impact**

According to the ILO, in 2012, the worldwide employment-to-population ratio is 72.7 for males and 47.8 for females.<sup>137</sup> Nevertheless, according to ILO’s Global Estimate with respect to exploitation in labour, women and girls represent a greater share of the total; 11.4 million or 55%.<sup>138</sup> This is compared to 9.5 million or 45% of men and boys.<sup>139</sup> The majority of victims in forced sexual exploitation and in domestic work appear to be women and girls. Once these women enter the recruitment process to work aboard, debt bondage often starts.<sup>140</sup> As they come from low-income backgrounds, it is almost impossible for these women to pay a recruitment fee, which often amounts to \$7000.<sup>141</sup>

Women in the Asia Pacific region face various legal, cultural, and economic obstacles in obtaining formal loans, and this, in turn, forces them to depend on recruitment agencies, which have unclear and unfair conditions on giving out loans.<sup>142</sup> While the workers consent to making an agreement, they quickly become subjected to debt, as their work cannot help them pay off their debts as it should.<sup>143</sup> The social cost of migration, especially for women, has been well documented, even though it is barely discussed in the migration for development narrative.<sup>144</sup> This cost includes ‘various forms of discrimination, sexual abuse, isolation, withholding of payment and documents, and debt bondage’.<sup>145</sup> While countries invest in resources to facilitate the labour-export industry, they disperse the resources which could have been invested to create decent working conditions that would help prevent the vulnerability of female workers, and reduce the chance of them getting into modern slavery abroad.<sup>146</sup>

**Cases of women migrant workers exploited<sup>147</sup>**

A Global Alliance Against Traffic in Women study from 2017 interviewed 57 documented and undocumented Cambodian nationals, who work or have worked in Thailand, and found multiple instances in which migrant women worked over months without being paid their wages, because they supposedly had to work off their debts (travelling costs, accommodation, food). Some examples of cases that were part of the research are mentioned below:

- a) Chianni and her sister Channa moved to Thailand from Cambodia to work in a restaurant. Their employer requested they pay off a debt of 60,000 THB (\$1,920).
- b) Sokkhla agreed to work on a construction site for 350 THB (\$11) a day. After one month, she was paid less than the agreed wage and was not paid at all for the following three months.

**Voices from the Ground<sup>148</sup>**

***“If there are jobs that require working at night, women are overlooked because they are considered ‘weak’ and unable to protect themselves. For hard labour, they do not want women. Women are paid less than men. If men get 10,000 THB (\$320), women get 7,000 THB (\$220)”.***

Kaung Tip Kyo, migrant worker from Shan State in Myanmar

***“If there is an opportunity to apply for the work permit, this will be provided to a man over a woman because of the assumption that women will eventually get pregnant and need maternity leave”.***

Ying Hom, Programme Coordinator, Migrant Assistance Programme Foundation (MAP) in Chiang Mai

### Challenge 9: Access to remedy for migrant workers is limited

#### Impact

Migrant workers' ability to access remedy in Thailand is severely limited. The numerous cases of violations of access to remedy include difficulties in using the Workmen's Compensation Fund, as well as the lack of provisions regarding compensation under the Damages for Injured Persons, Compensation and Expense for Accused in Criminal Cases Act of 2001, for workers who have entered Thailand illegally, following a decision by the Compensation Committee in May 2015.<sup>149</sup> The government is also unable to force employers to comply with the Social Security Act as it only applies to migrant workers with passports.<sup>150</sup> Migrant workers with pink ID cards, and/or undocumented workers, have no access to the rights provided under the Act.<sup>151</sup>

#### Case of Ms. Sasikarn Phongpaotanandorn<sup>152</sup>

Ms. Sasikarn Phongpaotanandorn, the wife of Mr. Thuwa, a Myanmar National, filed an application with the Committee to seek damages when her husband was murdered on 7 March 2014. In August 2016, the Committee refused to provide Ms. Sasikarn with compensation, arguing that although Mr. Thuwa was an injured person according to Section 3 of the Act, he entered Thailand illegally, and therefore, his wife was not eligible to receive damages. In November 2016, Ms. Sasikarn appealed the Committee's decision, demonstrating that Mr. Thuwa had a passport issued to him by the Myanmar Government. However, when the applicant appealed the Committee, she was unable to provide a copy of the passport, as it was destroyed when Mr. Thuwa was murdered. In the appeal, Ms. Sasikarn stated that although her husband came to Thailand illegally, the Committee should not deny him access to damages, and the right to compensation, as such a decision would be discrimination against a foreigner, which is in contravention of Article 2 of the ICCPR.

#### Voices on the Ground<sup>153</sup>

*"I've seen documented workers who were cheated out of their wage at my working site and then went to inform police. When the police arrived, they arrested the workers and threatened them. What I've seen and heard frightened me. The employer gave 30,000 THB (\$960) to the police. I've heard the police and employer shout at the workers and say "don't get smart with a Thai, man!" At that time, we were asking why we needed to keep working if we were not getting paid. We then quit because we couldn't do anything. I've heard from other people in the community that if undocumented migrants try to report an issue, they will be arrested and the police can do anything they want, they can assault or even kill you without any repercussions. To be an irregular worker in Thailand is tough. We can't go to the police. We have nobody to consult with and no one to provide assistance. When we have a problem, we have to shut ourselves in the room and just share our stories with people in our family but this doesn't help us to solve any problems. Sometimes, when facing a problem, I feel so discouraged that I want to go back to Cambodia but I don't have any money for transportation. I also feel embarrassed if I return home without any money. When I have a problem with employers, most of the time the problem is non-payment, but I have no options other than to try to find a new job because I have to make a living".*

Sokkhla, migrant worker from Cambodia

### Challenge 10: Even after a remedial process is accessed, barriers are placed on resolution

#### Impact<sup>154</sup>

From the perspective of a migrant worker, victims know their rights are being violated, however, their ability to act upon these violations is limited by a lack of information regarding, and access to the relevant mechanisms. Employers are aware of this, and due to their greater resources and understanding of the law, they can take advantage of the law, using legal loopholes, therefore disregarding the rights of their workers. This includes the use of defamation and other laws that are designed to undermine dissent.

**Case of law abuse<sup>155</sup>**

In September 2016, fourteen Burmese migrant workers in Thailand, including 13 poultry farm workers and a housekeeper from Thammakaset Farm, filed a lawsuit against Betagro before the labour court, for the violation of their labour rights. These workers claimed to have been mistreated by their employers, who violated the labour standards in the form of ‘forced labour (22 hours shift without extra pay and proper breaks), restriction on movement, passport confiscation, unlawful salary reductions, and being paid below the minimum wage’.

Following the lawsuit, the migrant workers filed a lawsuit to revoke the labour inspector’s orders with respect to ‘compensation calculation; minimum wages, off-day, annual, traditional holiday pays, overtime pays, and expenses deducted from wage payment’. Thammakaset received an order from the Department of Labour Protection and Welfare to pay the past wages which amounted to 1.7 million THB (\$54,400), to the 14 workers as a compensation for wage theft. The migrant workers, who were represented by the Migrant Workers Rights Network, also submitted a complaint to the National Human Rights Commission of Thailand (NHRCT) to have them investigate the violation of labour rights suffered by the poultry farmers. As a result, an investigative report by the NHRCT was released to call out labour right violations in the chicken farm industry. In turn, the company filed a defamation case against the workers based on the allegation that the migrant workers’ communication to the NHRCT had destroyed its reputation. The company did not agree to pay the compensation to the migrant workers and sued them for submitting false information to state officials. The migrant workers could face up to 1.5-year imprisonment if found guilty. On 7th February 2018, the Don Muang District Court started its first trial against the migrant workers.

**Voices from the Ground<sup>156</sup>**

*“I used to be arrested and fined. It was a lot of money. How can we then get help if we need to ask Thai employers to help communicating with the police, so that we can report the employers? And we as Cambodians must inform the Thai police to arrest Thai people? Cambodian people themselves alone can’t do much. It is complicated. If we report an issue and it doesn’t end quickly, it affects us because we might not be able to work and we need to earn an income. But it is also difficult to go to find work anywhere else”.*

Laem, migrant worker from Cambodia

**Challenge 11: There are restrictions on the right of migrant workers to form a union.****Impact**

The amendment of the Labour Relations Act B.E. 2518 (1975)<sup>157</sup> and the State Enterprise Labour Relations Act B.E. 2543 (2000)<sup>158</sup> imposes restrictions on the rights of workers to form a union, due to the categorisation of labour groups. In addition, the amendment process did not involve public consultation with affected parties. The 1991 Labour Relations Act specifies that for a person to be eligible to register with a labour union, they have to be of Thai nationality and a migrant worker can only become a member.<sup>159</sup> Thus, currently migrant workers in Thailand do not have the freedom to form unions, to serve as the director of a union or to be a sub-committee member or an advisor to the union.<sup>160</sup>

**Voices from the Ground**

*“Building our own union is the only long-term solution to fix problems. With our own union, we will be able to fight for ourselves, and win the kind of respect and dignity we deserve”.*

Chan Myae Aung, Burmese former fisher in Thailand



## 4. EXAMPLES OF GOOD PRACTICES 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 and Guidelines

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

For compliance with national standards and international obligations with respect to labour management, the MoL the government of Thailand developed a set of guidelines called the TLS: CSR of Thai Business (TLS 8001-2010), to serve as good practice for businesses and their subsidiaries to comply with.<sup>161</sup> In addition to requiring the establishment of a management system and representative within a business for the management of policies on social and labour accountability, it also sets guidelines on remuneration, working hours, disciplinary deductions or penalties, freedom of association and collective bargaining, occupational safety and health, as well as basic welfare provisions, and prohibits the support or use of forced labour.<sup>162</sup> These operational guidelines are meant to guarantee protections to all workers, including migrant workers. While these guidelines are by no means inclusive of all the laws, policies, and practices to be implemented to ensure the protection of the rights of migrant workers that are part of the formal and informal workers, it does serve as a good starting point. With the goal of obtaining a TLS certification from the MoL, these guidelines have been implemented in the management practices of several Thai companies and their subsidiaries.<sup>163</sup>

#### 4.1.2. Thailand's social protection of migrants under social security schemes

Under the Voluntary Social Insurance Scheme, the RTG participates in the contributory pension system by providing a contribution matching that of the contributing person, institution or enterprise.<sup>164</sup> To many in the informal economy, this serves as the only form of pension that they have access to.<sup>165</sup> While this is a step in the right direction, it is still a far way off from making these individuals self-sufficient, protecting and promoting their rights. With respect to migrant workers, those who are documented enjoy equal access to these social insurance schemes as compared to Thai nationals, and they are entitled to social security benefits under them.<sup>166</sup> However, in Thailand, undocumented migrants, who are often unskilled, have very limited social protection and those without documentation occupy a majority of the migrant workforce.<sup>167</sup> For example, in 2011, only about 0.3 million workers who compile less than 9% of the 3.5 million estimated workforce, were entitled to and covered by the basic protection of a social health insurance scheme.<sup>168</sup>

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

As the world's largest market for importing of seafood products, the European Union (EU) has taken steps to regulate illegally caught fish from entering the region.<sup>169</sup> It does so by using EU regulations to end illegal, unreported, and unregulated (IUU) fishing that requires strict standards to be maintained, or these countries risk being carded.<sup>170</sup> In response to being carded, countries have undertaken legislative and policy reforms, amongst other measures, to ensure that they implement 'international obligations through the adoption of an effective legal framework to combat IUU fishing'.<sup>171</sup> Being carded is not just a diplomatic tool, but could also result in blacklisting and trade sanctions by the EU.<sup>172</sup> As a result, the RTG has stepped up its efforts of monitoring and controlling the seafood industry.

In addition, a joint task force called the Seafood Taskforce has been formed by businesses, government bodies, and NGOs such as Charoen Pokphand Foods and Sodexo and Costco, to ensure that the supply chain is free from any form of forced labour, particularly with respect to migrant workers.<sup>173</sup> Every member of this taskforce has to make a commitment to minimum requirements, to support the goals and ensure progress on the objectives of the taskforce.<sup>174</sup> Manufacturers part of this task force have also refused to purchase products from and have terminated contracts with all suppliers involved in human rights violations or violations of any provisions of the Fisheries Act of 2015.<sup>175</sup> As a specific and measurable workplan, the Seafood Taskforce also has a Code of Conduct, that addresses forced labour, employment contracts, freedom of movement and personal freedom, retention of personal documents, recruitment fees, humane treatment, workplace equality, freedom of

association, grievance procedures, wages and benefits, working hours, worker awareness and training, private employment agencies and recruiters, and health and safety.<sup>176</sup> With respect to migrant workers, it specifically provides for workplace equality, by ensuring that migrant workers benefit from conditions of employment that are no less favourable than that of nationals, including with respect to wages, benefits, and accommodations.<sup>177</sup>

#### **4.1.4. Alþýðusamband Íslands' 'Equal rights: no exceptions' campaign fights for equal treatment of migrant workers<sup>178</sup>**

The Alþýðusamband Íslands Icelandic confederation of Labour (ASÍ) initiated a campaign in 2005 to defend the rights of all labourers in Iceland, after learning that many migrant workers in the construction sector were being paid less, had no access to social insurance, and had minimal access to information about their rights. ASÍ first conducted research on the ground, by sending representatives to speak with migrant workers in sectors they were most concentrated in, such as the food and construction sectors. This was to find out whether workers were receiving the wages they were promised, and if they were able to negotiate settlements with companies when they took legal action. Then, ASÍ instituted a public information campaign, publishing informational brochures in ten languages, issuing press releases, and placing advertisements in the media to share their research findings with the public. The campaign targeted the companies that were exploiting migrant workers. In the end, ASÍ gained new members and spread greater awareness about companies that tried to take advantage of migrant workers, therefore contributing to reduced discrimination. In addition, many migrant workers and non-migrant workers now see ASÍ as a source of information and assistance when they need to defend their rights.

#### **4.1.5. The Global Compact on Safe, Regular, and Orderly Migration (GCM)<sup>179</sup>**

The GCM is an inter-governmentally negotiated agreement that was developed following thematic and regional consultations, as well as multi-stakeholder dialogues and contributions, and that aims to address all aspects and dimensions of international migration in a holistic manner.<sup>180</sup> A comprehensive migration policy, as contained in the final draft of the GCM that was negotiated on until July 2018, includes 23 objectives<sup>181</sup> that address issues such as enhancing pathways for migration, promoting ethical recruitment and decent work, safeguarding labour rights, providing access to services, social protection and justice to migrants, promoting skills recognition and partnerships, advocating for social security portability, and confronting vulnerabilities in migration, such as through climate-induced displacement, trafficking, smuggling, forced labour, child labour, and gender-based violence.

#### **4.1.6. The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the National Contact Points (NCPs) for Responsible Business Conduct**

In line with applicable laws and international standards, the OECD Guidelines for Multinational Enterprises provides governmental recommendations to multinational corporations.<sup>182</sup> These are multilateral, non-binding principles and standards that establish responsible business conduct in a global context, and promote positive practices of businesses towards the economy, environment and society.<sup>183</sup> For the implementation of these guidelines, governments have established agencies called NCPs.<sup>184</sup> Complaints regarding human rights and their impact on the supply chain are brought against transnational corporations through this non-judicial mechanism.<sup>185</sup> There are several examples of complaints brought before and decided upon by NCPs. In addition to cases on the working conditions and collective bargaining of formal and informal workers in Thailand, such as those of Suzuki<sup>186</sup> and Electrolux and Mölnlycke;<sup>187</sup> a case was also filed on the human rights violations of migrant workers in the case of Fédération Internationale de Football Association (FIFA) vs. Building and Wood Workers' International (BWI).<sup>188</sup> BWI made a submission to the Swiss NCP in May 2015, with regards to alleged human rights violations of migrant workers in the construction of facilities for the FIFA World Cup in Qatar, that would take place in 2022. To resolve this, the Swiss NCP offered to mediate the dispute between the parties. In May 2017, an agreement was reached between them. This provided a detailed action plan, particularly with reference to decent and safe working conditions for the migrant construction workers. The agreed upon action plan, requires the implementation of:<sup>189</sup>

- A strong human rights policy;
- A HRDD process, that extends through the supply chain and amongst subcontracts;
- Robust processes to monitor labour conditions, including through joint labour inspections with BWI, and

- A strong grievance redressal mechanism and a body for oversight or that is advisory in nature.

The parties agreed to send periodic reports to the Swiss NCP about the progress made with regard to this agreed upon plan, and to discuss in person whether further follow up is necessary.

Although NCPs are useful as a grievance redressal mechanism they only provide recommendations in response to a complaint. The enterprise can then choose whether to comply with them or not. A stronger enforcement of this accountability mechanism must be built into NCPs' structure and in its mandate.

## 4.2. Business-led Good Practices & Guidelines

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

With more than 12,000 members in 160 countries, the UNGC is the largest corporate sustainability project, with participants from the business sector, labour associations, and organisations.<sup>190</sup> To align with international laws and policies on sustainable business practices, the UNGC has set out ten guiding principles on human rights, labour, environment, and anti-corruption, and with collaboration and innovation examples as goals in practice.<sup>191</sup>

With respect to rights of migrant workers, the UNGC principles 1 and 2 stipulate that 'businesses should support and respect the protection of internationally proclaimed human rights' and 'make sure that they are not complicit in human rights abuses'.<sup>192</sup> While addressing decent working conditions, these principles cover minimum wage, occupational health and safety, working hours, rest periods, annual leave, welfare measures and so on. They are also in line with General Comment No. 23 on the right to just and favourable conditions of work by the Committee on Economic, Social and Cultural Rights (CESCR);<sup>193</sup> as well as protection from forced labour. On access to remedies by workers, principle 3 requires 'businesses to uphold the freedom of association and effective recognition of the right to collective bargaining'.<sup>194</sup>

Businesses part of the UNGC are expected to incorporate these principles in their operations and annually report on how their efforts have progressed,<sup>195</sup> a step that has been taken by businesses in Thailand as well.<sup>196</sup> Failure to do so for two consecutive years, results in expulsion from the UNGC.<sup>197</sup> In Thailand, over 50 companies have signed on to the UNGC and a number of them have made commitments to abide by its principles.<sup>198</sup> Notable amongst them are the CP group,<sup>199</sup> PTT,<sup>200</sup> and True,<sup>201</sup> who have taken steps to ensure the adherence to and understanding of international human rights principles.

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

In 2017, the UNGC established an Action Platform on Decent Work in the Supply Chain as a means to facilitate dialogue and collaboration with respect to businesses and their role in promoting decent work in the supply chain.<sup>202</sup> This platform helps in the promotion of Sustainable Development Goals (SDGs), the UNGPs, the ILO's Fundamental Principles and Rights at Work, and the ten principles of the UNGC.<sup>203</sup> To advance human rights and sustainable supply chains, the Platform has also recognised the special attention that has to be given to migrant workers, as they may not be protected by local labour laws and thus run a greater risk of human rights violations.<sup>204</sup>

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

Guided by standards set in the international conventions of ILO and the UN, the IFC's Performance Standards on Environmental and Social Sustainability provides guidance for businesses it invests in in terms of responsibility and risks and impacts' identification, in an attempt 'to avoid, mitigate, and manage the risks and impacts as a way of doing business in a sustainable way'.<sup>205</sup> Performance Standard 2 addresses labour and working conditions, providing for the balance between economic growth and protection of the rights of workers.<sup>206</sup> It also has an overarching objective to protect workers, including those belonging to vulnerable categories of workers, such as migrant workers.<sup>207</sup> This standard requires the assessment of working conditions such as equality of opportunity and employment standards between migrant and non-migrant workers, wages, benefits, working hours, overtime, compensation, and leave; membership to worker's organisations; collective bargaining; terms of employment; occupational health and safety, and adverse impacts associated with the supply chain.<sup>208</sup>

#### 4.2.4. The Dhaka Principles for Migration with Dignity<sup>209</sup>

These are a set of human rights-based principles, aimed at enhancing respect for the rights of migrant workers in the recruitment process, during employment, and to safely return to their home countries. Based on the UNGPs, human rights and core ILO standards, the Dhaka Principles are intended for use by all industry sectors and in any country where workers migrate, either inwards or outwards.

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

#### 4.3.1. Multi-stakeholder initiative to address labour issues in South-East Asia<sup>210</sup>

The Issara Institute, initiated by experts from the UN was created as a multi-stakeholder alliance that includes both public and private actors, and civil society, working towards resolving labour issues in Southeast Asia. It was initially focused on the export-import industry in Thailand, to address labour issues in the supply chain. The Institute uses an Inclusive Labour Monitoring method to identify and address labour issues, particularly those linked to recruitment, by interfacing with businesses in a hope to responsibly source, and with migrant workers communities that are affected by businesses' violations.<sup>211</sup> In the last four years of operation, the institute has linked more than 100,000 migrant workers with its Inclusive Labour Monitoring system. This empowers migrant workers through the provision of channels for information, assistance or remediation.<sup>212</sup> They also contribute to the ethical recruitment of migrant workers. This is achieved by obtaining feedback from worker channels in source and destination countries, collaborating with employers and recruitment agencies to understand their practices, and taking action on the information received to strengthen recruitment systems.<sup>213</sup>

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

The CHRB is a multi-stakeholder initiative which methodically assesses the performance of businesses in line with human rights standards, including the UNGPs amongst other international instruments and standards set therein.<sup>214</sup> This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.<sup>215</sup> One of its indicators evaluates if a business is committed to respecting the human rights of workers by 'respecting the principles concerning fundamental rights at work in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. There must also exist a statement of policy committing it to respect the human rights of workers in business relationships'.<sup>216</sup> Specifically with respect to migrant workers, the benchmarking methodology requires a publicly available statement of a business' policy to commit to respecting and ensuring those part of its supply chain respect the human rights of individuals belonging to specific groups or populations including migrant workers in the apparel, agricultural products, and the extractives industries.<sup>217</sup> In accordance with Article 7 of ICESCR, commitment D.1.7.a specifically addresses the occupational health and safety of migrant workers and seasonal workers requiring companies to disclose quantitative information on their health and safety; including factors such as injury rate, fatality rate, lost days or near miss frequency.<sup>218</sup>

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

The ETI is an alliance of multisector actors, including companies, trade unions, and NGOs that work together to promote the respect of worker's rights worldwide, both in business enterprises and in their supply chains.<sup>219</sup> Basing their actions on the UNGPs and sharing methods for their effective implementation,<sup>220</sup> companies that are part of ETI adopt a code of labour practices which their subsidiaries and suppliers are also expected to work towards to.<sup>221</sup> Sourced from the ILO conventions, the code of labour practices includes the following aspects: 'employment is freely chosen, freedom of association and the right to collective bargaining are respected, working conditions are safe and hygienic, living wages are paid, working hours are not excessive, no discrimination is practiced, and no harsh or inhumane treatment is allowed'.<sup>222</sup>

#### 4.3.4. Addressing illegal labour migration through the Bali Process on people smuggling, trafficking in persons and related transnational crimes

Envisaged as a forum to raise regional awareness of and cooperation on practices of illegal labour migration, such as people smuggling, trafficking in persons and related transnational crimes, the Bali Process helps to address

these issues through policy dialogue, information sharing and by adopting practical measures for cooperation.<sup>223</sup> The Bali Process includes 49 member countries and international organisations such as the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), ILO and the United Nations Office of Drugs and Crime (UNODC).<sup>224</sup> In addition, it has also created an Ad Hoc group that brings together international organisations and the member countries that are most affected, in order for them to comprehensively address specific issues and devise strategies to resolve them on a case to case basis.<sup>225</sup> Thailand is both a member country and a part of the 16-member Ad Hoc group.<sup>226</sup>

The Bali Process Government and Business Forum has been devised as a means for governments to engage with the private sector, in order to augment legal and legitimate labour migration as a means to combat trafficking and all related acts of exploitation, and to ensure that non-abusive labour practices are adopted in the supply chains of these businesses.<sup>227</sup> The first forum was held in August 2017 and brought together governments and the business sector from 45 countries including Thailand, to deliberate on ways to prevent and combat illegal labour migration practices.<sup>228</sup>

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

Pillar I: State Duty to PROTECT			
Priority Area 1	Adoption and amendment of laws and policies		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Ratify major international treaties and standards on migrant workers, according to the Statement by the United Nations Working Group (UNWG) on BHR at the end of its visit to Thailand.	This includes ratification of the ICMW, ILO Convention No. 87, 97, 98 and 143.	The Ministry of Foreign Affairs (MoFA), the MoL	Policy and mechanisms should be provided for their implementation.  Timeline: 2 years – 2019-2020
Amend the Social Security Act to ensure the protection of migrant workers' rights to social security benefits and access to the Social Security Fund, in line with ILO Conventions 87 and 98.	Sections 33, 39, and 40 of the Act must be specifically amended with respect to benefits for child allowance, annual holidays, traditional holidays, paid sick leave, sterilisation leave, education and training leave, paid maternity leave, and guarantees to children and dependents of migrants must be put in place, to guarantee the same rights to migrant workers as Thai workers are entitled to.	MoL, the National Legislative Assembly (NLA)	The amendments must be undertaken following consultation with relevant stakeholders, including civil society actors and the affected migrant workers. These must extend to all migrants, irrespective of nationality or immigration status.  Timeline: 3 years – 2019-2021
Amend the draft bill on forced labour prevention and ensure its implementation, in line with ILO Protocol 2014 to the Forced Labour Convention of 2013 as	The draft bill must be amended to ensure its compliance with international obligations particularly with respect to the definition of forced	The NLA, the MoJ, MoL	All legislations in Thailand should adopt the same definition of forced labour. It is essential that provisions to raise public awareness about forced labour be included in



ratified by Thailand, for instances of forced labour of migrant workers to be prosecuted by itself and not just when it is accompanied by a trafficking offence.	labour, the punishment for violations, and the role and responsibility of state agencies in contributing to ending forced labour. In addition, forced labour should be punishable as a stand-alone criminal offence and not just as a part of human trafficking.		the bill, with examples on the local context duly provided.  Timeline: 1 year – 2019
Amend the 2015 Fisheries Act, to be in line with the Work in Fishing Convention, 2007 (ILO Convention No. 188), to ensure continued application and compliance through formal channels.	Towards this end, it is necessary to provide accountability mechanisms and provisions that are not ambiguous or subject to narrow interpretation, and to ensure that officials are trained on these accountability features.	MoJ, MoL, Law enforcement officials	Narrow and inflexible interpretation of the law that leads to failure to protect migrant workers should be effectively addressed.  Timeline: 1 year – 2019
Enact or amend laws and policies to ensure the inclusion of provisions that mandate the implementation of uniform and comprehensive standards, to better protect and guarantee migrant workers' rights.	The government should ensure consistency in implementation by private actors, by putting in place measures, strategies, and structures to monitor it. To address this, the creation of laws and policies that contradict each other or that complicate the existing policies and processes must be avoided.	MoL	These should be accompanied by penalties and remedies guaranteed for non-compliance. Penalties must however not be such that they create disincentives for reporting, resulting in the perpetuation of an unsafe environment for migrant workers.  Timeline: 1 year – 2019
Repeal laws and policies targeting unregistered migrants, particularly those that are accompanied with criminal penalties.	Threats that cause migrant workers or their families to flee the country or that subject them to exploitation, must be addressed.	The NLA, MoL	This must be undertaken following consultation with unregistered migrants to determine the challenges they face.  Timeline: 2 years – 2019-2020

Priority Area 2		Protection of migrant workers from violation of human rights	
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Open a new migrant registration process, in line with General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination (CERD), and its Concluding Observation on the first and third periodic	This must not have time limits and must allow for migrants to be able to enter the national verification process, and not have any barriers to access.	MoL, Mol	It will allow more than 1.4 million registered migrants to obtain work permits. The 80 OSS Centres across Thailand should assist in this process.
	De-link the migrant registration process from employers.		

reports of Thailand.	One-Stop Service (OSS) Centres should assist in the process of providing work permits to registered migrants.		Timeline: 1 year – 2019
Develop an effective and sustainable migrant workers' management policy.	This policy must provide long-term and short-term strategies, that result in the balancing of sustainable development with human rights.	MoL, MoI	This must be conducted in consultation with concerned stakeholders, particularly migrant workers.  Timeline: 2 years – 2019-2020
	An administrative framework that assigns tasks of management to various ministries should accompany this.		
Ensure that migrant workers are protected against violence, intimidation and other forms of gross human rights abuse and exploitation in the form of forced labour and human trafficking.	Draft and implement policy measures that mandate businesses, and those part of their supply chain, to refrain from such rights violations. They should also be instructed to formalise this by putting policy in place.	MoL	To ensure this is enforced and there is oversight in the process, labour inspectors must be given access to employers and employees, in informal and hard to reach places of work. Reports on their findings must be made publicly available and accessible.  Timeline: 2 years – 2019-2020
Address structural and systemic causes of poverty and inequality, which result in migrant workers being vulnerable to exploitative labour practices; in accordance with the report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequence, and development issue no. 4 of the 2030 Agenda for Sustainable Development on inequality tackling issues of access, gender, opportunities and outcomes.	Policies and practices must be put in place to address marginalisation and exclusion that bars access to resources and opportunities.	Ministry of Social Development and Human Security, (MSDHS), the MoL	These policies and practices must be studied for effectiveness in addressing inequality based on research in a cross-sectional manner, over all the SDGs including goal 4 on education; goal 5 on gender equality; goal 6 on water sanitation; goal 7 on energy; goal 8 on inclusive and sustained economic growth. This analysis can be done in the form of a statistical report identifying socio-economic risks faced by migrants.  Timeline: 3 years – 2019-2021
	These inequalities may be of opportunity or outcome, and must be specifically identified, for them to be addressed. Income and gender inequalities should also be tackled.		
	The disproportionate effect of discriminatory practices on women and girls ought to be analysed, documented and resolved for this purpose.		
Policies must be formulated to grant rights to members of the migrant worker's family, and remove barriers to accessing these rights that	This should grant rights to migrant labourers' family members, especially their children and child labour migrants, to ensure access to	The Ministry of Education, MoL, the Ministry of Public Health	The pilot project on the 15-year free education programme, carried out by the government, should be assessed on quantitative

<p>exacerbate inequality and exploitation, in line with observations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on ILO Convention C.182 in Thailand, Articles 13 and 14 of the ICESCR, and the Concluding observations of the CESCR on the combined initial and second periodic reports of Thailand.</p>	<p>healthcare and education of children.</p> <p>Remove or reduce the requirement for paperwork to access healthcare and education.</p> <p>Ensure that all children (particularly migrant and stateless children) have access to free basic primary education with well trained and fully qualified teachers.</p>	<p>(MoPH)</p>	<p>aspects (number of migrant children enrolled, number of drop outs etc.) and qualitative aspects (root cause for school drop outs and the poor quality of education provided).</p> <p>Timeline: 2 years – 2019-2020</p>
<p><b>Priority Area 3</b></p>	<p><b>Labour rights with respect to employment</b></p>		
<p><b>Recommendations (Goal to be achieved)</b></p>	<p><b>Actions</b></p>	<p><b>Lead Agency/ Jurisdiction</b></p>	<p><b>Performance Indicators/ Timeline</b></p>
<p>Apply uniformly a ‘zero fee’ or ‘employer pays’ policy for all migrant workers, as incorporated in the ILO Private Employment Agencies Convention, 1997 (No. 181), the Private Employment Agencies Recommendation, 1997 (No. 188), and the 2016 ILO General Principles and Operational Guidelines on Fair Recruitment.</p>	<p>Existing policy guidance and frameworks must be strictly implemented within the country and Memorandums of Understanding (MoUs) must be signed with neighbouring countries, or source/destination countries through government channels - to ensure the same policy is strictly implemented there.</p>	<p>MoL; and the Offices of Alien Workers Administration, and the Office of Illegal Migrant Workers Administration</p>	<p>Determine the number of migrant workers making payments of fees to recruitment agencies for labour migration, both in Thailand and any corresponding source and destination country.</p> <p>Timeline: 1 year – 2019</p>
<p>Develop policy to end practices in the recruitment process that mitigate the impact of established protections, undermine the rule of law, and reduce the economic and social benefits of migration; according to the Statement by the UNWG on BHR at the end of its visit to Thailand.</p>	<p>The policy must address corruption of government employees and intermediaries along the many stages of the recruitment process. Strict measures must be put in place to investigate official misconduct and abuse of power, and to punish violators.</p>	<p>MoL, Mol, MoJ</p>	<p>Monitor and document cases of official complicity, to ensure that the policy is effective and has a deterrent effect.</p> <p>Timeline: 1 year – 2019</p>
	<p>The policy must regulate services by brokers and private recruitment agencies, assisting migrants and employers, to increase transparency, reduce corruption and manage costs.</p>		<p>Enforcement provisions should be put in place. Enforcement should be monitored through multi-speciality teams, particularly in provinces along the border of Thailand.</p> <p>Timeline: 1 year – 2019</p>
	<p>Ensure accountability throughout the supply chain and plug gaps, by</p>		<p>This must be implemented in Thailand, in source countries as well as in countries along</p>

	introducing a system of joint and several liability with respect to abuse and exploitation of migrants.		the migration route.  Timeline: 2 years – 2019-2020
Protect migrant workers from unfair dismissal.	Laws and policies must be formulated so that the dismissal does not take place without advance notice and following communication of the reason for dismissal.	MoL	Violation of this right should be protected by remedies and compensation, based on the loss to livelihood and for adverse impacts caused due to it.  Timeline: 2 years – 2019-2020
<b>Priority Area 4</b>		<b>Right to a fair wage</b>	
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Ensure that businesses provide fair wages to migrant workers, in compliance with Ministerial regulations and applicable wage rules, and the ILO Conventions and Recommendations.	Migrant workers must receive wages in line with Thai national minimum wage. Migrant workers should be provided the same wage as Thai workers in equivalent positions or carrying out similar tasks.	MoL	Equality of treatment in the payment of the wage can be determined through a comparison study of the wage earned by migrant and other workers, employed in the same sector and with the same skills level.  Timeline: 2 years – 2019-2020
<b>Priority Area 5</b>		<b>Operational Health and Safety at the workplace</b>	
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Formulate policies to monitor occupational health and safety, in line with Article 7 of ICESCR; CESCR General Comment No. 9; United Nations General Assembly – (UNGA) RES 31/15; Article 2 of ILO Convention No. 187; and ASEAN Guidelines for Occupational Safety and Health.	The policies must cover informal work; SMEs; and industries, sectors, or enterprises where occupational health and safety of workers is at risk.	MoPH, MoL	To evaluate the effect and efficiency of action taken, interventions, outcomes, and the progress of action taken must be monitored.  Timeline: 2 years – 2019-2020
Migrant workers' health should not be put at risk due to a sub-standard working environment.	Ensure that duty bearers, such as governmental officials and employers, are held responsible for compensating workers, when their health suffers because of their work.	MoL, MoPH	Assessment of inadequate conditions must be based on the determination of the number of qualified staff or security, and the frequency and process of monitoring working conditions and workplace safety.  Timeline: 2 years – 2019-2020
Ensure accessibility of health care services by migrant workers in accordance with	Ensure that migrant workers have access to adequate public health care systems,	MoPH, MoL	Examine local and national health care systems to ensure that they meet these criteria.



<p>the elements of availability, accessibility, acceptability, and quality.</p>	<p>with respect to barriers placed due to their legal status, the cost or discrimination against them.</p> <p>Appropriate language services should be provided to improve information accessibility of health care service and to provide quality service to migrants.</p> <p>To increase accessibility to health service by migrant workers, rearrange opening times of local health services.</p> <p>The cost of consultation, tests, and medication that migrants pay for themselves should be reduced to minimum levels to ensure economic accessibility.</p> <p>Adopt a culturally sensitive approach toward migrant workers' health concerns, which will improve acceptability of health care service, especially in the cases of women and reproductive health.</p> <p>The employment of culturally competent health care providers, mediators, or interpreters will help to reduce cultural and social barriers for migrants to accept the health care practice.</p>		<p>Timeline: 2 years – 2019-2020</p>
<p>Create a more efficient and effective public health administration structure.</p>	<p>The staff structure should be clear, and it should be possible to hold them accountable.</p> <p>Allocate funds to areas based on needs, including with respect to rehabilitation of the migrant worker.</p>	<p>MoPH, MoL</p>	<p>Monitor the use of health insurance funds and services, to ensure there is no discrimination or barriers to access.</p> <p>Timeline: 2 years – 2019-2020</p>
<p><b>Priority Area 6</b></p>		<p><b>Limited Social Security for migrant workers</b></p>	
<p><b>Recommendations (Goal to be achieved)</b></p>	<p><b>Actions</b></p>	<p><b>Lead Agency/ Jurisdiction</b></p>	<p><b>Performance Indicators/ Timeline</b></p>
<p>Migrant workers should be able to afford full and effective access to social services, without</p>	<p>This should include equal access to education facilities by migrant workers and their children, access to their</p>	<p>MoL, MoPH</p>	<p>Ensure that the provision of benefits extends to workers without official documentation, including</p>



discrimination according to the 2005 Concluding Observations of the Human Rights Committee for the ICCPR.	personal documents, provision of health insurance to cover health related expenses.		migrant workers with pink ID cards and/or undocumented workers.  Timeline: 2 years – 2019-2020
Provision of benefits and services for migrant workers over the age of 55 years, to benefit workers who are otherwise not eligible to register for benefits and services.	The formulation of policies, and enforcement and oversight mechanisms are necessary to ensure the success of this process.	MoL, MoPH	Businesses must be made to regularly reassess the duties they owe to these categories of migrant workers, looking at the efficacy of internal policies and practices.  Timeline: 2 years – 2019-2020
Provide access to the Employee Fund, in accordance with the Labour Protection Act.	Labour inspectors should simplify the process of document submission for eligible undocumented workers to access the fund.	MoL	All workers must be able to access the fund, regardless of their legal status.  Timeline: 1 year – 2019
Disseminate information on the available social security benefits, with respect to migrant workers and their family members.	Conduct awareness raising workshops and informational meetings about these guarantees, including on the mechanisms to access them.	MoL	Popularisation and determination of whether the mode of accessing benefits has been understood, can be gauged by collecting disaggregated data on number of individuals have accessed benefits, based on their gender, age, sector of employment, and legal status.  Timeline: 6 months within 2019
<b>Priority Area 7</b>	<b>Detention of migrant workers</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Ensure that migrants are detained only when absolutely necessary and that the time of detention is limited to a strict minimum, in line with the recommendations of both the Committee for Civil and Political Rights (CCPR) and the CESC.	Detention should be based on individual circumstances that are reasonable, necessary, and proportionate, and cases should be reassessed over time. There should also be an effective access to judicial review, and provision of communication channels for contact with their embassies, counsels, and family members.	MoJ, MoI	Regular assessment and monitoring of detention conditions and reasons for detention.  Timeline: 1 year – 2019

<p>Ensure that conditions in IDCs are in compliance with the ICCPR and based on the recommendations made by the CCPR.</p>	<p>During the course of detention, migrant workers should be protected against torture, ill-treatment, abuse, violence, incommunicado detention, and enforced disappearance.</p> <p>IDCs should provide living conditions that are adequate and should not be overcrowded. Migrants who are detained must have access to sufficient nutrition and reliable healthcare.</p>	<p>MoJ, MoI</p>	<p>Active steps must be taken to rectify any failure to comply with these provisions on the conditions of the detention centre, and with respect to individual detentions. Independent oversight mechanisms must be implemented, including regular visits without prior notice, individual interviews of detainees, and submission of qualitative data on detentions.</p> <p>Timeline: 1 year – 2019</p>
<p><b>Priority Area 8</b></p>	<p><b>Gender based protection</b></p>		
<p><b>Recommendations (Goal to be achieved)</b></p>	<p><b>Actions</b></p>	<p><b>Lead Agency/ Jurisdiction</b></p>	<p><b>Performance Indicators/ Timeline</b></p>
<p>Recognise the importance of gender equality and equity, noting that women and girls are at high risk of rights abuses during migration, and determine the challenges they face with respect to access, in line with General Recommendation No. 30 of the CERD, and its Concluding Observation on the first and third periodic reports of Thailand, as well as General Recommendation No. 26 of the CEDAW.</p>	<p>For this, a study should be carried out to improve collection and analysis of disaggregated data and information on age, sector of employment, gender, and on all other dimensions of international migration such as legal status, where possible.</p> <p>Determine where there are gaps and deficiencies in law, policies and practices so that measures can be put in place to correct and rectify them.</p>	<p>The MoL, and the MoJ,</p>	<p>These processes should be undertaken through a participatory multi-stakeholder approach that includes a balanced representation of migrant workers of different categories, based on their legal status, sector of employment, gender, and geographic location in Thailand.</p> <p>Timeline: 1 year – 2019</p>
<p>Migration must be gender responsive, by recognising and addressing the specific vulnerabilities of women migrants.</p>	<p>The government must put in place policies to address legal, cultural, and economic barriers placed on women that stop them from taking out formal loans and penalise any action that amounts to discrimination, sexual abuse, isolation, withholding of payment and documents, and debt bondage in any form. Measures to promote social inclusion of women and girls can also help prevent forced labour.</p>	<p>MoL, The MSDHS</p>	<p>Statistical reports identifying continued socio-economic risks faced by women migrants must be compiled, and assessment of the statistical data collected therein should be compared prior to and following the implementation of government policy, on an annual basis.</p> <p>Timeline: 2 years – 2019-2020</p>

<p>Ensure the rights of women migrant workers are not violated, according to General Recommendation No. 26 of the CEDAW.</p>	<p>Resolve the challenges faced, including with respect to the payment of minimum wage, compensation for working overtime, safe working conditions, discrimination due to their status and gender in employment and at the workplace, gender-based violence, attribution of vulnerability, pressure to resolve cases through negotiation, cultural tolerance of violence against women, problems with communication, and traditional dynamics of power and gender roles.</p>	<p>The MoL</p>	<p>They should be provided with fair and accessible rights protection mechanisms, that do not prioritise their legal status over their safety. Disaggregated data on access to protections; and on responses to rights violations of migrant workers should be maintained, based on the gender of the person and sector of employment and legal status, where relevant and possible.</p> <p>Timeline: 1 year – 2019</p>
<p><b>Priority Area 9</b></p>	<p><b>Training and education on rights of migrant workers</b></p>		
<p><b>Recommendations (Goal to be achieved)</b></p>	<p><b>Actions</b></p>	<p><b>Lead Agency/ Jurisdiction</b></p>	<p><b>Performance Indicators/ Timeline</b></p>
<p>Information on the rights and protections that migrant workers are entitled to must be disseminated to encourage the recognition of these rights and to promote the exercise of these rights.</p>	<p>Human rights education should be made mandatory in schools and incorporated into the national curriculum in order to disseminate knowledge about human rights principles, labour rights and violations within the community, including with respect to migrant workers.</p> <p>Disseminate information amongst migrant workers, their families, trade unions, migrant associations, and employers, providing concrete examples of best practices on implementation.</p> <p>Government officials responsible for the implementation of laws and policies, such as labour inspectors, police officers, and immigration officers, must be educated on the obligations that states have towards migrant workers.</p>	<p>The Ministry of Education, MoL, MoJ</p>	<p>Number of trainings and meetings held must be assessed for effectiveness. Regular updates to trainings must be undertaken to address legal and contextual developments in the field of migration and associated rights.</p> <p>Timeline: 6 months within 2019</p>

Priority Area 10	Monitoring Mechanisms and Regulatory Oversight		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Establish monitoring mechanisms to ensure effective implementation of labour legislation with respect to migrant workers.	Effective oversight can be put in place by establishing independent mechanisms for each company, that study working conditions and access to social security, through disaggregated data based on age, sector of employment, gender, and legal status, where possible.	The Department of Labour Protection and Welfare, MoL	The study must also analyse legal loopholes and their use by companies. The effectiveness of this monitoring mechanisms should be determined based on the frequency of labour inspections at high risk workplaces and sectors.  Timeline: 1 year – 2019

**PILLAR III: Access to REMEDY**

Priority Area 1	Access to grievance redressal mechanisms and compensation		
Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Provide migrant workers with effective access to both judicial and non-judicial remedies.	The remedies must address human rights abuses against migrant workers.	MoJ, MoL, NHRCT	The process must be studied to ease access and it should provide effective compensation or other remedial measures.  Timeline: 2 years – 2019-2020
	Barriers to access should be resolved by providing lawyers and interpreters to migrant workers, at no extra cost.		
	General barriers to obtaining compensation, such as the lack of official documentation or legal status must be removed.		
	Specific policy limitations such as difficulties in being able to use the Workmen’s compensation fund must be addressed.		
	Provide adequate funding for legal aid and guarantee its access to migrant workers, in order for them to access remedies for the violation of their rights, irrespective of their status.		
A complaints’ mechanism should be created and implemented for migrant workers, in line with General Recommendation No. 30 of the CERD, and its Concluding Observation on the first and third periodic reports of Thailand, as well as the	The mechanism must be accessible, effective, and independent and should extend to migrant workers, specifically at the provincial level, with communications in a language that is understood by migrants.	MoJ, MoL	Interpreters should be provided at key entry points, and amnesty must be granted to stay temporarily, in order to access the complaints and grievance redressal mechanisms.

Statement by the UNWG on BHR at the end of its visit to Thailand.			Timeline: 2 years – 2019-2020
Enforce the Criminal Injuries Compensation Fund Act.	Policies must be put in place to ensure the effective utilisation of the Act. Procedural barriers for access by migrant workers must be removed.	MoJ	Measures in the Act that grant benefits to migrant workers must be strictly adhered to.  Timeline: 1 year – 2019
Review, revise, and revoke any limitations on providing compensation that is found to discriminate against migrant workers, depriving them of the right to have access to damages, compensation, and expenses for criminal cases filed.	An example of a limitation is the lack of provision of compensation under the Damages for Injured Persons, Compensation and Expense for Defendants in Criminal Cases Act B.E. 2554 to workers who have entered Thailand illegally, which must be corrected.  Institutional mechanisms such as the Compensation Committee should be careful that their decisions do not create or reiterate these limitations.	MoJ	Determine the number of migrant workers who are denied access to remedies, based on their legal status – and document this information.  Timeline: 2 years – 2019-2020
<b>Priority Area 2</b>	<b>Grievance redressal through collective bargaining</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
End restrictions on the right to assembly, association, and collective bargaining by migrant workers, to promote the rights of migrant workers to form labour unions and redress grievances, according to the Statement by the UNWG on BHR at the end of its visit to Thailand.	Laws and policies, such as the Labour Relations Act, must be amended to remove the requirement of Thai citizenship as a necessary qualification to found labour unions or services, and to serve as its director.	MoL, MoJ	Representation of migrant workers in the labour union should correspond to the number in the workforce, including in leadership roles.  Timeline: 2 years – 2019-2020
<b>Priority Area 3</b>	<b>Use of regional processes, mechanisms and institutions</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Address international migration and labour protection through regional associations and initiatives.	This can be done through the ASEAN, including initiatives such as the ASEAN Convention Against Trafficking in Persons, Especially Women and Children	MoFA, MoI, MoL, MoJ	This must be regulated through the use of standard operating procedures and the proposed NAP on the protection and promotion



	and its plan of action; the ASEAN Declaration and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and its follow-up processes, such as the ASEAN Committee on Migrant Workers and the ASEAN Forum on Migrant Labour.		of the rights of migrant workers.  Timeline: 3 years – 2019-2021
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**6. RECOMMENDATIONS AND ACTION PLAN FOR BUSINESSES: PILLAR II AND PILLAR III**

<b>Pillar II: Business Responsibility to RESPECT</b>			
<b>Priority Area 1</b>	<b>Fulfilment of International Obligations, including those under the UNGPs and SDGs</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Address adverse human rights impacts businesses are directly or indirectly involved in, in compliance with national laws and international standards; as set out in the ILO Conventions and international human rights instruments.	Through policies and practices, workers should be guaranteed the protection of their non-labour rights through human rights priorities, as particular to their sector, industry, and area of operation.	Businesses	Existing policies and modes of implementation must also be mapped for coverage and to determine gaps. Regular review and consultation with internal and external stakeholders will create a robust policy.  Timeline: 2 years – 2019-2020
Hold businesses responsible for the human rights impacts of their supply chain, determined in accordance with international human rights standards as established by the Universal Declaration on Human Rights (UDHR), ICESCR, the ICMW, and the Statement by the UNWG on BHR at the end of its visit to Thailand.	Supply chain recruitment, outsourcing and subcontracting must be inspected for practices that yield undesirable impacts on human rights of migrant workers.	Businesses	This can be undertaken by utilising a due diligence mechanism and include contributions from workers, civil society actors, individuals, and communities affected.  Timeline: 1 year – 2019
Provide migrant workers with a good working environment, as affirmed by Articles 23(3) and 24 of UDHR; Articles 7 and 9 of ICESCR; CESCR General Comments No. 19 and 23; the ICMW; UNGA RES 31/15; RES 2008/18 of ECOSOC; A/71/385 (2016) of the UN Special Rapporteur on the Right to Freedom of	The work environment should be safe, include a fair and realistic minimum wage, reasonable working hours, payment for overtime, safe working environment, freedom of movement, absence of violence and harassment (physical, mental and sexual), social security and recognise the	Businesses	Pattern and practice studies should be carried out, to strengthen monitoring of work conditions.  Timeline: 2 years – 2019-2020



Peaceful Assembly and Association; Articles 27 and 30 of the ASEAN Human Rights Declaration; and the Concluding Observations on Thailand made by the CESCR in 2015 and the CEDAW in 2017.	rights of migrant workers in the formal and informal sectors.		
Companies should not intentionally adopt policies and practices to traumatise or exhaust their workers or take any other step that would be a violation of their fundamental human rights.	Prior multi-stakeholder consultations on rights, practices, and obligations must be undertaken – with publication of the results, in an accessible format.	Businesses	This should be analysed along with the concomitant acceptable standards based on the right that was violated.  Timeline: 1 year – 2019
Contribute to the accessibility of health care services by migrant workers in accordance with the elements of availability, accessibility, acceptability and quality.	Set up health facilities or services within the workplace, to increase their accessibility by migrant workers.	Businesses	Analyse the utilisation and the reach of these, by studying the qualitative data maintained in the health care facilities or with regard to the services.  Timeline: 2 years – 2019-2020
	Offer in-house health programs to offset sub-standard public health care services.		
	Establish procedures to care for a migrant worker in the event of a medical emergency that cannot be handled by the health care system available to them.		
	Provide robust, appropriate, and accessible counselling programs in the workplace that include peer-to-peer counselling.		
	Ensure that information and materials on health and safety training, and services are provided in linguistically and culturally appropriate ways.		
<b>Priority Area 2</b>	<b>Abstain from policies and actions that violate human rights</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Protect migrant workers from unfair dismissal.	To ensure this, company policies must be formulated so that dismissal does not take place without advance notice and following communication of the reason for dismissal.	Businesses	Violation of this right should be protected by remedies and compensation.  Timeline: 1 year – 2019



Provision of official work contracts with employers that are fair and that ensure protection to migrant workers.	The contract must be written in a language that migrants understand or must be accompanied by a professional translation. The terms of the contract must be clear, easy to understand, not contain exploitative provisions, and include labour protections.	Businesses	The contract should be enforced and provide penalties for violation. Migrant workers must be provided a copy of the contract.  Timeline: 6 months within 2019
Provide migrant workers with full and effective access to social services, without discrimination, in line with the 2005 Concluding Observations of the Human Rights Committee for the ICCPR.	This should include equal access to education facilities by migrant workers and their children, access to their personal documents, and provision of health insurance to cover health related expenses.	Businesses	Policy must be put in place to ensure that benefits extend not just to workers with official documentation, but also to migrant workers with pink ID cards and/or undocumented workers, and migrant workers over the age of 55 years.  Timeline: 2 years – 2019-2020
Refrain from violating migrant workers' rights to freedom of movement and from increasing the risk of arrest, without discrimination to all migrant workers, whether documented, undocumented or stateless.	No step should be taken to restrict this right of migrant employees, through measures such as confiscation of worker's passports, work permits or other identification documents.	Businesses	Conduct a regular migrant survey to determine if they have their identification or travel documents or if they have been confiscated by their employer, supervisor or recruiter.  Timeline: 1 year – 2019
	Migrant workers must have access to these documents at all time, with provisions such as safe storage in employer provided housing.		
	Migrant workers should not be prevented from changing employers.		
Migration must be gender-responsive, by recognising and addressing the specific vulnerabilities of women migrants.	Businesses must refrain from any action that amounts to discrimination, sexual abuse, isolation, withholding of payment and documents, and debt bondage in any form.	Businesses	Internal oversight mechanisms must specifically monitor such occurrences, at every level of operation.  Timeline: 1 year – 2019
<b>Priority Area 3</b>	<b>Establishment of monitoring mechanisms and a regulatory framework</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Actions</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>



<p>Undertake effective eHRDD that addresses the rights of migrant workers and produce reports based on the information obtained, according to the Statement by the UNWG on BHR at the end of its visit to Thailand.</p>	<p>Businesses should use HRDD to identify, prevent, and mitigate human rights violations in regard to working conditions. This can be done by effective monitoring of migrants working hours through timesheets, keeping accurate records of holiday pay, and regularly interviewing them to ensure their rights are being respected.</p> <p>The conclusions of the report must be incorporated into the business practices of the company. They must also commit to a supplier code of conduct expecting suppliers to act with transparency and respect fundamental human rights for all people; treat their employees and workers with fairness, respect and dignity, and follow practices that protect the environment, as well as the health and safety measures for the people working in their facilities.</p>	<p>Businesses</p>	<p>Separate due diligence mechanisms must be carried out with respect to general employees and migrant workers, and the two must be compared to identify gaps. It must be carried out with the participation of all stakeholders including migrant workers (contributing to challenges and recommendations) and must address current and future rights violations.</p> <p>Timeline: 1 year – 2019</p>
<p>Establish monitoring mechanisms within the company to ensure effective implementation of labour legislations, with respect to migrant workers.</p>	<p>Effective oversight can be put in place by establishing independent mechanisms to study working conditions and access to social security, through aggregated data.</p>	<p>Businesses</p>	<p>Annual reports with this information and improvements made with respect to it, must be published on the company website and made publicly accessible.</p> <p>Timeline: 6 months within 2019</p>
<p>Dedicate resources to ensure the supply chain’s sustainability, with respect to migrant workers’ rights and protections.</p>	<p>A team of professionals responsible for ensuring sustainability in supply chains must monitor standards of work adopted by businesses and individuals, including with respect to recruitment practices and working conditions.</p>	<p>Businesses</p>	<p>Analysis of the policies and actions of existing businesses and individuals, as well as future entrants in the supply chain, must be undertaken.</p> <p>Timeline: 1 year – 2019</p>

	Investment should be set aside to specifically target responsible sourcing from suppliers who maintain standards of recruitment and employment that workers are entitled to.		
Create a platform for data sharing or automated data systems that monitor and track supplier information with respect to labour migration and workers' rights, utilising systems such as blockchain technology.	These platforms or systems should be designed to streamline the determination of where issues manifest and what the root causes of those issues are. Sharing these at the national or regional level will enhance tracking of the violation of rights, while reducing the resources that have to be dedicated to it.	Businesses	More transparency of the supplier base and the violations that occur therein, should be reinforced with an analysis of these results to identify and predict patterns of social risks in a future business relationship.  Timeline: 3 years – 2019-2021

**Priority Area 4 Training and education on the rights of migrant workers**

Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Educate migrant workers, migrant associations, trade unions, department heads, and other employees working in the company and subsidiaries, about the rights and protections that migrant workers are entitled to, and the contribution of compliance to supply chain sustainability in the long term. This is to encourage recognition of these rights and to promote their exercise.	Organise trainings on human rights, labour laws, and social security guarantees for migrant workers, with specific examples to address the local situation, and the context of the sector, size of the business enterprise, and the resultant rights violations that the migrant workers may be subjected to, based on these aspects.  Educate employees and those working in the management of the company on the long-term benefits of a supply chain that respects law, policy and good practice on the rights and protections of migrant workers.	Businesses	Migrant workers should also specifically be informed about processes and compensation available to them. Trainings must be assessed for effectiveness based on the number of trainings held and through follow up sessions to ensure that the information is synthesised, understood and can be utilised. Additional trainings may also be required on legal, policy and contextual developments.  Timeline: 2 years – 2019-2020

**PILLAR III: Access to REMEDY**

**Priority Area 1 Access to grievance redressal mechanisms and compensation**

Recommendations (Goal to be achieved)	Actions	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
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Refrain from using litigation to stop migrant workers from accessing remedies or compensation, for the violation of their rights by businesses.	Businesses should withdraw litigation and not file fresh charges or cases against migrant workers, such as those on defamation.	Businesses	Remedies and compensation must be provided for any false charges filed or litigation initiated against migrant workers.  Timeline: 1 year – 2019
Access to redressal mechanisms must be extended to all migrant workers.	Compliance with redressal for violation of provisions and mechanisms put in place under the Social Security Act, must extend to all migrant workers and not just those with passports, including migrant workers with pink ID cards, and undocumented workers.	Businesses	Structural and functional barriers to access by these individuals must also be specifically addressed.  Timeline: 1 year – 2019
Establish workplace-based grievance redressal mechanisms.	Provide confidential and safe avenues for reporting instances of abuse, harassment, violence or exploitation, that migrant workers can utilise without fear of deportation or retaliation; in order to access the full range of resolutions under Thai Law.  Recruitment agencies, labour inspectors, other authorities, trade unions or civil society organisations may take a more active role in the process of grievance redressal.	Businesses	They must provide remedies to the violation of rights of migrant workers, within 60 days. Timeline: 6 months within 2019
Create a dedicated hotline for employees and workers nationwide to voice their concerns.	This hotline should be managed by a neutral organisation, where all employees regardless of position and nationality can freely express their opinions, recommendations and complaints. The organisation managing the hotline could also have staff and lawyers with knowledge of laws, issues and solutions, which they can use to offer advice and assistance.	Businesses	This approach should be used obtain honest feedback on actual work conditions and promptly tackle all problematic human rights and labour rights issues, in a comprehensive manner. Number of calls received from migrant workers and the issues faced by them must be documented for dissemination to businesses for them to resolve.  Timeline: 1 year – 2019
<b>Priority Area 2</b>	<b>Grievance Redressal through collective bargaining</b>		
<b>Recommendations</b>	<b>Actions</b>	<b>Lead Agency/</b>	<b>Performance Indicators/</b>



<b>(Goal to be achieved)</b>		<b>Jurisdiction</b>	<b>Timeline</b>
End restrictions on the right to assembly of migrant workers and grievance redressal by collective bargaining.	Policies formulated by the company should remove barriers placed on the use and formation of labour unions by migrant workers.	Businesses	Representation of migrant workers in the labour union should correspond to the number in the workforce, including in leadership roles.
	Specific problems faced by migrant workers while accessing this process must be addressed and remedied.		Timeline: 1 year – 2019

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# NOTES

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**MANUSHYA**

Empowering Communities | Advancing Social Justice

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

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